

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEFebruary 16, 2024

MEETING LOCATIONFinance Commission Building
William F. Aldridge Hearing Room
2601 North Lamar Boulevard
Austin, Texas 78705

CONTACT INFORMATION.....Phone: (512) 936-6222
Website: www.fc.texas.gov

FUTURE MEETING DATESApril 19, 2024
June 21, 2024
August 16, 2024
October 25, 2024
December 20, 2024

*** The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. Finance Code §11.106*

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FINANCE COMMISSION AGENDA

Friday, February 16, 2024
9:00 a.m.
or Upon Adjournment of the Audit Committee Meeting
Finance Commission Building
William F. Aldridge Hearing Room
2601 North Lamar Boulevard
Austin, Texas 78705

Section A.3 will take up agenda items A1, B2-B4, and D2, with NO DISCUSSION as notated in bold and italicized.

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission of Texas agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

A. FINANCE COMMISSION MATTERS

1. ***Review and Approval of the Minutes of the December 15, 2023 Finance Commission Meetings***
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Presentation from the Texas Treasury Safekeeping Trust Company related to the Texas Financial Education Endowment Fund
6. Audit Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2024 First Quarter Investment Officer Reports
 1. Office of Consumer Credit Commissioner
 2. Department of Savings and Mortgage Lending
 3. Texas Department of Banking
 - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2024 First Quarter Financial Statements
 1. Office of Consumer Credit Commissioner
 2. Department of Savings and Mortgage Lending
 3. Texas Department of Banking
 - C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2024 Internal Auditor's Risk Assessment and Audit Plan
 1. Office of Consumer Credit Commissioner
 2. Department of Savings and Mortgage Lending
 3. Texas Department of Banking
7. Discussion of the Process for the 2025-2029 Strategic Plans for the Finance Commission Agencies
8. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to § 551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to

the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff

9. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to § 551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
10. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to § 551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation
11. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by §§ 551.076 and 551.089, Texas Government Code
12. Discussion of Matters Made Confidential by Law Pursuant to § 551.081, Texas Government Code, including Information Relating to the Financial Condition or Business Affairs of a Financial Institution

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 1, Concerning Consumer Credit Regulation, Resulting from Rule Review*
4. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review*
5. Discussion of and Possible Vote to Take Action on the Proposal of Amendments in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders
6. Discussion of and Possible Vote to Take Action on the Proposal of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales
7. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 01-22-00712-CV, in the First Court of Appeals, Houston, Texas

C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Tim Schoenbauer v. Texas Department of Savings and Mortgage Lending; Cause No. JPC-23-02334-32, in the Justice Court, Precinct 3, Place 2, Dallas County, Texas

D. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 2, Chapter 15, Concerning Corporate Activities by State-Chartered Banks***
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 2, § 33.27, Concerning Fees to Obtain and Maintain a License
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

NOTE: The Finance Commission of Texas may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Accessibility: Under the Americans with Disabilities Act, the Finance Commission of Texas will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

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MINUTES OF THE FINANCE COMMISSION MEETING Friday, December 15, 2023

The Finance Commission of Texas convened at 9:03 a.m., on December 15, 2023, with the following members present:

Finance Commission Members in Attendance:

Phillip Holt, Chairman
George "Cliff" McCauley, Vice Chairman
Bob Borochoff
Hector Cerna
Martin "Marty" Green

Will Lucas
Roselyn "Rosie" Morris
Vince Puente
Laura Warren

Finance Commission Members Absent:

Sharon McCormick

Commissioner Charles G. Cooper announced there was a quorum with nine (9) members present. *(0:59 on audio file).*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the October 27, 2023 Finance Committee Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	1:07 Start of Discussion
3. Consent Agenda – Items A1, C2, D2 and D3	Will Lucas made a motion to Approve Consent Agenda items A1, C2, D2 and D3. Laura Warren seconded, and the motion passed.	1:48 Start of Discussion 2:46 Vote
4. Finance Commission Operations	No Action Required.	2:03 Start of Discussion
5. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Appointment of New Texas Financial Education Endowment Fund Grant Advisory Committee Member Andrea Herrera	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Appointment of New Texas Financial Education Endowment Fund Grant Advisory Committee Member Andrea Herrera passed.	3:08 Start of Discussion 3:23 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	No Discussion.	n/a
7. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	No Discussion.	n/a
8. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation	No Discussion.	n/a
9. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by §§ 551.076 and 551.089, Texas Government Code	No Discussion.	n/a
10. Discussion of Matters Made Confidential by Law Pursuant to § 551.81, Texas Government Code, including Information Relating to the Financial Condition or Business Affairs of a Financial Institution	No Discussion.	n/a
B. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, Including Consumer Complaints and Gift Reporting; and e) Legislative Activities	No Action Required.	3:50 Start of Discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p> <p><i>Tim Schoenbauer v. Texas Department of Savings and Mortgage Lending; Cause No. JPC-23-02334-32, in the Justice Court, Precinct 3, Place 2, Dallas County, Texas</i></p> <p><i>Julius Lamunn North v. Texas Department of Savings and Mortgage Lending; et al., Cause No. 2023-50470, in the District Court, 270th Judicial District, Harris County, Texas</i></p>	No Action Required.	n/a
C. Texas Department of Banking		
<p>1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities</p>	No Action Required.	22:31 Start of Discussion
<p>2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 2, Chapter 12, Concerning Loans and Investments by State-Chartered Banks</p>	<p>On Consent Agenda – Item C2 This item Approved on the Consent Agenda.</p>	n/a
<p>3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 2, Chapter 15, Concerning Corporate Activities by State-Chartered Banks</p>	Marty Green made a motion to Approve the Proposal and Publication for Comment of Amendments in 7 TAC, Part 2, Chapter 15, Concerning Corporate Activities by State-Chartered Banks. Laura Warren seconded, and the motion passed.	40:10 Start of Discussion 41:40 Vote
<p>4. Discussion of and Possible Vote to Take Action on the Appointment of Ray Boone as the Consumer Representative and Reappointment of Amy Biggs as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2024, to December 31, 2025</p>	Laura Warren made a motion to Approve the Appointment of Ray Boone as the Consumer Representative and Reappointment of Amy Biggs as the Insurance Industry Representative to the Guaranty Fund Advisory Council for the Period January 1, 2024, to December 31, 2025. Will Lucas seconded, and the motion passed.	42:08 Start of Discussion 43:07 Vote
<p>5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation</p>	No Discussion.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
D. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	43:57 Start of Discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales	On Consent Agenda – Item D2 This item Approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 85, Subchapter B, Concerning Crafted Precious Metal Dealers, Resulting from Rule Review	On Consent Agenda – Item D3 This item Approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 01-22-00712-CV, in the First Court of Appeals, Houston, Texas</i>	No Discussion.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 10:05 a.m. (1:02:02 on the audio file).

Phillip Holt, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Ruth Wright, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

February 16, 2024

A. Finance Commission Matters

1. Review and Approval of the Minutes of the December 15, 2023 Finance Commission Meeting

B. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 1, Concerning Consumer Credit Regulation, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review

C. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 2, Chapter 15, Concerning Corporate Activities by State-Chartered Banks

Finance Commission Agencies Tentative Strategic Planning Timeline*

Date	Action
January – February 2024	<ul style="list-style-type: none"> Review Survey of Employee Engagement Results Stakeholder meetings
March – April 2024	<ul style="list-style-type: none"> Review Goals and Performance Measures Conduct and Review Customer Service Survey <p>Prepare Drafts of:</p> <ul style="list-style-type: none"> Strategic Plan Customer Service Report Workforce Analysis
Early May 2024	Provide drafts to Strategic Planning Committee and receive feedback
Mid-May 2024	Make edits and revisions as necessary
End of May 2024	Provide revised strategic plan drafts to all Finance Commission members
June 2024	<ul style="list-style-type: none"> Submission of final Strategic Plans, Workforce Analysis, and Customer Service Reports to state leadership Present strategic plans to Finance Commission for formal action

**Dates and actions are subject to change upon issuance of the instructions for preparing and submitting agency strategic plans by the Legislative Budget Board.*

B.

**Office of Consumer Credit
Commissioner**

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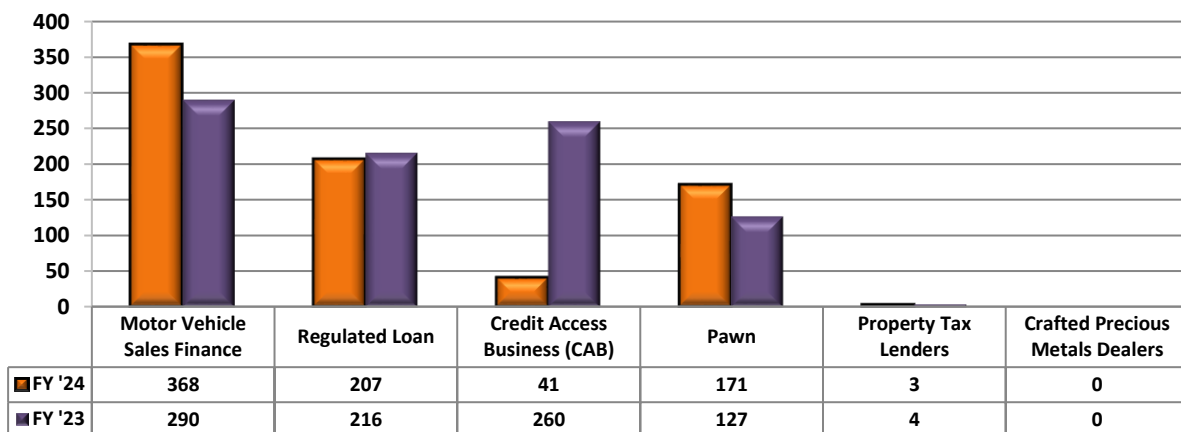
Consumer Protection and Consumer Assistance Report

The OCCC examination program is behind FY '24 target exam production by 8% as of the end of January 2024. Typically, examination production lags at the end of the calendar year. Two multi-state mortgage examinations (covering exams of 27 licenses) with completed fieldwork remain in review by the Multi-State Mortgage Committee (MMC). These exams are anticipated to be finalized by August 31, 2024. The OCCC is participating in and will complete work in three other multi-state mortgage exams (covering exams of 28 licenses) this spring. The OCCC does not plan to participate in any additional multi-state mortgage exams for the remainder of fiscal year 2024. The OCCC also does not have plans to participate in any multi-state auto finance exam activity during the remainder of this fiscal year.

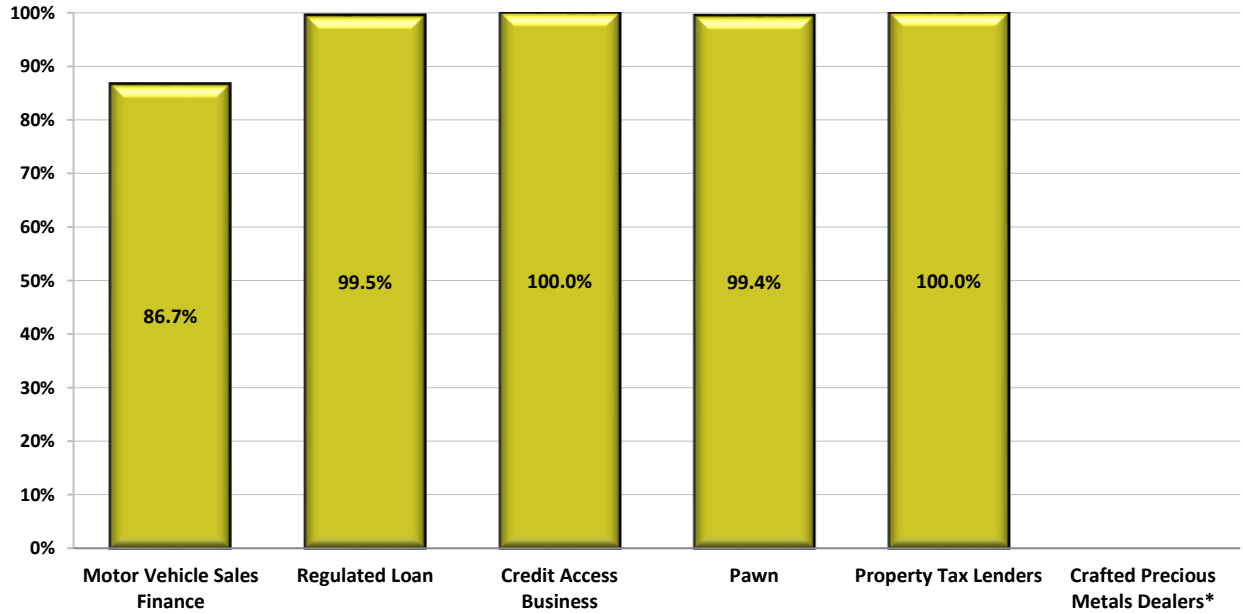
The examination department continues to prioritize examiner training and development. Certification in motor vehicle sales finance examinations for the June 2023 examiner class is concluding. A class of eight examiners completed classroom training for 342-E exams in January. These eight examiners are scheduled to participate in a large 342-E enterprise exam this spring. Additionally, during March 2024, a classroom training experience is scheduled for mortgage and property tax lender exams. Finally, classroom training (six examiners) related to credit access business examinations is scheduled for the summer of 2024. These classroom training events are a vital component of examiner development and represent milestones necessary for career ladder progression.

The OCCC is committed to filling a June 2023 examiner class of five or six examiners. Recruiting trips are scheduled and participation is confirmed at six universities beginning in February and concluding late March.

**Examinations Conducted: Sept - Dec
Fiscal Year Comparison**



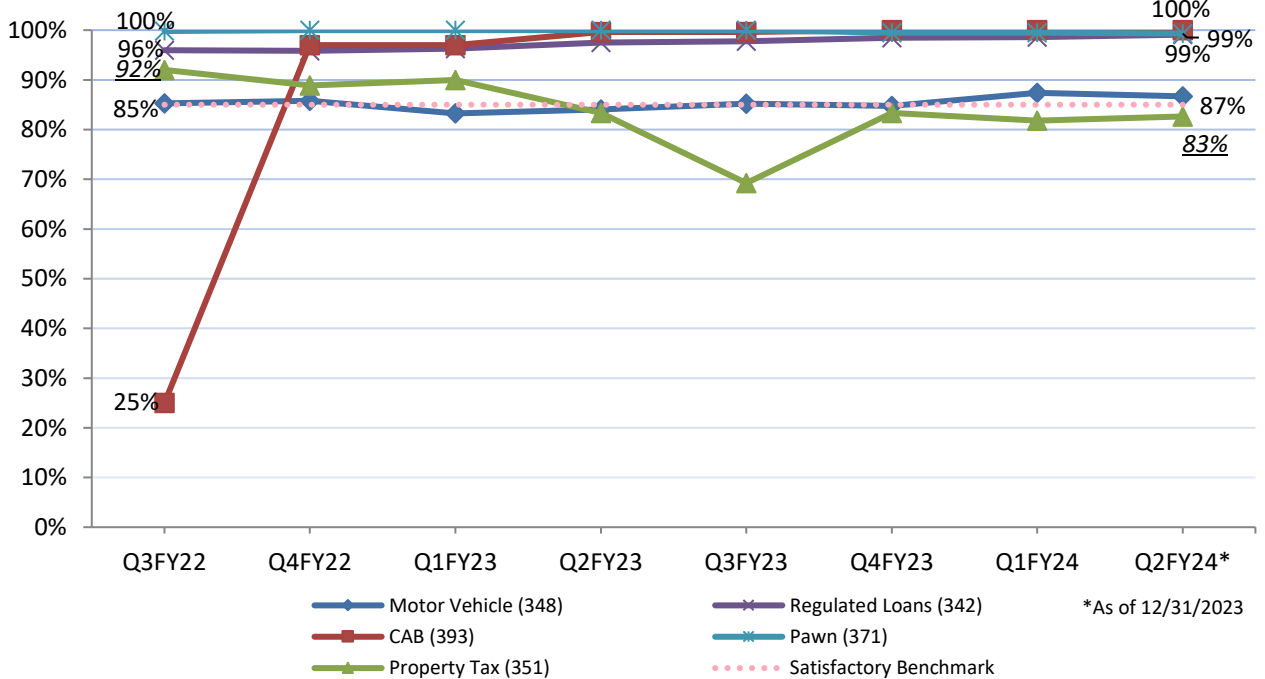
Acceptable Level of Compliance FY '24 (Sept 2023 - Dec 2023)



*No exams finalized as of 12/31/2023

The following chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of December 2023.

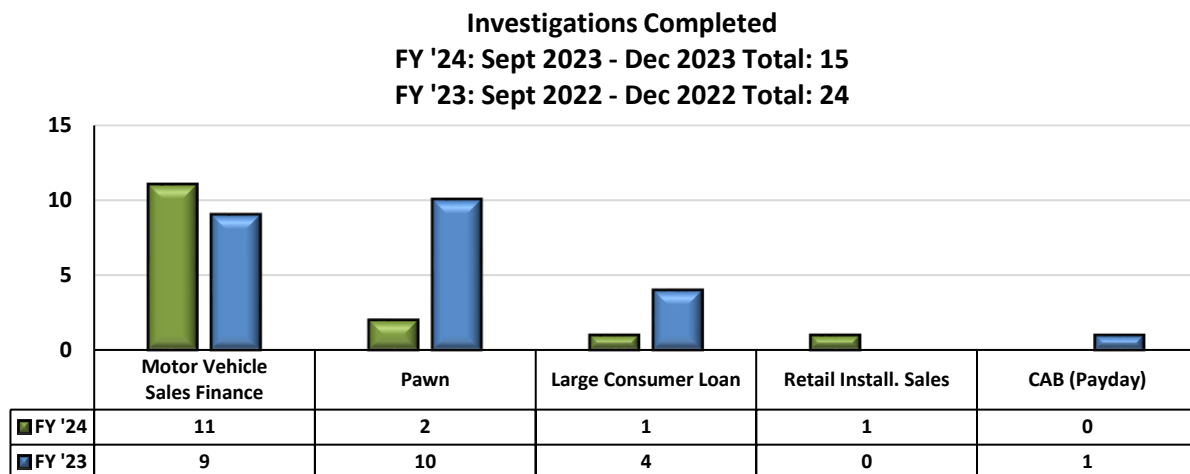
Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



*As of 12/31/2023

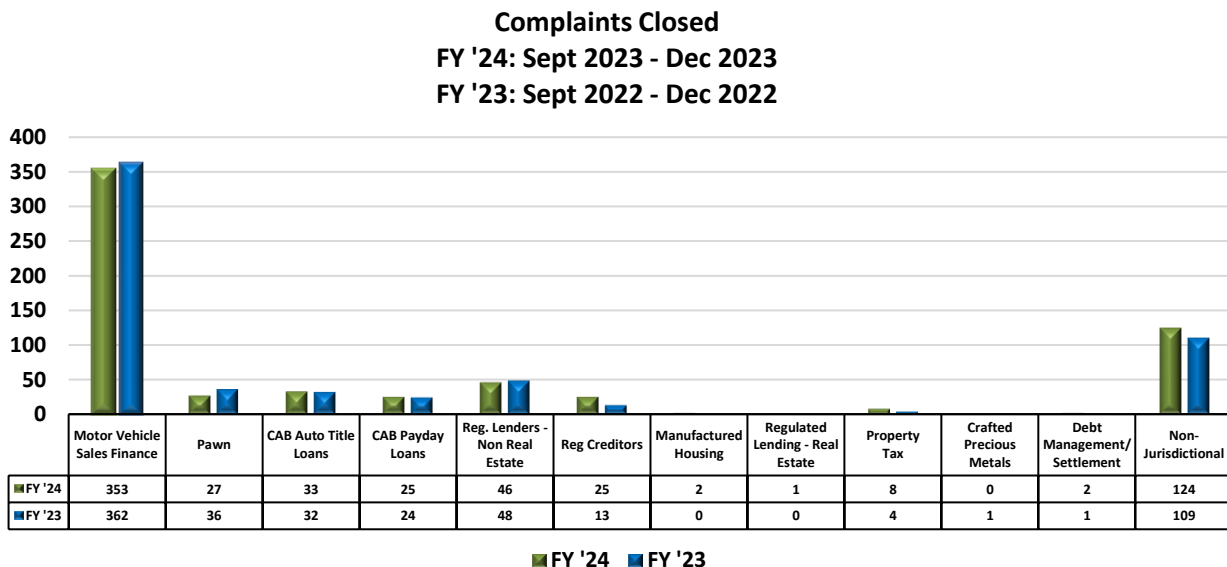
Investigations

For FY 2024 through December, the OCCC completed 15 investigations out of the annual goal of 75. Motor Vehicle Sales Finance issues comprise 73.3% of the overall number of completed investigations. Referrals to investigation have declined this fiscal year.



Consumer Assistance

From September 1, 2023, through December 31, 2023, 646 complaints were closed, of which 124 were classified as non-jurisdictional. The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Businesses (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn. MVSF complaints were the largest complaint category at 54.6%. The second largest category was Credit Access Business complaints at 9% collectively, separately these are 3.9% for payday loans and 5.1% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 7.1%. The fourth largest category was Pawnshops at 4.2%.



Fiscal Year 2024: Number of Complaints Closed by Source (Table 1), Subject (Table 2), and Disposition (Table 3)

Table 1

Source of Complaint	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Consumer	421	N/A	N/A	N/A
Business	3	N/A	N/A	N/A
Law Enforcement	0	N/A	N/A	N/A
State or Federal Agency	78	N/A	N/A	N/A
OCCC	4	N/A	N/A	N/A
Whistleblower	0	N/A	N/A	N/A
Other	0	N/A	N/A	N/A
Total	506	N/A	N/A	N/A

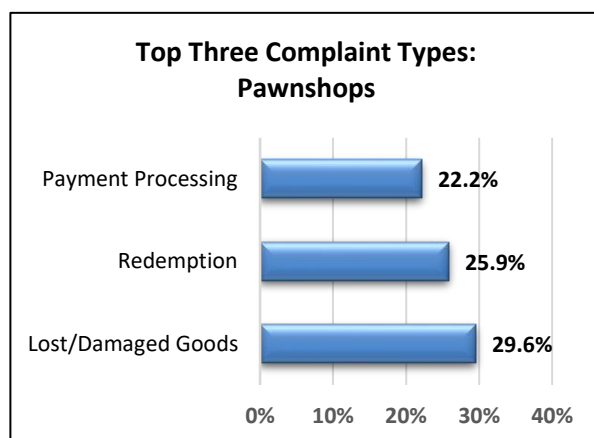
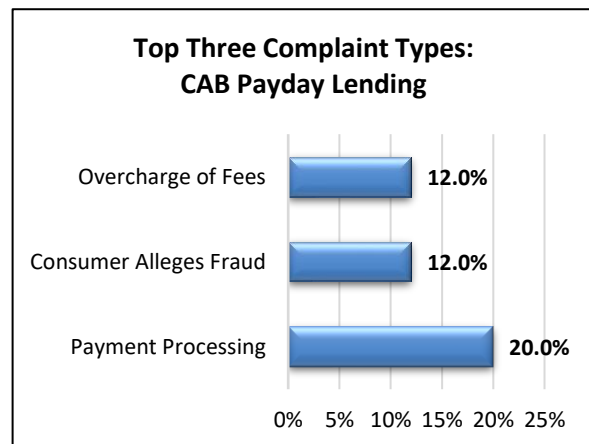
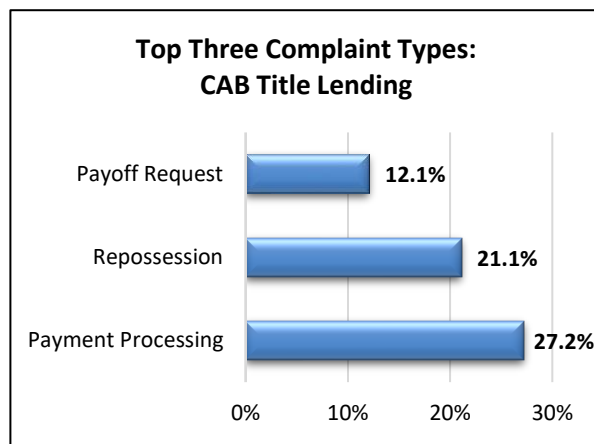
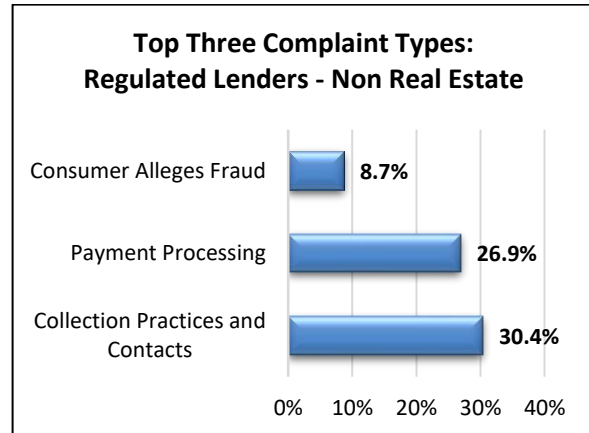
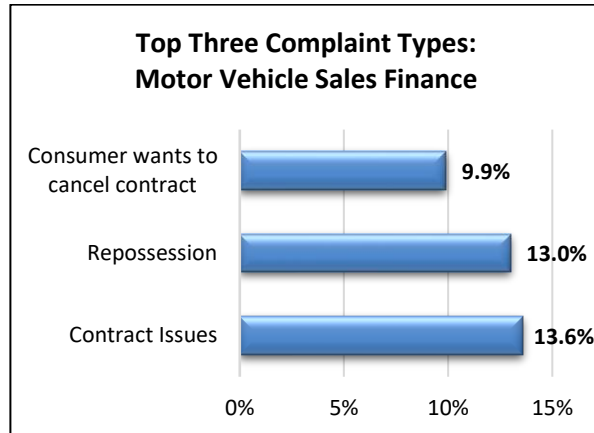
Table 2

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	284	N/A	N/A	N/A
CAB Payday Loans	18	N/A	N/A	N/A
CAB Auto Title Loans	25	N/A	N/A	N/A
Reg. Lenders - Non-Real Estate	35	N/A	N/A	N/A
Pawn	18	N/A	N/A	N/A
Registered Creditors	22	N/A	N/A	N/A
Crafted Precious Metal Dealers	0	N/A	N/A	N/A
Regulated Lenders - Real Estate	0	N/A	N/A	N/A
Manufactured Housing	1	N/A	N/A	N/A
Property Tax Lenders	5	N/A	N/A	N/A
Debt Management/Settlement	2	N/A	N/A	N/A
Refund Anticipation Loan	0	N/A	N/A	N/A
Non-Jurisdictional	96	N/A	N/A	N/A
Total	506	N/A	N/A	N/A

Table 3

Disposition	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	8	N/A	N/A	N/A
Closed to Legal	0	N/A	N/A	N/A
Closed -Action Taken	60	N/A	N/A	N/A
Closed -No Violation	208	N/A	N/A	N/A
Closed - Administratively	134	N/A	N/A	N/A
Close - Non-Jurisdictional	96	NA	N/A	N/A
Total	506	N/A	N/A	N/A

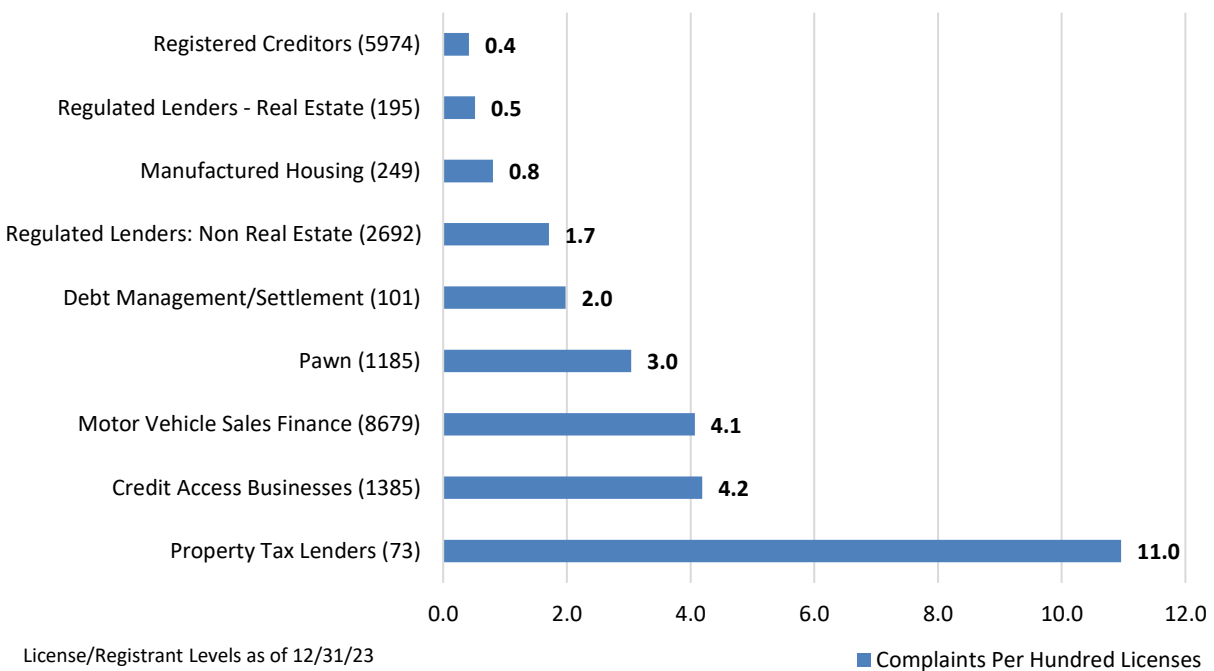
The following charts represent the top three complaint areas per license type.



Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Percentage of Written Complaints Closed within 90 days	96.1%	N/A	N/A	N/A
Average Number of Days to Close a Complaint	39.2	N/A	N/A	N/A
Number of Complaints Closed	506	N/A	N/A	N/A

Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. For this reporting period, the highest ratio of complaints to active license/registrants is Property Tax Lenders, followed by Credit Access Businesses, Motor Vehicle Sales Finance, and Pawn.

**Ratio of Complaints to Active License and Total Active Licenses and Registrants
FY '24 (Sept 2023 - Dec 2023)**



CAB Reporting Update

Summaries of CAB reports through the third quarter of 2023 are available on the OCCC website. Presented are selected statistics of first, second and third quarter reports compared with previous years. New loan origination in 2023 has decreased slightly from 2022, sitting 2% lower than last year's observation. Installment payday loans made up 90% of all new payday loan originations in the first three quarters of the year. Repossessions in Q3 2023 have increased 9.6% from last quarter but are down 3.7% for the year compared to 2022.

Data Highlights (All Loan Types) Q1-Q3 Comparison	2023	2022	2021	2020	2019	2018
Number of new payday loans	1,250,128	1,278,977	1,131,406	1,093,086	1,612,428	1,563,242
Number of new auto title loans	166,865	167,092	147,878	141,051	215,925	245,826
Percentage of payday loans due in multiple installments	90%	84%	72%	63%	56%	52%
Percentage of auto title loans due in multiple installments	44%	47%	45%	53%	60%	54%
Number of vehicles repossessed under all auto title loans	31,989	33,174	31,312	25,916	32,763	27,210
Total number of locations reporting activity	1,687	1,721	1,837	2,026	2,034	1,999

Payday Loans Q1-Q3	Single Installment			Multiple Installment		
	2023	2022	2021	2023	2022	2021
Number of consumers obtaining loans	88,509	140,355	145,281	980,438	930,394	727,819
Number of new loans	130,813	203,058	213,229	1,119,315	1,075,919	817,989
Number of total refinances ¹	143,014	224,506	186,979	285,385	255,804	162,596
Average loan amount	\$518	\$501	\$495	\$641	\$606	\$559
Average fee per \$100 borrowed	\$28	\$27	\$24	\$120	\$124	\$128
Average original term (in days)	20	20	22	127	145	142
Average Fee Converted to a Daily Rate ²	1.39%	1.34%	1.12%	0.94%	0.86%	0.90%

Title Loans Q1-Q3	Single Installment			Multiple Installment		
	2023	2022	2021	2023	2022	2021
Number of consumers obtaining loans	70,902	70,004	63,297	68,936	73,986	63,075
Number of new loans	93,439	87,898	81,059	73,426	79,194	66,837
Number of total refinances ¹	380,060	307,913	319,415	68,012	66,618	65,516
Average loan amount	\$1,564	\$1,762	\$1,818	\$1,675	\$1,662	\$1,621
Average fee per \$100 borrowed	\$17	\$16	\$15	\$106	\$103	\$106
Average original term (in days)	30	31	31	155	162	161
Average Fee Converted to a Daily Rate ²	0.55%	0.53%	0.49%	0.69%	0.64%	0.66%

¹ Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.

² Based on averages, per dollar borrowed a consumer would pay this percentage per day. The APR could be approximated by multiplying this rate by 365; however, it could be significantly higher if the multiple installment loans reduce principal with each payment and the total fees remain the same.



Licensing Report-February 2024

Renewals

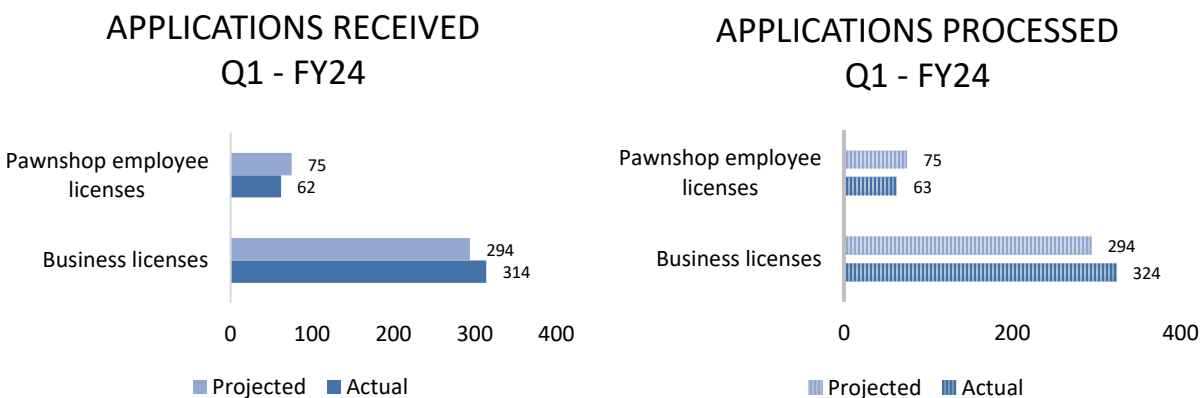
The Licensing department has concluded renewal for Residential Mortgage Loan Originators, Property Tax Lenders, Crafted Precious Metals, Regulated Lenders, Refund Anticipation Loan Facilitators and Credit Access Businesses.

As of January 31st, renewal rates for Credit Access Businesses are approximately 99%, Property Tax Lenders are 93%, while Regulated Lenders are standing at roughly 90%.

The department is currently working on Debt Management and Settlement Provider registration renewals. The renewal period closed on January 31.

Application Processing

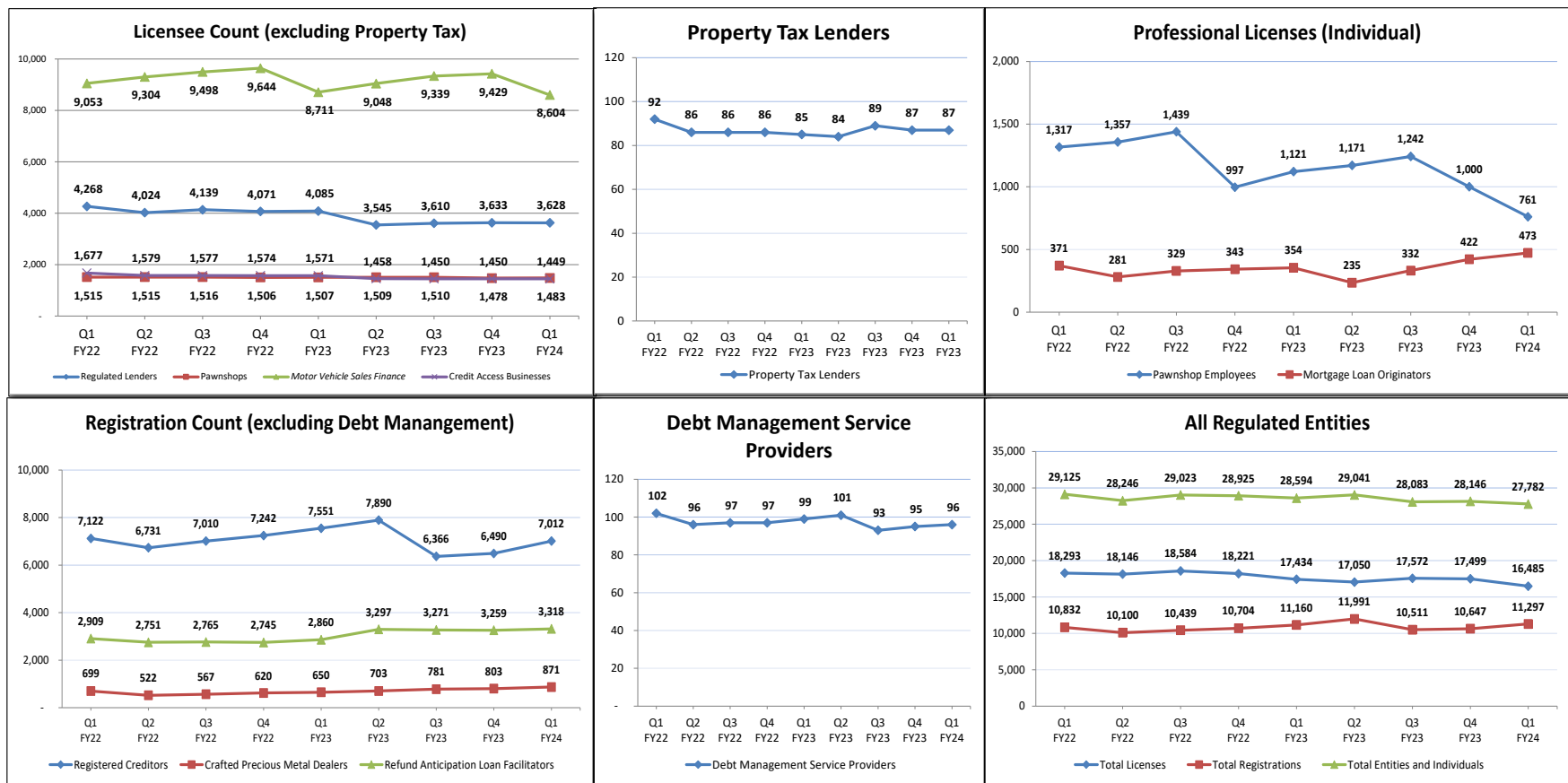
Since the beginning of the fiscal year, the department has maintained less than 190 pending applications weekly, indicating efficient and timely processing of applications in FY24. Management will continue to monitor incoming volume, as well as application processing data.



Other Updates

Licensing, along with IT and the legal department, is continuing work to digitize historical paper files in coordination with the Department of Banking and a vendor. The Licensing department is also prioritizing staffing and cross-training to further elevate the overall effectiveness of License Specialists and Compliance Analysts. This training is set to start Q2 of FY24.

Number of OCCC Regulated Entities Quarterly Comparison of FY 22-24





Administration

Financial Education and TFEE

OCCC staff provided financial education to 284 individuals during the first quarter of FY '24. On February 21st, the OCCC is partnering with the Texas Department of Banking to host a joint webinar addressing strategies and guidelines for organizing important life and financial documents. Additionally, the Agency has presentations scheduled with Texas County & District Retirement Systems, as well as a presentation to a Houston area senior community center, scheduled over the next two months.

TFEE's 2022-2023 grant cycle ended on December 31, and semi-annual reports and final reimbursement requests are currently being processed. The 2024-2025 grant cycle began on January 1 and is well underway. Staff continue to reach out to new grantees to answer questions and have scheduled a site visit for a Houston area recipient.

Communication

On January 26, 2024, the OCCC hosted its quarterly town hall to meet with staff, facilitate communication, and convey updates from agency leadership. The OCCC will begin the biannual Survey of Employee Engagement soon. In anticipation of the upcoming 2025-2029 Strategic Plan, stakeholder feedback is being solicited. The OCCC continues to communicate with stakeholders, and staff have provided presentations to regulated entities and other groups as follows:

- On December 7, 2023, Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On January 4, 2024, Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On January 29, 2024, Commissioner Pettijohn, General Counsel Nance, Director Lewis, Assistant Director Hubenthal, and other staff members conducted a Regulated Lender Fee Rule Review Webinar.
- On January 30, 2024, Commissioner Pettijohn, General Counsel Nance, Director Lewis, Assistant Director Hubenthal, and other staff members conducted a Motor Vehicle Documentary Fee Rule Review Webinar.

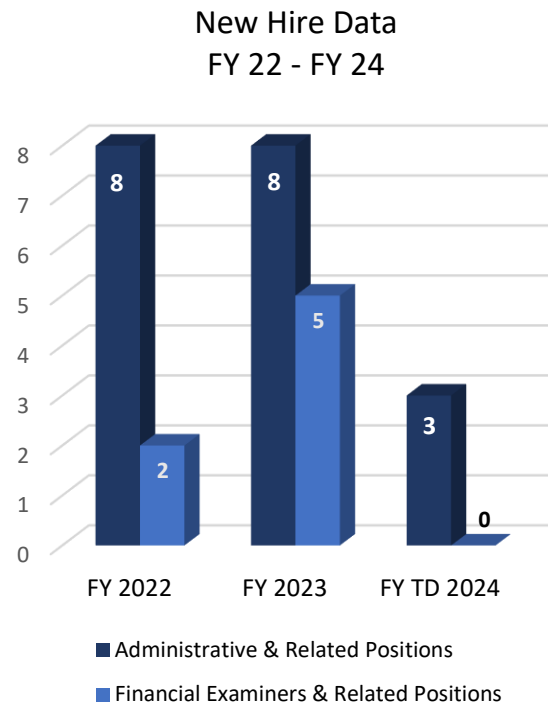
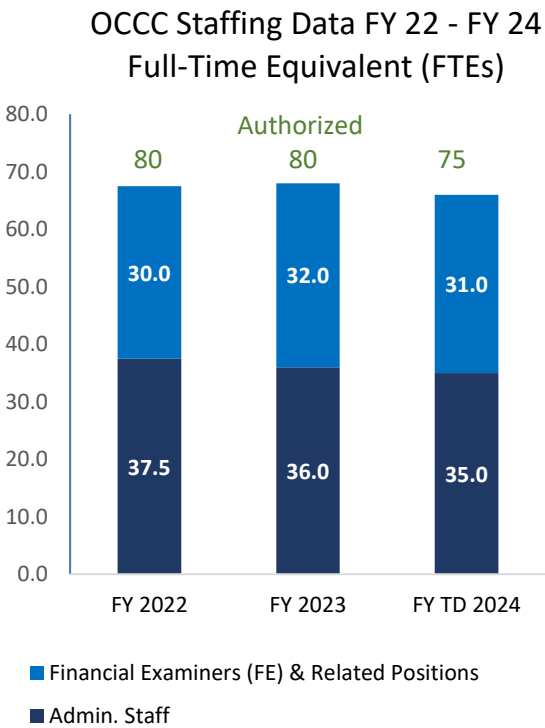
HUMAN RESOURCES

On January 31, 2024, the OCCC was staffed with a total of 66 FTEs.

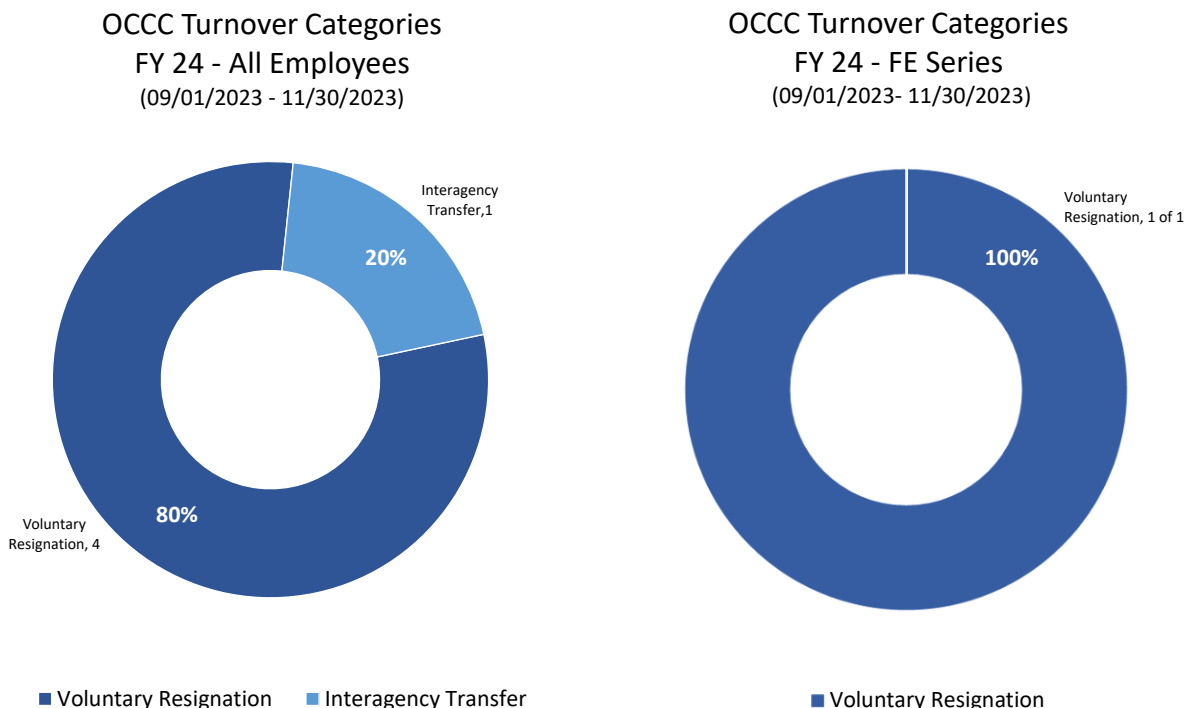
The OCCC has the following open positions:

Vacancy	Status
Customer Service Representative II-III- Licensing	Open
Administrative Assistant -Consumer Protection	Open
HR Specialist V-VI	Open

The following charts represent staffing data for Fiscal Years 2022 - 2024.



The turnover ratio as of January 31, 2024, was 6.25%, and the chart(s) below represents FY24 data.



Information Technology (February 2024)

Technology modernization and deployment

OCCC successfully migrated to the latest revision of the long-term documentation archive, Application Xtender – now known as Application Enhancer – in concert with Department of Banking’s lead role in this update. The examination department leveraged this migration as an opportunity for records management to identify and remove unneeded, out-of-date records.

Cybersecurity and Privacy

The comprehensive revising and restructuring of OCCC IT-relevant policies, to fully align with NIST SP 800-53 revision 5, is approximately 50% completed, with another 10% expected to complete ratification next month. Procedures, of which there are more, are about 12% completed with significantly more in drafting and review.

The annual agency-wide staff access review was completed and validated in December.

Compliance Reporting

The biannual Information Resources Deployment Review is due to the Department of Information Resources by March 31, 2024. Work is underway on this project.



Accounting Report- February 2024

Mirand Diamond, Director of Licensing & Finance

Financial Reporting

The first quarter of fiscal year 2024 ended on November 30, 2023. The first quarter financial statements are presented elsewhere in the meeting material.

The fiscal year end close cycle for fiscal year 2023 was completed in CAPPs.

Other Items

In compliance with Government Code, Section 2101.0115, the accounting staff submitted the Annual Non-Financial Report by the December 31 due date.

In accordance with Government Code, Section 2052.103, the agency reported to the State Auditor's Office the management-to-staff ratio as specified in Texas Government Code, Section 651.004.

As required by Government Code, Section 657.008(c), the Veteran Workforce Summary Report was submitted. Additionally, the Multiple Worksite quarterly report was submitted in January.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of November 30, 2023

	FY 2022	FY 2023	FISCAL YEAR 2024				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned (000)	24,756	13,720	846				846
Regulated Lenders Examinations	818	830	148				148
Property Tax Lender Examinations	27	24	1				1
Pawnshop Examinations	638	398	128				128
Motor Vehicle Examinations	1,398	1,360	277				277
Credit Access Businesses Examinations	268	563	41				41
Crafted Precious Metal Dealers	10	10	0				0
CONSUMER ASSISTANCE							
Telephone Complaints Received	491	496	115				115
Written Complaints Received	1,252	1,310	325				325
Total Complaints Closed	1,751	1,797	506				506
% of Written Complaints Closed within 90 Calendar Days	92.3%	92.5%	96.1%				96.1%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	114	124	4				4
Finalized	138	133	52				52
LICENSING AND REGISTRATION							
Licenses							
Regulated Lender Licenses	4,071	3,633	3,628				3,628
Pawnshop Licenses	1,506	1,478	1,483				1,483
Pawnshop Employee Licenses	997	1,000	761				761
Commercial MV Sales Fin. Licenses	59	65	63				63
Motor Vehicle Sales Finance Licenses	9,585	9,364	8,541				8,541
Property Tax Lender Licenses	86	87	87				87
Mortgage Loan Originators	343	422	473				473
Credit Access Business Licenses	1,574	1,450	1,449				1,449
Registrations							
Registered Creditors	7,242	6,490	7,012				7,012
Crafted Precious Metal Dealers	620	803	871				871
Debt Management Service Providers	97	95	96				96
Refund Anticipation Loan Facilitators	2,745	3,259	2,499				2,499
Applications							
Business -- New	1,434	1,118	314				314
Business -- Change of Ownership	58	85	10				10
Pawnshop Employees -- New	366	286	63				63
HUMAN RESOURCES DATA							
Field Examiners Staffing	30	32	31				31
Total Staffing	67.5	68	66				66

Office of Consumer Credit Commissioner
Actual Performance for Output Measures
Fiscal Year 2024

Type/Strategy/Measure	2024 Target	2024 Actual	2024 YTD	Percent of Annual Target	
Output Measures-Key					
CONSUMER PROTECTION					
1-1-1 Complaint Resolution					
1. # Complaints Closed					
Quarter 1	1,750	506	506	28.9%	
2-1-1 Examination and Enforcement					
1. # Examinations Completed					
Quarter 1	3,000	595	595	19.8%	*
<i>Examination results are more than 5% under the quarterly target primarily due to resources associated with training instead of production. Examination production is anticipated to normalize at the end of the second quarter.</i>					
EFFECTIVE LICENSING & REGISTRATION					
2-2-1 Licensing and Registration					
1. # Business License Applications Processed					
Quarter 1	1,175	324	324	27.6%	
FINANCIAL EDUCATION					
3-3-1 Financial Education					
1. # People Receiving Direct Educational Services					
Quarter 1	650	284	284	43.7%	*
<i>During the first quarter, the OCCC received more requests for financial education classes than forecasted.</i>					

*Varies by 5% or more from target.



Legal Department Report

Matthew Nance, General Counsel

February 2024

Enforcement Report

Contested Cases

As of January 31, 2024, the OCCC does not have any contested cases pending before the State Office of Administrative Hearings (SOAH) and does not have any hearings scheduled before SOAH.

Enforcement Case Highlights

Credit access business quarterly and annual reports

Under Chapter 393 of the Texas Finance Code and its implementing rules, each credit access business is required to file quarterly and annual reports with the OCCC describing transaction activity. The reports are due January 31, April 30, July 31, and October 31 of each year. If a credit access business violates this requirement, the OCCC's typical practice is to send an injunction for the first violation, followed by administrative penalties for subsequent violations. In January 2024, the OCCC issued 13 orders against credit access businesses for failing to file 2023 third quarter reports by the deadline of October 31, 2023.

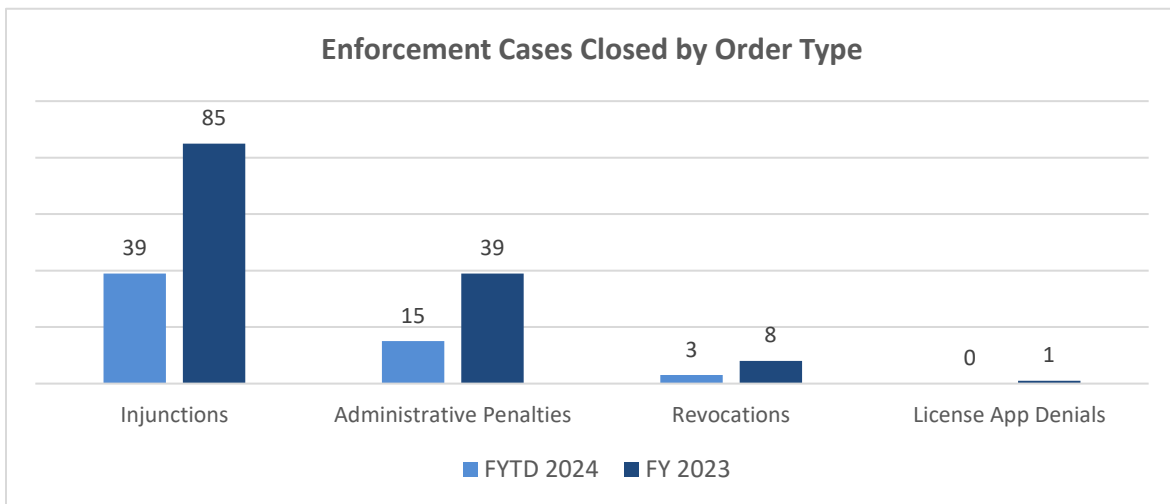
Order disapproving plain language contract submission

Under Chapter 341 of the Texas Finance Code, motor vehicle sales finance licensees are required to use retail installment contracts that are written in plain language. Licensees must use either a model contract adopted by rule of the Texas Finance Commission or a contract that has been submitted the OCCC for plain language review. In December 2023, the OCCC issued one order disapproving a plain language contract submission, because the contract was inconsistent with a retail buyer's right to refinance a balloon payment under Section 348.123 of the Texas Finance Code.

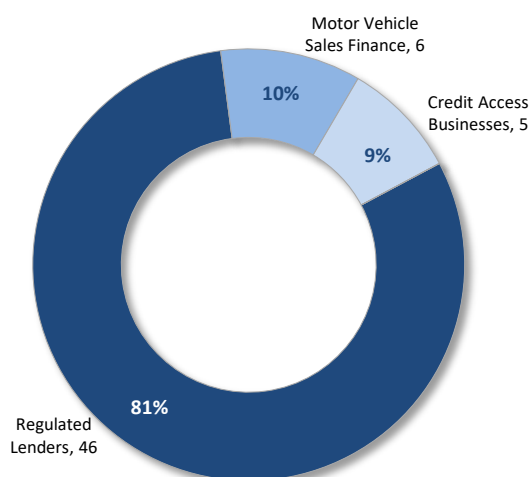
Enforcement Case Tracking

The following table includes enforcement case tracking information for FY 2024 to date (September 1, 2023, through January 31, 2024) and FY 2023.

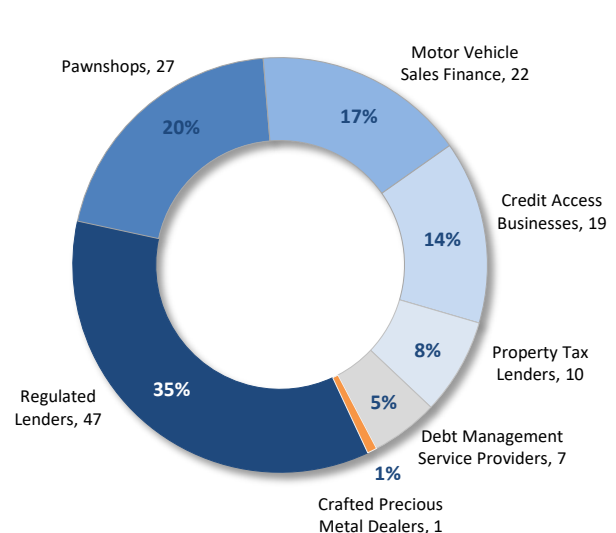
Enforcement Case Tracking Information	FYTD 2024	FY 2023
Enforcement Cases Opened	39	124
Enforcement Cases Closed	57	133
Enforcement Cases Closed by Final Order	54	126
Average Number of Days to Close an Enforcement Action	84	142
Contested Cases Docketed at SOAH	0	2



Cases Closed by Industry FYTD 2024



Cases Closed by Industry FY 2023



Litigation

Ernest Polk v. Texas Office of Consumer Credit Commissioner

This is an employment discrimination lawsuit pending before the First Court of Appeals in Houston (case no. 01-22-00712-CV). The district court dismissed the plaintiff's case, and the plaintiff appealed the case. The parties have filed their briefs in the court of appeals. On October 4, 2023, the court of appeals issued a letter that identified the three justices who will decide the case, stated that the court will not hear oral argument, and set a case submission date of November 28, 2023. As of January 31, 2024, the appeal is still pending.

Rulemaking

At the February meeting, the OCCC is presenting the following rule actions:

- Adoption of amendments to 7 TAC Chapter 83, Subchapter B (relating to credit access businesses), resulting from rule review.
- Readoption of 7 TAC Chapters 1 (relating to OCCC official interpretations) and 82 (relating to OCCC administration), resulting from rule review.
- Proposed amendments to 7 TAC Chapter 83, Subchapter A (relating to regulated lenders) to adjust the maximum administrative fee and acquisition charge for regulated loans.
- Proposed amendments to 7 TAC Chapter 84 (relating to motor vehicle sales finance) to adjust the documentary fee amount considered reasonable and to make technical corrections.

Federal Rulemaking

FTC CARS Rule

On December 12, 2023, the Federal Trade Commission issued its final Combating Auto Retail Scams (CARS) Rule. The rule: (1) prohibits motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles, (2) requires accurate pricing disclosures in dealers' advertising and sales discussions, (3) requires dealers to obtain consumers' express, informed consent for charges, (4) prohibits the sale of any add-on product or service that confers no benefit to the consumer, and (5) requires dealers to keep records of advertisements and customer transactions. The rule states that it does not preempt state laws that provide greater protection to consumers.

Initially, the FTC scheduled the CARS Rule to go into effect on July 30, 2024. On January 5, 2024, the National Automobile Dealers Association and the Texas Automobile Dealers Association filed a petition for review with the Fifth Circuit, alleging that the rule does not comply with applicable law and should be vacated. On January 18, the FTC stayed the effective date of the rule due to the pending lawsuit.

Advisory Guidance

From December 1, 2023, to January 31, 2024, the OCCC did not issue any advisory bulletins.

From December 1, 2023, to January 31, 2024, the OCCC did not receive any requests for official interpretations of the Texas Finance Code. As of January 31, 2024, there were no pending requests for official interpretations of the Texas Finance Code.

Public Information Requests

Public Information Tracking Information	FYTD 2024	FY 2023
Public Information Requests Received	49	162
Public Information Requests Closed	44	155
Public Information Requests Withdrawn	1	7
Public Information Requests Referred to Office of Attorney General	0	0
Average Number of Days to Address a Public Information Request	2.7	2.3

Gifts Received by the OCCC

From December 1, 2023, to January 31, 2024, the OCCC received no gifts.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC Chapter 83, Subchapter B is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 83, Subchapter B.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 83, Subchapter B.

Title 7, Texas Administrative Code
Part 5. Office of Consumer Credit Commissioner
Chapter 83. Regulated Lenders and Credit Access Businesses
Subchapter B. Rules for Credit Access Businesses

The Finance Commission of Texas (commission) adopts amendments to §83.3002 (relating to Filing of New Application), §83.3007 (relating to Processing of Application), §83.4003 (relating to Denial, Suspension, or Revocation Based on Criminal History), and §83.6007 (relating to Consumer Disclosures) in 7 TAC Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The commission adopts the amendments to §83.3002, §83.3007, and §83.4003 without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6516).

The commission adopts the amendments to §83.6007 with changes to the proposed figures as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6516) and the corrected figures published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6927).

The commission received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the rule changes to 7 TAC Chapter 83, Subchapter B is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 83, Subchapter B was published in the *Texas Register* on August 4, 2023 (48 TexReg

4283). The commission received no official comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Amendments to §83.3002 update requirements for filing a new CAB license application. Currently, §83.3002(1)(A)(ii) requires a CAB license application to identify a "responsible person" with substantial management responsibility for each proposed office. The adoption replaces the "responsible person" requirement in §83.3002(1)(A)(ii) with a requirement to list a "compliance officer," who must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. The amendment will enable CABs to identify an individual who can be contacted on a company-wide basis. The amendment is intended to ensure that each CAB lists an individual who can be contacted about compliance issues. In addition, an amendment to §83.3002(2)(A)(v) removes language suggesting that CAB license applicants send fingerprints directly to the OCCC. Currently, license applicants submit fingerprints through a party approved by the Texas Department of Public Safety.

Amendments to §83.3007 revise provisions governing the OCCC's denial of a CAB license application. Under Texas

Finance Code, §393.603(b), if the OCCC finds that a CAB license applicant has not met the eligibility requirements for a CAB license, then the OCCC will notify the applicant. Under Texas Finance Code, §393.603(c), an applicant has 30 days after the date of the notification to request a hearing on the denial. Amendments at §83.3007(d) specify that if the eligibility requirements for a license have not been met, the OCCC will send a notice of intent to deny the license application, as described by Texas Finance Code, §393.603(b). Amendments at §83.3007(e) revise current language to specify that an affected applicant has 30 days from the date of the notice of intent to deny to request a hearing, as provided by Texas Finance Code, §393.603(c). These amendments will ensure consistency with the license application denial process in Texas Finance Code, §393.603. The amendments are consistent with the OCCC's current practice for notifying an applicant of the intent to deny a license application.

Amendments to §83.4003 relate to the OCCC's review of the criminal history of a CAB applicant or licensee. The OCCC is authorized to review criminal history of CAB applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.151; and Texas Government Code, §411.095. The amendments to §83.4003 ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included a change to Texas Occupations Code, §53.022 relating to factors considered in determining whether an offense relates to the duties and responsibilities of the licensed occupation. Amendments to §83.4003(c)(2) implement this statutory change from HB 1342. An amendment to §83.4003(d) corrects an internal cross-reference in the rule.

Amendments to the figures accompanying §83.6007 revise the model forms for the consumer cost disclosure used by CABs. The amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. The amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2022 quarterly and annual reports provided by CABs to the OCCC. Since the proposal, additional changes have been made to the figures to improve formatting and ensure that the figures can be effectively used as fillable forms on the OCCC's website.

The commission and the OCCC will allow a delayed implementation date of September 1, 2024, for all licensees to provide the amended versions of the disclosures under §83.6007. From the rule's effective date through August 31, 2024, licensees may provide consumers with either the previous versions of the disclosures or the amended versions. Starting on September 1, 2024, licensees must provide the amended versions. Regardless of which version of the forms they use, licensees must ensure that their disclosures comply with all requirements in Texas Finance Code, §393.223 and the rule text of §83.6007 and §83.6008 (relating to Permissible Changes). In particular, licensees must ensure that they: (1) use the disclosure corresponding to the correct product (e.g., multiple payment payday loan), (2) provide the disclosure at a time that is both before a credit application is provided and before a financial evaluation occurs, and (3) ensure that the disclosure is completed with all required information.

The rule changes are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules

necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.223 authorizes the commission to adopt rules regarding the cost disclosure used by CABs.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

Division 3. Application Procedures

§83.3002. Filing of New Application

An application for issuance of a new credit access business license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information.
All questions must be answered.

(A) Application for license.

(i) (No change.)

(ii) Compliance officer. The application must list a compliance officer. The compliance officer must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. ~~[Responsible person. For each of the applicant's proposed offices, the person with substantial management responsibility for operations must be named.]~~

(iii) - (iv) (No change.)

(B) - (E) (No change.)

(2) Other required filings.

(A) Fingerprints.

(i) - (iv) (No change.)

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted under ~~[to the~~ ~~OCCC, as per]~~ Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

(B) - (F) (No change.)

(3) (No change.)

§83.3007. Processing of Application

(a) - (c) (No change.)

(d) Notice of intent to deny application. If the OCCC does not find that the eligibility requirements for a license have been met, then the OCCC will send a notice of intent to deny the license application to the applicant.

(e) [(d)] Hearing. An [Whenever an application is denied, the] affected applicant has 30 calendar days from the date of the notice of intent to deny the license application [the application was denied] to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under

§9.1(a) of this title (relating to Application, Construction, and Definitions), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(f) ~~(e)~~ Denial. If an application has been denied, the assessment fee will be refunded to the applicant. The investigation fee and the fingerprint processing fee in §83.3010 of this title (relating to Fees) will be forfeited.

(g) ~~(f)~~ Processing time.

(1) - (3) (No change.)

Division 4. Application Procedures

§83.4003. Denial, Suspension, or Revocation Based on Criminal History

(a) - (b) (No change.)

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a credit access business, as provided by Texas Occupations Code, §53.021(a)(1).

(1) (No change.)

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; ~~and~~

(D) the relationship of the crime to the ability or ~~;~~ capacity ~~[-or-fitness]~~ required to perform the duties and discharge the responsibilities of a licensee; and ~~;~~

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) (No change.)

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or ~~(f)(1)~~ ~~(f)(2)~~ of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and

general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) - (f) (No change.)

Division 6. Consumer Disclosures and Notices

§83.6007. Consumer Disclosures

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.

Figure: 7 TAC §83.6007(a) {See attached amendments.}

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.

Figure: 7 TAC §83.6007(b) {See attached amendments.}

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in

conjunction with a single payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(c) {See attached amendments.}

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.

Figure: 7 TAC §83.6007(d) {See attached amendments.}

(e) - (f) (No change.)

Certification

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on February 16, 2024.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner

CAB NAME HERE

Payday Loan

\$_____, One Payment

Cost Disclosure

Cost of this loan:

Borrowed amount (cash advance)	\$_____
Interest paid to lender (interest rate: _____%)	\$_____
Fees paid to <u>CAB name here</u>	\$_____
Total of payments (if I pay on time)	\$_____

APR	_____%
Term of loan	_____





If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$_____	\$_____
1 Month	\$_____	\$_____
2 Months	\$_____	\$_____
3 Months	\$_____	\$_____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	22%	30%	89%	180%	223%	415%	Average APR
	\$1.82	\$3.55	\$13.38	\$15.00	\$19.45	\$34.14	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new single-payment payday loan:

	5 ¾ will pay the loan on time as scheduled (typically before 30 days)
	1 ½ will renew 1 time before paying off the loan
	1 ¾ will renew 2 to 4 times before paying off the loan
	1 will renew 5 or more times or will never pay off the loan

This data is from 2022 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Payday Loan

\$_____, _____ Payments

Cost Disclosure

Cost of this loan:

Borrowed amount (cash advance)	\$_____
Interest paid to lender (interest rate: _____%)	\$_____
Fees paid to CAB name here	\$_____
Payment amounts (payments due every _____)	Payments #1 - #____ \$_____ Final Payment #____ \$_____
Total of payments (if I pay on time)	\$_____

APR	_____%
Term of loan	_____




If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$_____	\$_____
1 Month	\$_____	\$_____
2 Months	\$_____	\$_____
3 Months	\$_____	\$_____
_____	\$_____	\$_____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	22%	30%	89%	180%	223%	415%	Average APR
	\$1.82	\$3.55	\$13.38	\$15.00	\$19.45	\$34.14	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new single-payment payday loan:

	6 ¾ will pay the loan on time as scheduled (typically before 5 months)
	¾ will renew 1 to 4 times before paying off the loan
	2 ½ will renew 5 or more times or will never pay off the loan

This data is from 2022 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Auto Title Loan

\$_____, One Payment

Cost Disclosure



You can lose your car.

If you miss a payment or make a late payment, your car can be repossessed.

Cost of this loan:

Borrowed amount (cash advance)	\$_____
Interest paid to lender (interest rate: _____%)	\$_____
Fees paid to <u>CAB name here</u> (includes a one-time \$____ title fee)	\$_____
Total of payments (if I pay on time)	\$_____

APR	_____%
Term of loan	_____





If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$_____	\$_____
1 Month	\$_____	\$_____
2 Months	\$_____	\$_____
3 Months	\$_____	\$_____

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	22%	30%	89%	180%	223%	415%	Average APR
	\$1.82	\$3.55	\$13.38	\$15.00	\$19.45	\$34.14	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new single-payment payday loan:

	1 ¼ will pay the loan on time as scheduled (typically before 30 days)
	¼ will renew 1 time before paying off the loan
	¾ will renew 2 to 4 times before paying off the loan
	7 ¾ will renew 5 or more times or will never pay off the loan

This data is from 2022 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

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- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Auto Title Loan

\$_____, ____ Payments

Cost Disclosure



You can lose your car.

If you miss a payment or make a late payment, your car can be repossessed.

Cost of this loan:

Borrowed amount (cash advance)	\$ _____
Interest paid to lender (interest rate: _____%)	\$ _____
Fees paid to <u>CAB name here</u> (includes a one-time \$____ title fee)	\$ _____
Payment amounts (payments due every _____)	Payments #1 - #____ \$ _____ Final Payment #____ \$ _____
Total of payments (if I pay on time)	\$ _____

APR	_____ %
Term of loan	_____

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ _____	\$ _____
1 Month	\$ _____	\$ _____
2 Months	\$ _____	\$ _____
3 Months	\$ _____	\$ _____
	\$ _____	\$ _____

Cost of other types of loans:

Least Expensive Credit Cards Secured Loans Signature Loans Pawn Loans Auto Title Loans Payday Loans Most Expensive





22%	30%	89%	180%	223%	415%
\$1.82	\$3.55	\$13.38	\$15.00	\$19.45	\$34.14

Average APR

Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new single-payment payday loan:

	4 ¼ will pay the loan on time as scheduled (typically 5 – 6 months)
	¾ will renew 1 time before paying off the loan
	1 will renew 2 to 4 times before paying off the loan
	4 will renew 5 or more times or will never pay off the loan

This data is from 2022 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 1, Concerning Consumer Credit Regulation, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 1 and believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission readopt 7 TAC Chapter 1 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that the Finance Commission readopt 7 TAC Chapter 1 following rule review, because the reasons for the rules continue to exist.

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 1. Consumer Credit Regulation

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 1, Chapter 1, concerning Consumer Credit Regulation, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 1 was published in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7179). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 1 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 82, Concerning Administration, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 82 and believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission readopt 7 TAC Chapter 82 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that the Finance Commission readopt 7 TAC Chapter 82 following rule review, because the reasons for the rules continue to exist.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 82. Administration

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 82, concerning Administration, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 82 was published in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7179). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 82 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Proposal of Amendments in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders

PURPOSE: The purpose of the proposed rule changes to 7 TAC Chapter 83, Subchapter A is to adjust the maximum administrative fee and acquisition charge, in order to ensure that the rules reflect administrative costs of closing a loan.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission approve the amendments to 7 TAC Chapter 83, Subchapter A for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve for publication and comment the amendments to 7 TAC Chapter 83, Subchapter A.

Title 7, Texas Administrative Code
Part 5. Office of Consumer Credit Commissioner
Chapter 83. Regulated Lenders and Credit Access Businesses
Subchapter A. Rules for Regulated Lenders

The Finance Commission of Texas (commission) proposes amendments to §83.503 (relating to Administrative Fee) and §83.605 (relating to Limitation on Acquisition Charge) in 7 TAC Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The rules in 7 TAC Chapter 83, Subchapter A govern regulated lenders licensed by the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapter 342. In general, the purpose of the proposed rule changes is to adjust the maximum administrative fee and acquisition charge, in order to ensure that the rules reflect administrative costs of closing a loan.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received four written precomments on the rule text draft. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §83.503 would adjust the maximum administrative fee for a consumer loan under Texas Finance Code, Chapter 342, Subchapter E. The proposed amendments would also prescribe a method for annually adjusting the administrative fee based on the consumer price index (CPI). The commission is authorized to set the maximum amount of the administrative fee under Texas Finance Code, §342.201(g). Currently, §83.503(a) sets the maximum administrative fee at \$100. The commission adopted the \$100 maximum amount in 2013.

As the commission explained in its preamble to the adoption, the administrative fee "compensates the lender for the administrative costs of closing a loan and providing money to the borrower." 38 TexReg 5705 (Aug. 30, 2013).

Proposed amendments to §83.605 would adjust the maximum acquisition charge for a consumer loan under Texas Finance Code, Chapter 342, Subchapter F. The proposed amendments would also prescribe a method for annually adjusting the acquisition charge based on CPI. The commission is authorized to set the maximum amount of the acquisition charge under Texas Finance Code, §342.201(g). Currently, §83.605(a) sets the maximum acquisition charge at the lesser of 10% of the cash advance or \$100. The commission adopted the \$100 maximum amount in 2013. As the commission explained in its preamble to the adoption, the administrative fee "compensates the lender for performing the administrative activities related to making the loan and the risk involved in engaging in the transaction." 38 TexReg 5705 (Aug. 30, 2013).

Under the proposed amendments to §83.503, the maximum administrative fee would be set at \$125 through June 2025 and would then be adjusted annually based on the consumer price index (CPI). Under the proposed amendments to §83.605, the maximum acquisition charge would be set the lesser of 12.5% of the cash advance or \$125 through June 2025, and the \$125 amount would be adjusted annually based on CPI. CPI is a measure of the change over time in prices paid by consumers. CPI is widely

used as a measure of inflation and the overall price level in an economy. The U.S. Bureau of Labor Statistics explains that CPI is "the most widely used measure of inflation" and that CPI is "used to adjust other economic series for price change." U.S. Bureau of Labor Statistics, Consumer Price Indexes Overview (Jan. 23, 2023). The process for adjusting the fee amounts based on CPI is similar to the process that the Texas Legislature has specified to adjust rate bracket amounts under Texas Finance Code, §§341.201-341.204, and to adjust debt management fee amounts under Texas Finance Code, §394.2101. The OCCC and the commission believe that the CPI-based methodology in the amendments would provide an effective method for the administrative fee and acquisition charge to keep pace with increases in costs.

Between September 2013 (when the \$100 administrative fee went into effect) and November 2023, the CPI for Urban Wage Earners and Clerical Workers increased approximately 31% (from 230.537 to 301.224). In addition to CPI, other indexes increased during this period. Comments from lenders suggest that the wages, office space, and technology are significant categories of costs. During this period, the seasonally adjusted Employment Cost Index for private industry workers (a measure of compensation for civilian workers) increased approximately 35% (from 119.0 to 160.7). The Commercial Real Estate Price Index increased approximately 64% (from 212,305 to 348,923). The Producer Price Index for Information Technology Technical Support and Consulting Services increased approximately 24% (from 103.900 to 128.939). Taken as a whole, this information strongly supports the conclusion that costs have increased for lenders since 2013.

The Federal Reserve Board and Fannie Mae have projected that inflation will continue into 2024 and 2025. The Federal Reserve Board has estimated core inflation at a median value of 2.4% for 2024 (with a range from 2.3% to 3.0%) and a median value of 2.2% for 2025 (with a range from 2.0% to 2.6%). Federal Reserve Board, Summary of Economic Projections, p. 2 (Dec. 13, 2023). Similarly, Fannie Mae expects "that core inflation will continue to move toward the Fed's 2-percent target over the next year." Fannie Mae, "Economic Developments - November 2023" (Nov. 17, 2023). This information suggests that costs will continue to increase for lenders in 2024 and 2025, although at a decelerated pace from the high inflation of the last several years.

The proposed adjustment to the maximum administrative fee and acquisition charge (from \$100 to \$125) approximates cost increases between September 2013 and November 2023. This adjustment would ensure that lenders can be compensated for the administrative costs of making a loan, which is the intent of §83.503 and §83.605. The proposed adjustment would achieve an appropriate balance by maintaining loan affordability for consumers while compensating lenders. In addition, the adjustment from 10% to 12.5% in §83.605 would help ensure that lenders can be compensated for cost changes since 2013 for loan amounts of \$1,000 or less. The amount is a maximum, so lenders are free to offer lower administrative fees and acquisition charges in a competitive marketplace.

Since 2020, the OCCC has received several informal and official comments from stakeholders dealing with the maximum administrative fee under §83.503. In 2020, the OCCC received an informal request from the Texas Consumer Credit Coalition (an

organization of licensed lenders) to review the maximum administrative fee. The TCCC requested a rule amendment that would increase the maximum administrative fee, and provided aggregated cost information purporting to justify this increase. To determine whether a rule amendment would be appropriate, in July 2021, the OCCC requested information about costs from stakeholders, and conducted an initial stakeholder meeting on this issue. Since then, the OCCC has provided stakeholders with four opportunities to provide informal comments on this issue: once in July and August 2021 (in response to the OCCC's initial information request), once in November 2021 (in response to an advance notice of rule review), once in January 2022 (in response to a precomment draft of amendments), and once in January 2024 (in response to a precomment draft of the current amendments). In addition, during December 2021 and January 2022, stakeholders submitted official comments in response to a published notice of rule review.

In general, lenders have provided informal and official comments that describe increased costs since 2013 and support amending §83.503. In response to the 2021 rule review notice, the TCCC provided an official comment explaining that the costs of originating loans have increased since the \$100 maximum was adopted in 2013. The comment focuses on costs for labor, occupancy, technology, and compliance. The comment states that although improvements in technology have created economies of scale, lenders face increased financial privacy, identity theft, and cybersecurity requirements. In particular, the comment describes recent amendments to the Federal Trade Commission's Safeguards Rule that will require costs to ensure compliance. Other groups of lenders have made similar

points in informal precomments. For example, an attorney commenting on behalf of an association of banks explained that costs for overhead, labor, rent, and utilities have increased since 2013, and provided estimated loan origination costs ranging from \$185.35 (with labor making up \$106.35 of this estimate) to \$268. Another group of licensed lenders supported a CPI-based adjustment method, explaining that "[c]hanges in CPI evidence changes in costs, which is why CPI is commonly used for such adjustments." In 2024, TCCC filed an informal precomment expressing general support for a \$125 administrative fee with CPI-based adjustments, explaining that "as origination costs continue to rise, issues critical to consumer protection have increasingly required attention from our members. Efforts by lenders to safeguard financial privacy, to combat identity theft, and ensure cybersecurity have required continued investments. Additionally, large scale federal initiatives, like the Military Lending Act, the CFPB's third party vendor management requirements, and FTC's Safeguard Rule, have all increased up-front lending costs since the previous 2013 fee increase." Also in 2024, an association of Subchapter F lenders filed a written precomment that supported changing the acquisition charge to the lesser of 12.5% of the cash advance or \$150.

In general, consumer groups provided informal and official comments that express concerns about increased costs for consumers, and argue that the maximum administrative fee should be maintained at \$100 (or decreased due to increased efficiencies in electronic and online loans). In response to the 2021 published rule review notice, the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending (organizations of community and faith leaders supporting

reforms to protect Texas consumers) filed an official comment expressing concerns about increasing the administrative fee, arguing that this is not supported by available data. The comment points out that licensed lenders have experienced profits and certain decreased expenses. The comment argues that if §83.503 is amended, the maximum should be decreased from \$100. Other consumer organizations (submitting information on behalf of retired Texans and Texans in poverty) have made similar points in informal precomments. In 2024, two consumer organizations filed informal precomments reiterating these concerns about whether an increase to the administrative fee and acquisition charge is appropriate at this time.

The OCCC and the commission believe that objective measures cited earlier in this preamble (including CPI, Employment Cost Index, and Producer Price Index) strongly indicate that overall costs have increased since 2013. For the same reasons, the OCCC and the commission disagree with the contention that costs have stayed the same or decreased. At the same time, the OCCC does not believe that information provided by lenders warrants an increase above the proposed \$125 amount subject to CPI-based adjustments.

An informal precomment from an association of Subchapter F lenders recommends amending §83.605 to specify a maximum acquisition charge of the lesser of 12.5% of the cash advance or \$150 (with the \$150 amount adjusted annually based on CPI). The precomment points out that if the maximum in §83.605(a)(1) remains at 10%, the amendments would not provide any adjustment for loans up to \$1,000. The precomment explains: "Costs have increased with respect to the full range of loan amounts

under Subchapter F, not just loans above \$1,000." As discussed earlier in this preamble, objective measures including CPI have increased since 2013. Costs have increased in a similar manner for loans above and below \$1,000. Without a change to the current 10% maximum in §83.605(a)(1), the rule would not reflect changes in costs since 2013 for loans up to \$1,000. Adjusting the 10% maximum to 12.5% (not to exceed \$125) maintains the same proportionate result between a \$1,000 loan with the proposed increased maximum acquisition charge of \$125 and a loan less than \$1,000. In order to ensure that lenders can be compensated for cost changes since 2013 for loan amounts up to \$1,000, the proposal includes a change in §83.605(a)(1) to replace the 10% maximum with 12.5%.

The OCCC appreciates the feedback of stakeholders on the issue of the administrative fee and the acquisition charge, and invites further comments in response to this proposal.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit is that licensees will be able to charge administrative fees and acquisition charges that keep pace with changing costs.

The OCCC does not anticipate that the proposed rule changes will result in any

economic costs to persons who are required to comply with the proposed rule changes.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §83.503 and §83.605 to provide a revised method for determining the maximum administrative fee and acquisition charge. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance,

General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes to §83.503 are proposed under Texas Finance Code, §342.201(g), which authorizes the commission to adopt a rule prescribing a reasonable maximum amount of an administrative fee under Chapter 342, Subchapter E. The rule changes to §83.605 are proposed under Texas Finance Code, §342.252(b), which authorizes the commission to adopt a rule prescribing a reasonable maximum amount of an acquisition charge under Chapter 342, Subchapter F. In addition, Texas Finance Code, §342.551, authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342, and Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

Division 5. Interest Charges on Loans

§83.503. Administrative Fee

An authorized lender may collect an administrative fee pursuant to Texas Finance Code, §342.201(f), on interest-bearing and precomputed loans.

(1) As an alternative to the maximum administrative fee specified in Texas Finance Code, §342.201(f), an authorized lender may collect an administrative fee that does not exceed the maximum administrative fee amount computed under this paragraph [\$100].

(A) Definitions. In this paragraph:

(i) "Consumer price index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, or, if that index is canceled or superseded, the index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the purchasing power of the dollar for consumers.

(ii) "Reference base index" means the consumer price index for December 2023.

(B) Base amount. Effective until June 30, 2025, the maximum administrative fee is \$125.

(C) Annual adjustment. Beginning in 2025, each year, the amount of the maximum administrative fee will be adjusted. The adjustment will be effective from July 1 of the year of adjustment to June 30 of the next year. The adjusted amount of the maximum administrative fee is the greater of \$125 or the amount computed by:

(i) dividing the reference base index into the consumer price index at the end of the preceding year;

(ii) computing the percentage of change under clause (i) of this subparagraph to the nearest whole percent;

(iii) multiplying \$125 by the result under clause (ii) of this subparagraph; and

(iv) rounding the result computed under clause (iii) of this subparagraph to the next lower multiple of \$5.00, unless the result computed under clause (iii) of this subparagraph is a multiple of \$5.00 in which event that result is used.

(D) Computation and publication. Beginning in 2025, each year, the OCCC will compute the adjusted maximum administrative fee. No later than May 1, the OCCC will publish the amount of the maximum administrative fee in effect for the year of adjustment.

(2) An administrative fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation that has an interest charge authorized by Texas Finance Code, §342.201(e) more than once in any 365-day period. An administrative fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation that has an interest charge authorized by Texas Finance Code, §342.201(a) or (d) more than once in any 180-day period. The administrative fee may be contracted for, charged, or received in a renewal or modification if the authorized lender did not contract for, charge, or receive the administrative fee on any previous obligation within the appropriate period.

(3) An administrative fee may not be contracted for, charged, or received by an authorized lender on the refinance of a loan that utilizes Texas Finance Code, §342.201(a), (d), or (e) rates for a period of 365 days after the lender has entered into a Texas Finance Code, §342.201(e) rate loan in which an administrative fee was contracted for, charged, or received.

(4) An administrative fee is a prepaid charge and may be contracted for, charged, or received in addition to the contractual interest charge authorized by Texas Finance Code, §342.201(a), (d), or (e).

(5) The administrative fee may be included in the cash advance on which interest is computed under Texas Finance Code, §342.201(a) or (e). The administrative fee may be included in the principal balance on which interest is computed under Texas Finance Code, §342.201(d).

Division 6. Limitation on Acquisition Charge

§83.605. Acquisition Charge

(a) As an alternative to the maximum acquisition charge specified in Texas Finance Code, §342.252(a) and §342.259(a)(1), an authorized lender may collect an acquisition charge that does not exceed the lesser of:

(1) 12.5% [~~10%~~] of the cash advance of the loan; or

(2) the maximum acquisition charge computed under subsection (b) of this section [~~\$100~~].

(b) Computation of maximum acquisition charge.

(1) Definitions. In this subsection:

(A) "Consumer price index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, or, if that index is canceled or superseded, the index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the purchasing power of the dollar for consumers.

(B) "Reference base index" means the consumer price index for December 2023.

(2) Base amount. Effective until June 30, 2025, the maximum acquisition charge is \$125.

(3) Annual adjustment. Beginning in 2025, each year, the amount of the maximum acquisition charge will be adjusted. The adjustment will be effective from July 1 of the year of adjustment to June 30 of the next year. The adjusted amount of the maximum acquisition charge is the greater of \$125 or the amount computed by:

(A) dividing the reference base index into the consumer price index at the end of the preceding year;

(B) computing the percentage of change under subparagraph (A) of this paragraph to the nearest whole percent;

(C) multiplying \$125 by the result under subparagraph (B) of this paragraph; and

(D) rounding the result computed under subparagraph (C) of this paragraph to the next lower multiple of \$5.00, unless the

result computed under subparagraph (C) of this paragraph is a multiple of \$5.00 in which event that result is used.

(4) Computation and publication. Beginning in 2025, each year, the OCCC will compute the adjusted maximum acquisition charge. No later than May 1, the OCCC will publish the amount of the maximum acquisition charge in effect for the year of adjustment.

(c) Cash advance less than \$30. Subsections [(b) Subsection] (a) and (b) of this section do [does] not apply to a loan for which the cash advance is less than \$30.

(d) Limitation of one acquisition charge per month. [(e)] For a Texas Finance Code, Chapter 342, Subchapter F loan, an authorized lender may not contract for, charge, or collect an acquisition charge more than once during a month to the same borrower for that loan, any refinancing of that loan, or any new loan made to the borrower within the same month.

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas on February 16, 2024.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

6. Discussion of and Possible Vote to Take Action on the Proposal of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales

PURPOSE: The purposes of the proposed rule changes to 7 TAC Chapter 84 are to adjust the documentary fee amount that is presumed reasonable by rule and to make technical corrections and updates.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission approve the amendments to 7 TAC Chapter 84 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve for publication and comment the amendments to 7 TAC Chapter 83, Subchapter A.

Title 7, Texas Administrative Code
Part 5. Office of Consumer Credit Commissioner
Chapter 84. Motor Vehicle Installment Sales
Subchapter B. Retail Installment Contract

The Finance Commission of Texas (commission) proposes amendments to §84.205 (relating to Documentary Fee) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The rule at §84.205 relates to documentary fees for motor vehicle retail installment transactions. In general, the purposes of the proposed rule changes to 7 TAC §84.205 are: (1) to adjust the documentary fee amount that is presumed reasonable under the rule, and (2) to make technical corrections and updates.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received two written precomments on the rule text draft. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Under Texas Finance Code, §348.006(a), in a motor vehicle retail installment transaction, the retail seller is authorized to charge "a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the motor vehicle sale." Under §348.006(c), the documentary fee "may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services." Under §348.006(e), before a retail seller increases the maximum amount of the documentary fee that the seller intends to charge, the seller must provide written notice to the OCCC, and the OCCC may review the amount for reasonableness.

Under §348.006(f), a documentary fee is considered reasonable if it is less than or equal to the amount presumed reasonable as established by rule of the commission.

Currently, §84.205 describes the requirements for filing a written notification of an increased documentary fee under Texas Finance Code, §348.006, and describes the criteria that the OCCC uses to determine whether a documentary fee is reasonable. Current §84.205(b)(1) explains that a documentary fee of \$150 or less is presumed reasonable. The commission adopted the \$150 amount in 2016.

Proposed amendments throughout §84.205 would adjust the documentary fee amount that is presumed reasonable under the rule from \$150 to \$225. The proposal would adjust this amount throughout subsections (a), (b), (c), and (d).

The commission and the OCCC periodically adjust the documentary fee to ensure that it adequately represents a reasonable cost for documentary services in the current market. The agency's ongoing review of documentary fee cost analyses has indicated that most sellers can demonstrate costs related to documentary services of at least \$225. Of the 211 documentary fee filings submitted to the OCCC since 2020, the average filing amount is \$246.30. In 2022, in a contested case before the State Office of Administrative Hearings, an administrative law judge found that a dealership group met its burden of proving that a range of documentary fee amounts was reasonable. Proposal for Decision, *Office of*

Consumer Credit Commissioner v. Clay Cooley Entities, SOAH Docket No. 466-22-0322 (Oct. 11, 2022) (hereinafter "Clay Cooley PFD"). The case involved extensive analysis of the dealership group's costs relating to payroll, facilities, software, forms, printing, and postage. The case resulted in a final order that approved a range of fees from \$202.58 to \$267.83 (with an average of \$245) as reasonable. Final Order to Reduce Documentary Fees and Pay Restitution, *Office of Consumer v. Clay Cooley Entities*, SOAH Docket No. 466-22-0322 (Jan. 18, 2023).

Based on the analysis in the contested case regarding the Clay Cooley entities, as well as the OCCC's ongoing review of documentary fee cost analyses, the OCCC and the commission believe that it is appropriate to adjust the amount presumed reasonable from \$150 to \$225. The \$225 amount is well below typical documentary fee amounts in other states. A 2023 survey of 50 states and the District of Columbia reflects an average documentary fee of \$390. CarEdge, "Car Dealer Doc Fee by State in 2023 (Updated)," (rev. Dec. 8, 2023).

The proposal includes additional amendments that clarify requirements for a documentary fee cost analysis and include technical corrections. These clarifying amendments are discussed in the following six paragraphs.

A proposed amendment to §84.205(d)(2)(B) specifies that costs must be determined "in accordance with this section" in addition to being determined in accordance with generally accepted accounting principles (GAAP). This is intended to clarify that any costs included in the documentary fee must comply with both §84.205 and GAAP. In other words, if a cost is includable

under GAAP but is not includable under §84.205, then it may not be included in the documentary fee. This is consistent with the analysis used by the administrative law judge in the contested case regarding the Clay Cooley entities. See Clay Cooley PFD at 26 (discussing specific timing requirements of the rule that control "rather than the general application of GAAP").

Proposed amendments to §84.205(d)(2)(E)(ii) would clarify requirements for including the cost of a credit report in the documentary fee. Proposed rule text would explain that a seller may include the cost of a credit report for a buyer who ultimately purchases a motor vehicle, that the seller must incur the cost uniformly in cash and credit transactions, and that the documentary fee may not include the cost of obtaining a credit report in unconsummated transactions. This text clarifies an issue that was analyzed by the administrative law judge in the contested case regarding the Clay Cooley entities. See Clay Cooley PFD at 30 (finding that the current text of §84.205 "does not restrict credit report costs to only consummated deals"). The OCCC and the commission believe that it is appropriate for the rule to limit credit report costs to consummated transactions. Credit report costs for unconsummated transactions are an indirect cost, do not directly relate to processing documents for a consummated transactions, and should not be subsidized by buyers in consummated transactions.

An additional proposed change to §84.205(d)(2)(E)(ii) replaces a reference to the USA PATRIOT Act with a reference to regulations of the Office of Foreign Assets Control (OFAC). OFAC rules prohibit sellers from doing business with certain specially designated nationals or blocked persons. See U.S. Department of the Treasury, Office of

Foreign Assets Control, "Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists" (rev. Dec. 20, 2023). Obtaining a credit report can be a way for sellers to ensure compliance with these OFAC rules. The citation to the OFAC rules is a more appropriate citation for this proposition than the current rule's reference to a provision of the USA PATRIOT Act.

Proposed amendments to §84.205(d)(3)(B)(ii)(I) would clarify requirements for including the cost of a sales contract in the documentary fee. The proposed language explains that any included cost for a sales contract must be in the form of "only one" of the following: a purchase agreement, a buyer's order, a bill of sale, or a retail installment sales contract (excluding provisions used only in credit transactions). Because only one sales contract is legally required in order to sell a motor vehicle, this text is consistent with the requirement under §84.205(d)(2)(B) that costs must be legally required. The proposed text would clarify an ambiguity discussed by the administrative law judge in the contested case regarding the Clay Cooley entities. See Clay Cooley PFD at 15-17 (describing different possible interpretations of §84.205(d)(3)(B)(ii)(I) and an ambiguity regarding whether more than one type of sales contract may be included in the documentary fee).

Other proposed amendments to §84.205(d)(3)(B)(ii) would make technical corrections to the list of required forms that may be included in the documentary fee. A proposed amendments would remove current §84.205(d)(3)(B)(ii)(III), which allows the documentary fee to include the cost of the County of Title Issuance form (Form VTR-136). The OCCC understands that this form is now obsolete and is no longer used,

following the passage of SB 876 (2021) and amendments to Texas Transportation Code, Chapter 501. A proposed amendment at §84.205(d)(3)(B)(ii)(IV) would replace a reference to the USA PATRIOT Act with a reference to regulations of OFAC, as discussed earlier in this preamble. Proposed amendments at §84.205(d)(3)(B)(ii)(VII) and (VIII) would make technical corrections to rule references regarding buyer's temporary tags. Other proposed amendments throughout §84.205(d)(3)(B)(ii) would renumber other subclauses accordingly.

A proposed amendment to §84.205(d)(3)(B)(v) would explain that the documentary fee may not include costs incurred while the dealership is closed, and that the documentary fee may not include costs relating to areas that are not involved in the processing of documents (e.g., common areas, break rooms, bathrooms). This proposed text is consistent with the current requirement in §84.205(d)(2) that costs must directly relate to the seller's preparation and processing of documents for a motor vehicle sale. The proposed text would help ensure that any facilities costs included in the documentary fee directly relate to processing documents.

Two associations of Texas motor vehicle dealers submitted written informal precomments expressing general support for the amendments to §84.205. One of these associations requested "that the proposal include an annual adjustment to the documentary fee's reasonable amount based on the Consumer Price Index (CPI) for Average Prices or another CPI as determined by the OCCC." The commission declines to use a recurring CPI-based adjustment to the reasonable documentary fee amount at this time. If documentary costs increase in the future, §84.205 enables dealers to file for a

higher documentary fee and provide a cost analysis supporting the higher fee. The commission and the OCCC may periodically review the reasonable documentary fee amount.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefits are that licensees will be able to charge documentary fees that reflect costs for motor vehicle dealers, and that the commission's rules will be more easily understood by licensees.

The OCCC does not anticipate that the proposed rule changes will result in economic costs to persons who are required to comply with the proposed rule changes.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will

not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §84.205 by adjusting the documentary fee amount presumed reasonable and adding clarifying text regarding the documentary fee cost analysis. The proposal would limit current §84.205 by removing outdated text relating to a documentary fee cost analysis. The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule amendments are proposed under Texas Finance Code, §348.006(f), which authorizes the Finance Commission to adopt

a rule establishing a documentary fee amount that is presumed reasonable, and Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules to enforce Texas Finance Code, §348.006, including rules relating to standards for a documentary fee reasonableness determination. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4, and Texas Finance Code, §348.513 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 348.

§84.205. Documentary Fee

(a) Purpose. Under Texas Finance Code, §348.006(e), before a retail seller charges a documentary fee greater than \$225 [~~\$150~~], the seller must provide the OCCC with a written notification of the maximum amount of the documentary fee the seller intends to charge. The OCCC may review the amount of the documentary fee for reasonableness. This section describes the requirements for the notification and cost analysis.

(b) General requirements.

(1) \$225 [~~\$150~~] or less. A seller is not required to provide a notification or cost analysis to the OCCC before charging a documentary fee of \$225 [~~\$150~~] or less. A documentary fee of \$225 [~~\$150~~] or less is presumed reasonable under Texas Finance Code, §348.006(f).

(2) Over \$225 [~~\$150~~]. Before charging a documentary fee greater than

\$225 [~~\$150~~], a seller must provide a notification and a cost analysis to the OCCC.

(c) Notification.

(1) Generally. Before charging a documentary fee greater than \$225 [~~\$150~~], a seller must provide a written notification to the OCCC, stating the amount of the maximum documentary fee that the seller intends to charge.

(2) Notification for each location. A seller must provide a notification for each licensed location or registered office at which motor vehicles are sold. If a seller has more than one license or registered office in the same physical space, then it must provide a notification for each license or registered office under which it sells vehicles. For example, if a seller has two registered offices at the same location and does business under the names of both registered offices, then it must provide a notification for each of the two registered offices.

(3) Form. The notification must be provided on a form prescribed by the OCCC for receiving notifications of documentary fee amounts. A notification is not effective until the OCCC receives a complete form.

(4) Transfer of ownership. In the event of a transfer of ownership described by §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), if the transferee intends to charge a documentary fee greater than \$225 [~~\$150~~], then the transferee must provide a documentary fee notification for each licensed location or registered office that the transferee will operate. The transferee must provide the notification no later than the 30th calendar day following the transfer of ownership. If the transferee has

not filed a notification on or before the 30th calendar day following the transfer of ownership, then it must cease charging a documentary fee greater than \$225 [~~\$150~~]. The transferee may not charge a greater amount than the amount described in the transferor's previous notification until the transferee has provided a complete notification listing the amount that the transferee intends to charge. If the transferor did not previously provide a documentary fee notification, then the transferee may not charge a documentary fee greater than \$225 [~~\$150~~] until it has provided a complete notification listing the amount it intends to charge.

(5) Failure to provide notification. A seller violates this subsection if the seller:

(A) charges a documentary fee greater than \$225 [~~\$150~~] without first providing a complete notification to the OCCC; or

(B) provides a notification to the OCCC and charges a documentary fee greater than the amount described in the notification.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection, then the OCCC may take an action, including ordering the seller to do one or more of the following:

(A) provide restitution to affected buyers;

(B) lower its documentary fee prospectively;

(C) provide a complete, accurate notification to the OCCC;

(D) cease charging a documentary fee greater than \$225 [~~\$150~~] for a specified period of time.

(7) Restitution amount. If a seller does not provide a complete notification to the OCCC, then the amount of restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus \$225 [~~\$150~~] (for each buyer). If the seller provides a notification but charges a documentary fee greater than the amount described in the notification, then the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus the amount of its filing (for each buyer).

(d) Cost analysis.

(1) Generally. Before charging a documentary fee greater than \$225 [~~\$150~~], a seller must submit a cost analysis showing that the documentary fee is reasonable. The seller has the burden of showing that the documentary fee is reasonable, and that all included costs are reasonable, specified, and supported by adequate documentation. This subsection does not require the OCCC's approval of a documentary fee before a seller charges it. However, the OCCC may order restitution under subsection (d)(6) if a seller charges a documentary fee over \$225 [~~\$150~~] that is not supported by a complete cost analysis, or if the documentary fee includes costs that are not reasonable.

(2) Reasonableness requirements. In order to be reasonable, a documentary fee must reflect costs actually incurred by the seller in preparing and processing documents for a motor vehicle sale. All included costs must comply with the following reasonableness requirements.

(A) Directly related and allocable.

Costs must directly relate to the seller's preparation and processing of documents for a motor vehicle sale. Costs must be allocable (i.e., chargeable or assignable) to the objective of preparing and processing documents. Costs must be incurred by the seller. A seller may not increase any authorized charge imposed by a third party.

(B) Allowable. Costs must relate

to activities required to comply with local, state, or federal law concerning motor vehicle sales. Costs related to ancillary or optional products may not be included. Costs must be determined in accordance with generally accepted accounting principles and in accordance with this section.

(C) Prudent business person.

Costs must comply with the prudent-business-person standard. This means that costs are limited to what a prudent business person would pay in a competitive marketplace. For example, hiring a limousine to deliver documents does not comply with the prudent-business-person standard. In determining whether a given cost is prudent, consideration will be given to the following:

(i) whether the cost is of a type generally recognized as ordinary, customary, and necessary for preparing and processing documents for a motor vehicle sale;

(ii) the restraints or requirements imposed by sound business practices, arm's-length bargaining, and applicable laws and regulations;

(iii) market prices for comparable goods or services; and

(iv) the necessity of the cost.

(D) Timing.

(i) Costs must be incurred either concurrently with or after the seller's preparation of at least one of the following: a buyer's order, bill of sale, purchase agreement, or retail installment sales contract. Any costs incurred before the preparation of the earliest of these documents may not be included. This clause does not apply to the costs of purchasing or printing forms specifically listed in subsection (d)(3)(B)(ii).

(ii) Costs must be incurred before the title of the purchased motor vehicle is actually transferred, or when title is legally required to have been transferred, whichever is earlier.

(iii) Costs relating to a trade-in motor vehicle must be incurred before the title of the trade-in motor vehicle is actually transferred, or when the title is legally required to have been transferred, whichever is earlier.

(E) No finance charge. The documentary fee may not include any amount that would be considered a finance charge under the Truth in Lending Act, 15 U.S.C. §§1601-1667f. All included costs must be incurred uniformly in cash and credit transactions.

(i) The documentary fee may not include any cost associated with the negotiation or assignment of the retail installment sales contract to another financial institution or a related finance company.

(ii) The documentary fee may not include any cost associated with the evaluation of the buyer's creditworthiness. A

seller may include the cost of obtaining a credit report for a buyer who ultimately purchases a motor vehicle, if the seller incurs this cost uniformly in cash and credit transactions [~~in a substantial number of transactions where credit is not extended~~], and the cost complies with the other requirements described in this subsection (e.g., the cost of obtaining a credit report to ensure compliance with regulations of the Office of Foreign Assets Control, 31 C.F.R. Parts 501-599 [the USA PATRIOT Act, 31 U.S.C. §5318(1)(2)(C)]). The documentary fee may not include the cost of obtaining a credit report in unconsummated transactions.

(iii) The documentary fee may not include the cost of preparing any disclosure or contractual provision that is used only in credit transactions. In particular, the documentary fee may not include the cost of preparing a Truth in Lending disclosure statement.

(F) Other prohibitions. The documentary fee may not include costs associated with any of the following:

(i) advertising;

(ii) floor planning (i.e., the seller's credit arrangements for the purchase of its inventory);

(iii) manufacturer or distributor's rebates;

(iv) the price of any report on the condition or history of the motor vehicle to be purchased or traded in;

(v) the disbursement of money to a financial institution (e.g., the cost of issuing a certified check);

(vi) a salesperson's commission for the sale of the motor vehicle (but commissions for an employee other than a salesperson may be included if they comply with subsection (d)(3)(B)(i)).

(3) Form of cost analysis. The cost analysis must include a summary of documentary fee costs and supporting exhibits.

(A) Summary of documentary fee costs. The summary of documentary fee costs must be provided on a form prescribed by the OCCC.

(i) The summary must include an itemization of the amount of costs for each of the following categories:

(I) personnel;

(II) forms and printing;

(III) postage;

(IV) software;

(V) facilities costs;

(VI) other costs.

(ii) The summary must include the number of sales completed during the period used to determine the costs described in clause (i).

(B) Supporting exhibits. A seller must provide a supporting exhibit for each category of costs included in the documentary fee. A seller must prorate costs to ensure that costs that are impermissible under this subsection are excluded. If a category is associated with both permissible and impermissible costs, then a seller must

include only the permissible portion and explain the percentage of the category that is being included. The OCCC may prescribe a form for the supporting exhibits. A seller is not required to provide an exhibit for any category that does not include any costs.

(i) Personnel. The supporting exhibit for personnel must describe how all employee salaries included in the documentary fee comply with the reasonableness requirements described in this subsection.

(I) The supporting exhibit for personnel must include a job description for each position. Job descriptions must be specific enough to illustrate which functions are unique to each listed position, on a task level. The job description must identify which specific tasks are included as a cost component of the documentary fee, and which are excluded.

(II) The supporting exhibit for personnel must include each salary and a complete description of how compensation is calculated for each position (e.g., a pay plan).

(-a-) Commission paid to a salesperson for the sale of a motor vehicle must be excluded. If the seller includes a portion of the base salary paid to a salesperson, then the seller must explain how the salary has been prorated to exclude impermissible costs. If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission.

(-b-) If the seller includes any commission paid to a person other than a salesperson, then the seller must explain how the commission has been

prorated to exclude any impermissible costs (e.g., commission for ancillary products, or commission that arises only in credit transactions). If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission.

(III) If costs of training employees are included, then the supporting exhibit must include an agenda for the training and an explanation of the subject matter of the training. The seller must explain how training costs have been prorated to exclude impermissible costs (e.g., costs of training employees on responsibilities that arise only in credit transactions, or that arise before preparation of a purchase agreement).

(ii) Forms and printing. The supporting exhibit for forms and printing must describe all included costs and explain which forms are purchased or printed. All included forms must be used uniformly in cash and credit motor vehicle sales. If a seller uses a form only in certain transactions, then the seller must prorate costs by the fraction of the seller's sales in which the form is used. For example, if a form is used only for used motor vehicle sales, then a seller must prorate the cost of the form by the fraction of the seller's sales that are used motor vehicles. If a seller includes forms not listed in this clause, then the supporting exhibit must include an explanation of how the forms comply with the reasonableness requirements described in this subsection, with a citation to the law that requires the form. A seller may include the costs of the following forms:

(I) a written contract for the sale of the motor vehicle, as required by Texas Business and Commerce Code §2.201, which must ~~may~~ be in the form of only one of the following: ~~[a purchase agreement,~~

~~buyer's order, bill of sale, or retail installment sales contract (if a seller includes the cost of a retail installment sales contract, then the cost must be prorated to exclude the Truth in Lending disclosure statement and any provisions that are used only in credit transactions);~~

(-a-) a purchase agreement;

(-b-) a buyer's order;

(-c-) a bill of sale; or

(-d-) a retail installment sales contract (if a seller includes the cost of a retail installment sales contract, then the cost must be prorated to exclude the Truth in Lending disclosure statement and any provisions that are used only in credit transactions);

(II) an application for certificate of title, form 130-U, as required by Texas Transportation Code, §501.023;

~~[(III) a statement of the county of title issuance, form VTR-136, as required by Texas Transportation Code, §501.023;]~~

(III) ~~[(IV)]~~ a privacy notice, as required by the Gramm-Leach-Bliley Act, 15 U.S.C. §6803;

(IV) ~~[(V)]~~ a copy of the buyer's driver's license, in order to verify the buyer's identity and ensure compliance with regulations of the Office of Foreign Assets Control, 31 C.F.R. Parts 501-599 ~~[the USA PATRIOT Act, 31 U.S.C. §5318(i)(2)(C)]~~;

(V) ~~[(VI)]~~ a report of a cash payment over \$10,000, form 8300, as

required by the USA PATRIOT Act, 31 U.S.C. §5331;

(VI) ~~[(VII)]~~ a Texas Lemon Law disclosure, as required by Texas Occupations Code, §2301.610;

(VII) ~~[(VIII)]~~ the buyer's temporary tag, as required by Texas Transportation Code, §503.063, and 43 Texas Administrative Code §215.155 ~~[§245.155]~~;

(VIII) ~~[(IX)]~~ the buyer's temporary tag receipt, as required by 43 Texas Administrative Code §215.156 ~~[§245.156]~~;

(IX) ~~[(X)]~~ a window sticker for new vehicles, as required by 15 U.S.C. §1232; and

(X) ~~[(XI)]~~ a used car buyers guide, as required by the Federal Trade Commission's Used Motor Vehicle Rule, 16 C.F.R. §455.2.

(iii) Postage. The supporting exhibit for postage must identify the postage carrier, the types of documents that are sent by postage, and each specific postage cost. All postage costs must comply with the reasonableness requirements described in this subsection, including the prudent-business-person standard. The OCCC will presume that a prudent business person would use certified mail from the United States Postal Service or a similarly priced service. The exhibit must explain how costs that do not comply with this subsection (e.g., costs of sending documents to other financial institutions) have been excluded.

(iv) Software. The supporting exhibit for software must identify the cost of

each included piece of software. The exhibit must state the type of software used and the specific functions of the software. The exhibit must identify which specific software functions are included as a cost component of the documentary fee, and which are excluded. If the software is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included.

(v) Facilities costs. The supporting exhibit for facilities must identify all included facilities costs (e.g., rent, property taxes, insurance). Any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements described in this subsection. The documentary fee may not include costs incurred while the seller's facilities are closed, because these are indirect costs that do not directly relate to the processing of documents. The documentary fee may not include costs associated with areas that are not involved in the processing of documents (e.g., common areas, break rooms, bathrooms). The documentary fee may not include any depreciation of facilities costs. The exhibit must describe an appropriate methodology ensuring that the documentary fee includes only the portion of the facilities costs that corresponds to the percentage of time and space used for activities that may be included in the documentary fee.

(vi) Other costs. The supporting exhibit for other costs must identify all other costs included in the documentary fee. The exhibit must state the amount of each cost and the nature of the associated activities. If the activities are associated with both permissible and

impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included.

(4) Cost analysis covering multiple locations. A seller may submit a cost analysis that covers more than one licensed location or registered office if:

(A) the cost structures of all covered locations are substantially similar (e.g., due to centralized processing among a group of locations); and

(B) in the supporting exhibits, the seller explains which costs are similar among the locations and explains the differences in costs among the locations.

(5) OCCC review. The OCCC will review each cost analysis in order to determine whether the documentary fee is reasonable for the seller that provided the analysis. If the cost analysis does not support the seller's documentary fee, or if the OCCC determines that any included costs are not reasonable, then the OCCC may require the seller to provide additional information, or the OCCC may determine that the amount is unreasonable. The review may result in a determination of the maximum amount of the documentary fee that a specific seller may charge.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection by charging a documentary fee over \$225 ~~[\$150]~~ that is not supported by a complete cost analysis or that includes costs that are not reasonable, then the OCCC may order the seller to provide restitution to affected buyers and lower its documentary fee prospectively. For each buyer, the restitution for violating this subsection will

not exceed the amount of the documentary fee the seller charged or received, minus \$225 [~~\$150~~], minus other restitution paid under subsection (c)(6) - (7) of this section. In addition, the OCCC may order a seller to cease charging a documentary fee greater than \$225 [~~\$150~~] for a specified period of time if the seller violates this subsection.

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas on February 16, 2024.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner

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C.

**Department of Savings and
Mortgage Lending**

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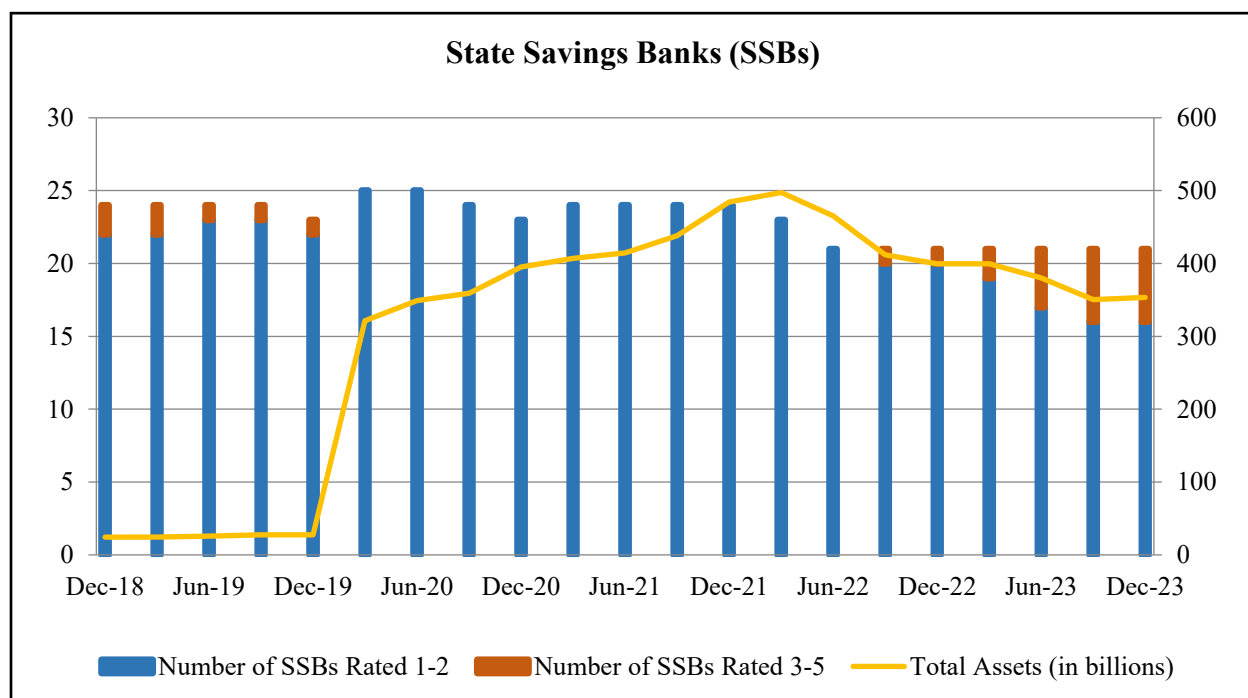
C. Department of Savings and Mortgage Lending

a) Thrift Regulation Division Activities

Industry Status

The Department continues to monitor various local, state, and national data sources to understand the risks facing the industry and individual savings banks.

The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry is comprised of 21 state savings banks with assets totaling \$350.6 billion as of September 30, 2023. The industry consists of 76% of banks being well rated as of December 31, 2023, and with three informal and one formal supervisory action in place.



All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and national economic environment.

Thrift Examination Activity Report

On-site examinations are being conducted. Risk scoping, availability of bank staff, and request of bank management are taken into consideration when determining the examination approach.

Thrift Supervision Activity Report

The Thrift Supervision section continues to receive and process various requests for approval, including branch, subsidiary, and holding company applications.

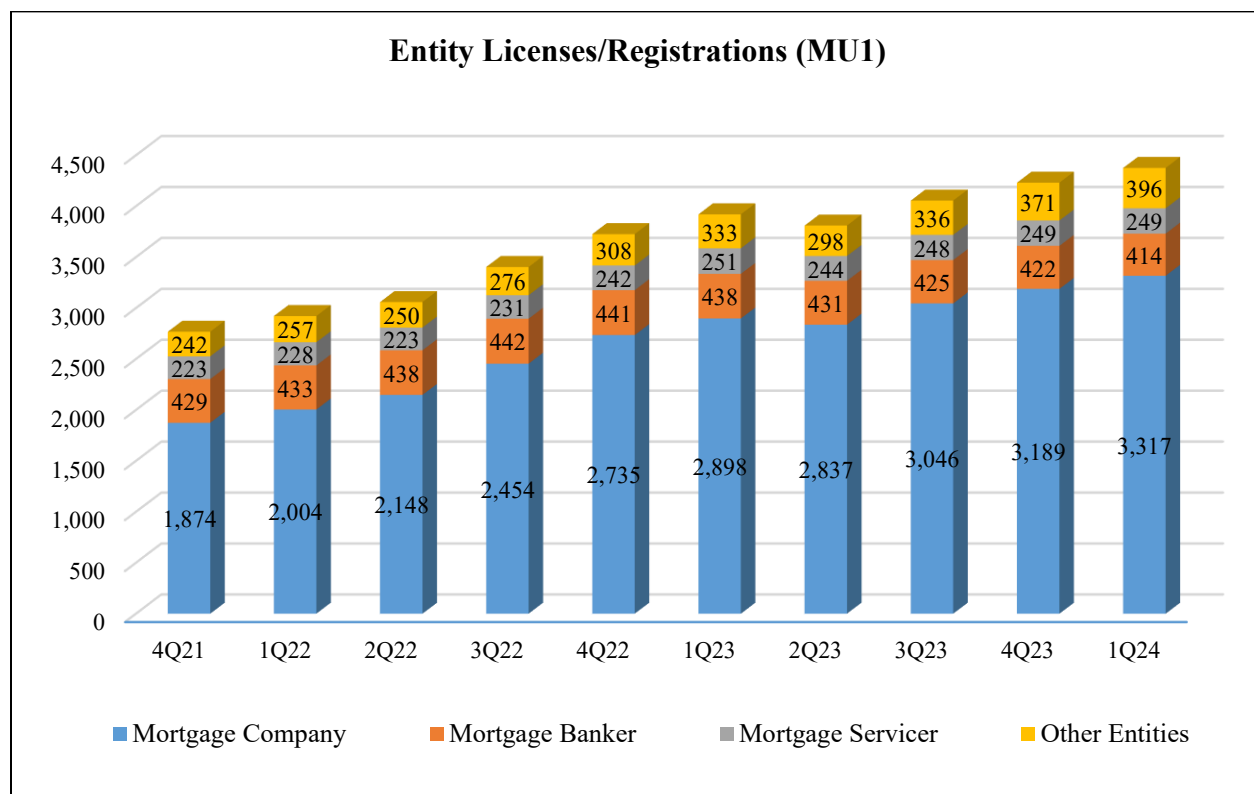
On June 30, 2023, Integrity Bank, SSB, a proposed de novo bank, filed an application for a state savings bank charter to be located in Houston, Texas. The application is under review.

b) Mortgage Regulation Division Activities

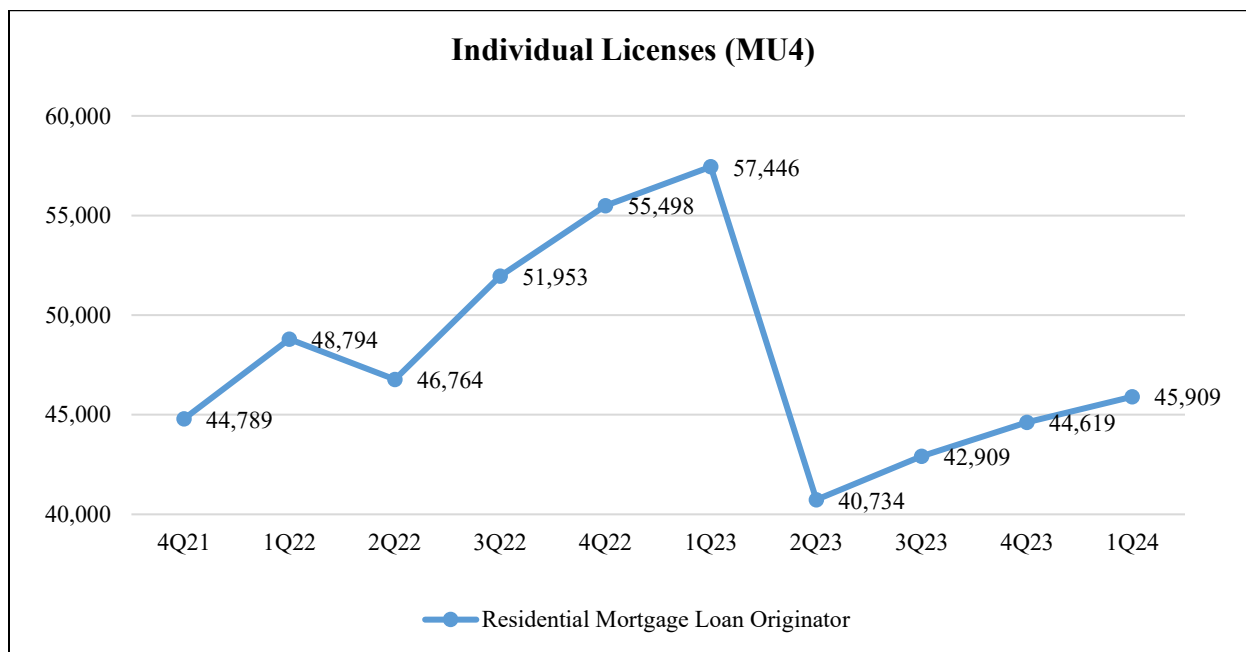
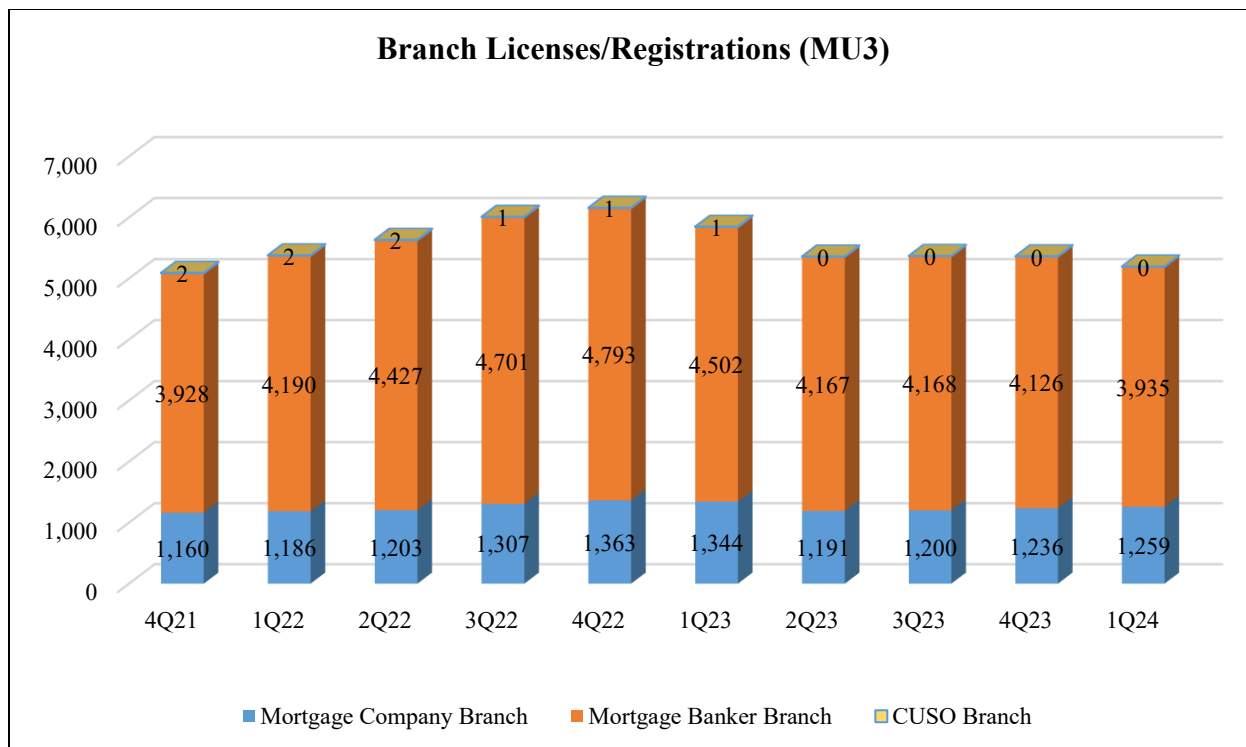
Industry Status

The Department continues to monitor various local, state, and national sources to identify issues impacting the mortgage industry including interest rate changes, housing supply and demand, availability and affordability of homeowner's and flood insurance, mortgage-backed securities (MBSs) market, and trends in homeownership.

The charts below reflect historical information regarding the number of licenses and registrations in an approved status.

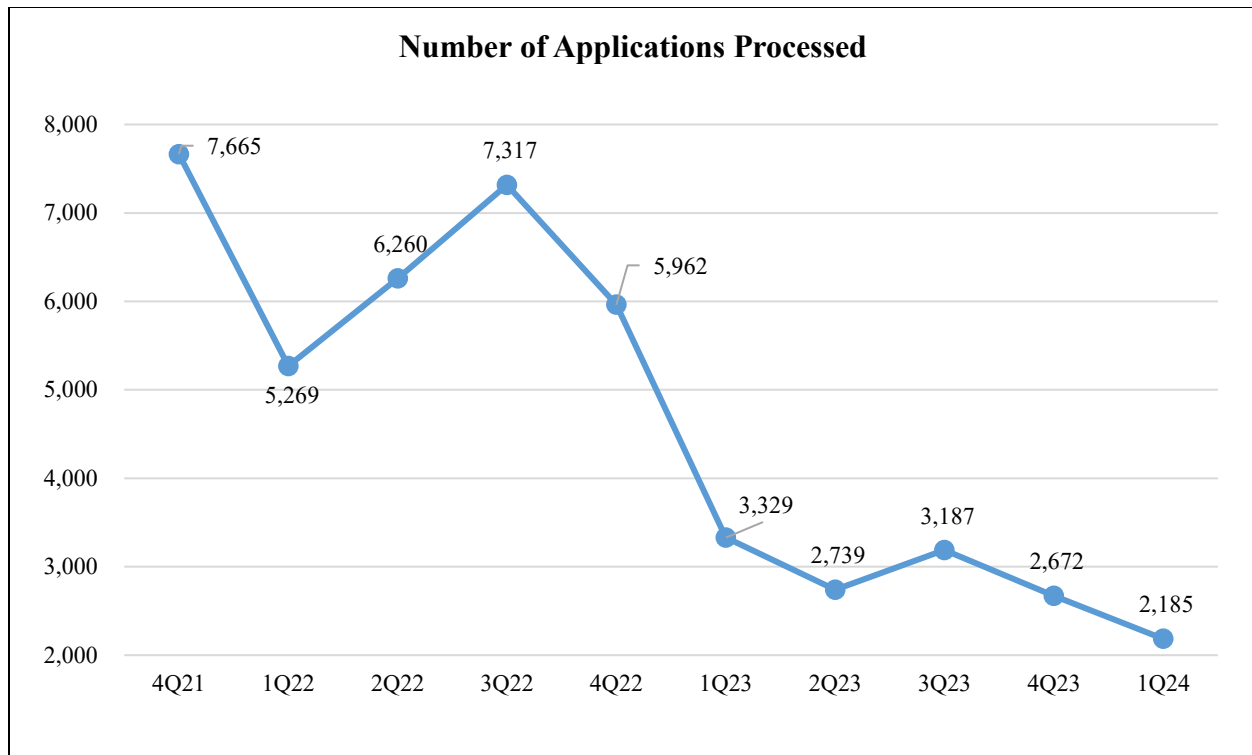


Other entities include Auxiliary Mortgage Loan Activity Company, Credit Union Subsidiary Organization (CUSO), Financial Services Company, and Independent Contractor Processor/Underwriter Company.



Licensing Activity Report

For the first quarter of FY2024, the Mortgage Licensing section processed 2,185 applications and approved 1,902 applications, including 191 mortgage entities, 337 branch offices, and 1,374 residential mortgage loan originators. The remaining 283 applications were either withdrawn by the applicant or denied by the Department.



Even though there is a reduction in the number of applications processed for the first quarter of FY2024, the overall results are more aligned with the historical averages prior to FY2021.

According to NMLS Data Analytics for the first quarter of FY2024, the Mortgage Licensing section processed 25,728 license amendments, 4,642 credit report reviews, 4,434 sponsorship removals, and 3,872 sponsorship requests.

Mortgage Examination Activity Report

For the first quarter of FY24, the Mortgage Examination section issued 88 examinations covering 1,341 individual licensees. Compared to the same reporting period in FY23, the overall number of examinations issued (88 versus 88) is identical; however, and the number of individual licensees examined (1,341 versus 2,307) declined by 41.87%. The decline in the number of individual licensees examined was attributable to several large mortgage bankers being examined last year at the beginning of the fiscal year compared to this fiscal year.

During the first quarter of FY24, a 5-rated examination report was issued. The 5-rated examination reports reflected significant areas of non-compliance including:

- Failure to Contract a Properly Licensed Loan Processor
- Improper Sponsorship
- Failure to Fully Comply with Remote Work Rules
- Failure to Deliver Properly Executed Wrap Mortgage Disclosure
- Failure to Evidence Delivery of Wrap Mortgage Disclosures to Pre-Existing Lienholders
- Unauthorized Fees on a 2nd Lien Mortgage Loan
- Collection of Time-Restricted Fees

- Failure to Properly Complete the Loan Estimate
- Failure to Deliver Properly Executed Closing Disclosure
- Collection of Excessive Fees
- Prohibited Acts or Practices on High-Cost Mortgages
- Failure to Meet the Requirements for Higher-Priced Mortgage Loans
- Failure to Fully Comply with Information Security Program Requirements
- Failure to Comply with Anti-Money Laundering Requirements

The most common violations for the other examinations included unlicensed independent loan processors, unlicensed residential mortgage loan originators, inadequate recordkeeping, failure to maintain adequate policies and procedures (e.g. Anti-Money Laundering Programs, Identity Theft Prevention Programs, Information Security Program and Remote Work Policies), non-compliant social media advertisements, and non-compliant Conditional Pre-Qualification and Approval Letters.

Outreach and Training

On November 13, 2023, Director of Mortgage Regulation and Senior Review Examiner Justin Accola attended an online training seminar on “Mortgage Pipeline Hedging and Servicing Risks” held by the Conference of State Bank Supervisors.

Licensing Investigators Fabiola Bernal and Terry Washington and License & Permit Specialist La ‘Shondra Houston obtained their Certified Application Specialist – Level I designation from the Conference of State Bank Supervisors.

c) Operations Division Activities

Accounting, Budget, and Financial Reporting

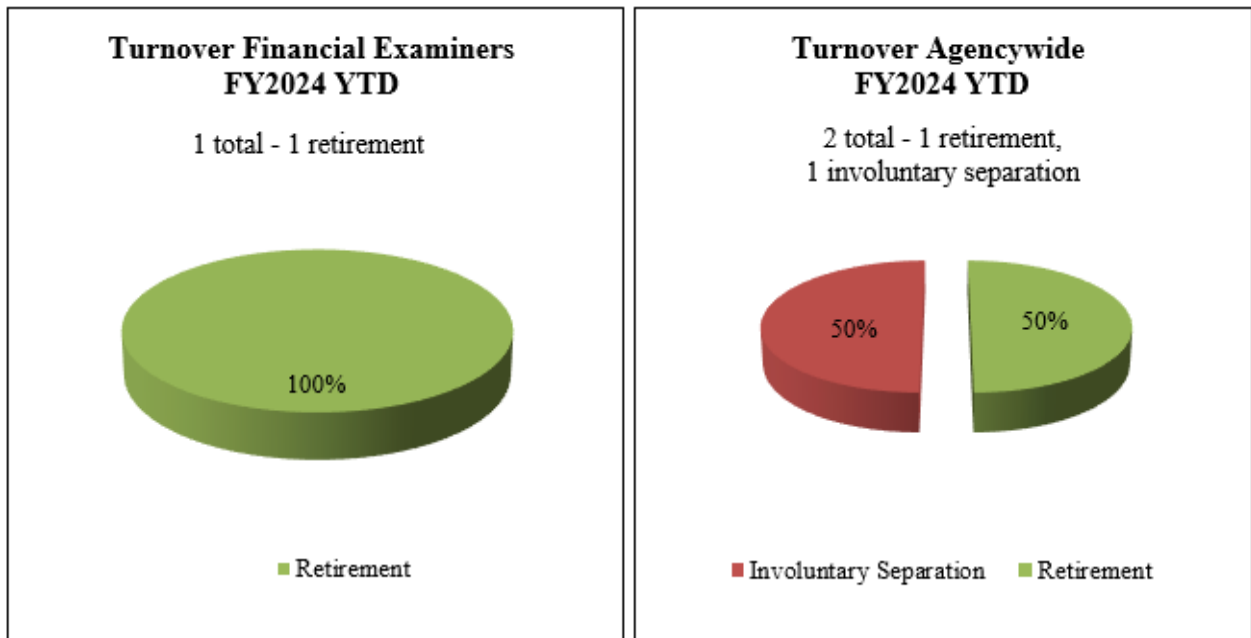
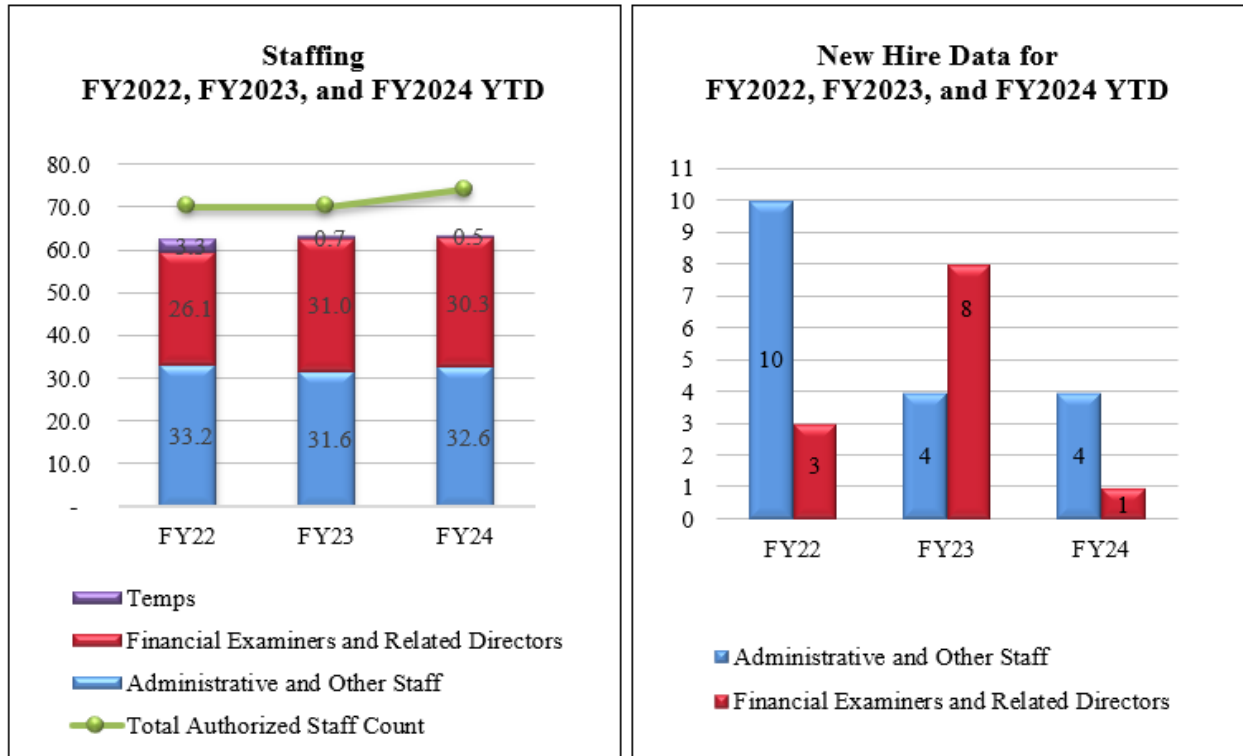
Staff closed out the first quarter of fiscal year 2024. The reports are located elsewhere in the packet. The annual tax forms were prepared and distributed, as required.

In compliance with the Texas Government Code, Section 2101.0112 the Department submitted the Annual Report of Nonfinancial Data for the year ended August 31, 2021, including the annual HUB progress report to the Governor’s Office, State Auditor’s Office, and the Legislative Budget Board.

Human Resources

As of January 31, 2024, the Department was staffed at 65 regular full-time employees. During January, one Investigator joined the Department.

Staffing Charts as of January 31, 2024



Below is the status of the Department's vacancies:

Vacancy Status	
Financial Examiner I – Thrift Examinations - 2	Collecting and reviewing applications
Financial Examiner I-II -Thrift Examinations (Information Technology)	
Financial Examiner VI/VII– Thrift Examinations - 2	
Financial Examiner V – Thrift Examinations (Loan Review) - 2	
Program Specialist I – Mortgage Regulation	
Investigator II-IV – Mortgage Licensing	

Outreach and Training

The next quarterly agencywide meeting and training is scheduled for February 22, 2024.

**Department of Savings and Mortgage Lending
Actual Performance for Output Measures**

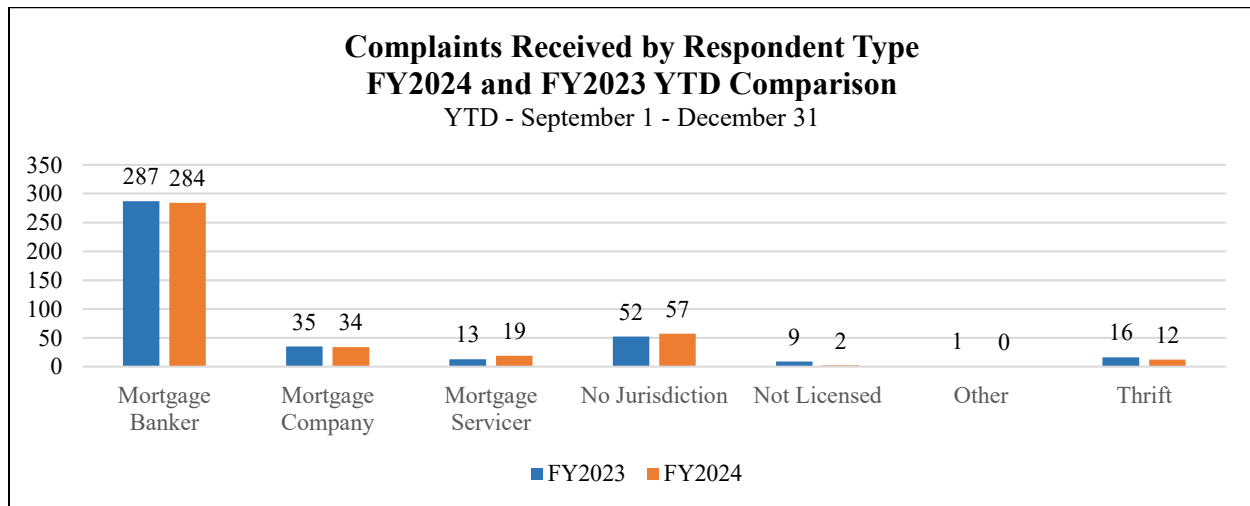
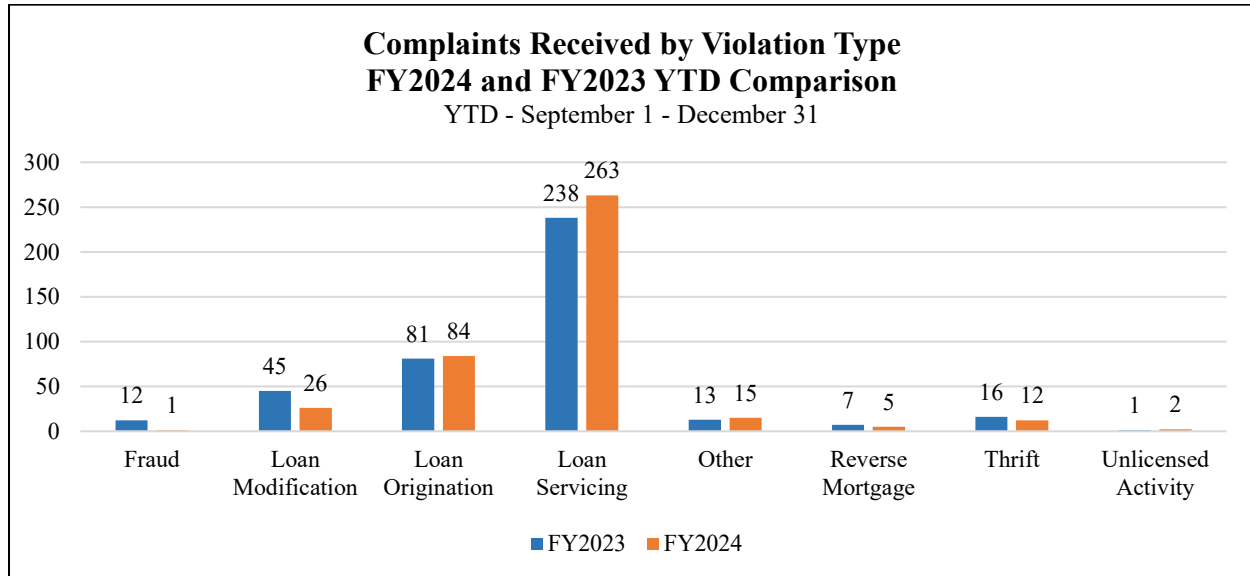
Type/Strategy/Measure	2024 Target	2024 Actual	2024 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1 Thrift Safety and Soundness					
1. Number of State Chartered Savings Institution Examinations Performed					
Quarter 1	19	6	6	31.58%	*
* The Department examines state-chartered savings banks jointly with the FDIC and FRB, based on a priority schedule. The results for this measure may fluctuate between quarters due to the timing of individual examinations.					
2-1-1 Mortgage Regulation					
1. Number of Applications Processed					
Quarter 1	9,350	2,185	2,185	23.37%	
2. Number of Examination Reports Issued					
Quarter 1	575	88	88	15.30%	*
* The overall production was affected by the necessary training provided to the examiners to implement the State Examination System (SES).					
3-1-1 Consumer Responsiveness					
1. Number of Complaints Closed					
Quarter 1	1,350	329	329	24.37%	

* Varies by 5% or more from the target

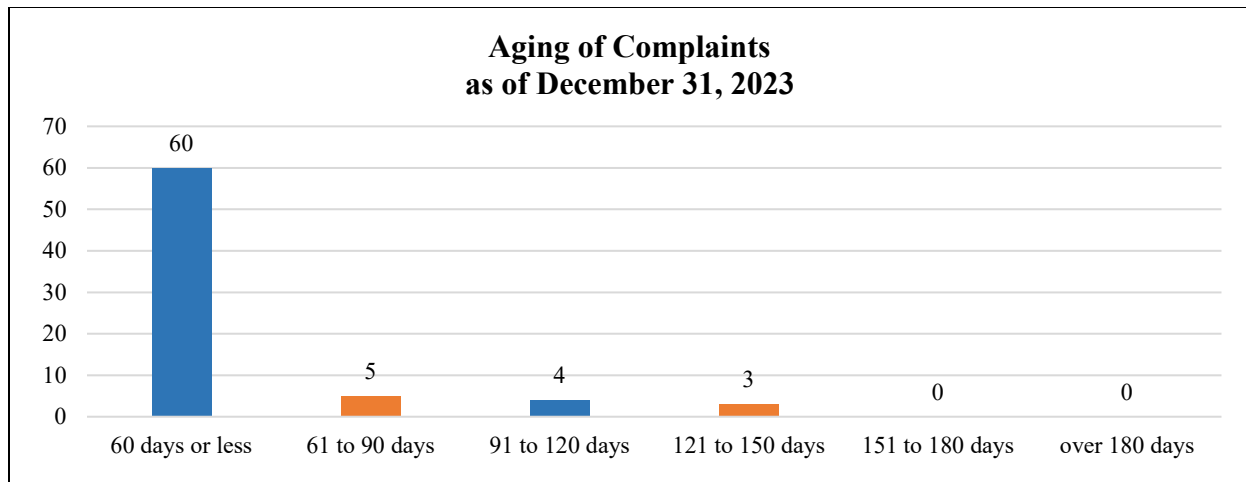
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

Complaints Received – For the fiscal year to date (September 1 – December 31, 2023), the Department received 408 complaints, compared to 413 received during the same period in FY23, representing a 1.2% decrease.



Aging of Open Complaints – As of December 31, 2023, there were 72 open complaint files. Complaint aging is acceptable with 96% of complaints aged 120 days or less.



Closed Complaints	FY2024			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Servicing Complaints				
Number of Servicing Complaints Closed	211			
Average Number of Days to Close a Complaint	27			
Percentage of Complaints Closed Within 90 Days	90%			
Non-Servicing Complaints				
Number of Non-Servicing Complaints Closed	118			
Average Number of Days to Close a Complaint	24			
Percentage of Complaints Closed Within 90 Days	92%			
Total	329			

Legal and Enforcement Activity Report

Mortgage Enforcement Actions –

Enforcement Action	FY2024			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Advisory Letter	10			
Agreed Order to Take Affirmative Action	0			
Agreed Order – Other	0			
Notice of Suspension/Revocation	1			
Order to Cease and Desist	3			
Order to Take Affirmative Action	2			
Order of Suspension/Revocation	0			
Total	16			

Recovery Claims –

Recovery Claim Applications Received	FY2024			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
	1			

Status of Pending Recovery Claim Applications as of December 31, 2023	
Pending Investigation	2
Pending Preliminary Determination Letter	4
Preliminary Determination Letter Issued, Pending Opportunity to Appeal	2
On Appeal	0
Open to Facilitate Resolution by the Parties	0
Total	8

Closed Recovery Claim Files	FY2024			
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Granted	0			
Denied	0			
Resolved by the Parties	0			
Claim Withdrawn	0			
Total	0			

Contested Cases at the State Office of Administrative Hearings (SOAH)

The Department does not have any cases pending at SOAH.

Litigation

Tim Schoenbauer v. Texas Department of Savings and Mortgage Lending (Cause No. JPC-23-02334-32; in the Justice Court, Precinct 3, Place 2, Dallas, County, Texas) In this lawsuit, Mr. Schoenbauer seeks to compel the Department to take action that would, in turn, cause the insurer on a lender-placed homeowner's insurance policy (a policy that insures Mr. Schoenbauer's home and protects the mortgagee against loss) to add Mr. Schoenbauer as an insured. On May 5, 2023, Mr. Schoenbauer filed his original petition. On June 16, 2023, the Department, represented by the Office of the Attorney General, filed its original answer. On June 29, 2023, Mr. Schoenbauer filed his response to the Department's original answer. No activity has occurred in this proceeding since the Finance Commission's August 18, 2023, meeting.

Julius Lamunn North v. Texas Department of Savings and Mortgage Lending, et al. (Cause No. 2023-50470; in the District Court, 270th Judicial District, Harris County, Texas) In this lawsuit, Mr. North alleges violations of the Texas Deceptive Trade Practices-Consumer Protection Act (Tex. Civ. Prac. & Rem. Code Ch. 17, Subchapter E). Mr. North seeks unspecified damages in excess of \$1 million and unspecified injunctive relief. On August 7, 2023, Mr. North filed his original petition. On September 5, 2023, the Department, represented by the Office of the Attorney General, filed its original answer. On September 12, 2023, the court issued a scheduling order establishing various deadlines for the proceeding. On October 4, 2023, the Department filed its plea to the jurisdiction and motion to dismiss, seeking to dismiss the case. On November 21, 2023,

the Department's motion to dismiss and plea to the jurisdiction was granted, and the case was dismissed. On December 20, 2023, Mr. North filed a motion to reinstate the case on the court's docket. On that same day, such motion was granted, and the case was reinstated. Trial is currently set for March 18, 2024.

Public Information Requests

Public Information Requests	FY2024			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Requests Received	39			

Rulemaking

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
Chapter 78, Wrap Mortgage Loans	Proposed Rule Changes Resulting from Rule Review	April 2024
Chapter 79, Residential Mortgage Loan Servicers	Proposed Rule Changes Resulting from Rule Review	April 2024
Chapter 80, Residential Mortgage Loan Companies	Proposed Rule Changes Resulting from Rule Review	April 2024
Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators	Proposed Rule Changes Resulting from Rule Review	April 2024
Chapter 51, Department Administration	Rule Review	FY2025

Gift Reporting

The Department has no gifts to report for the period November to December 2023.

e) Legislative Activities

On December 5, 2023, the fourth special session of the 88th Legislature ended. No legislation was enacted that will significantly impact the Department or its regulated industries.

2. Discussion of and Possible Action Regarding Anticipated and Pending Litigation

Anticipated Litigation

None

Pending Litigation

Tim Schoenbauer v. Texas Department of Savings and Mortgage Lending (Cause No. JPC-23-02334-32; in the Justice Court, Precinct 3, Place 2, Dallas, County, Texas)

Julius Lamunn North v. Texas Department of Savings and Mortgage Lending, et al. (Cause No. 2023-50470; in the District Court, 270th Judicial District, Harris County, Texas)

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D.

Texas Department of Banking

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Charles G. Cooper
Commissioner


TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

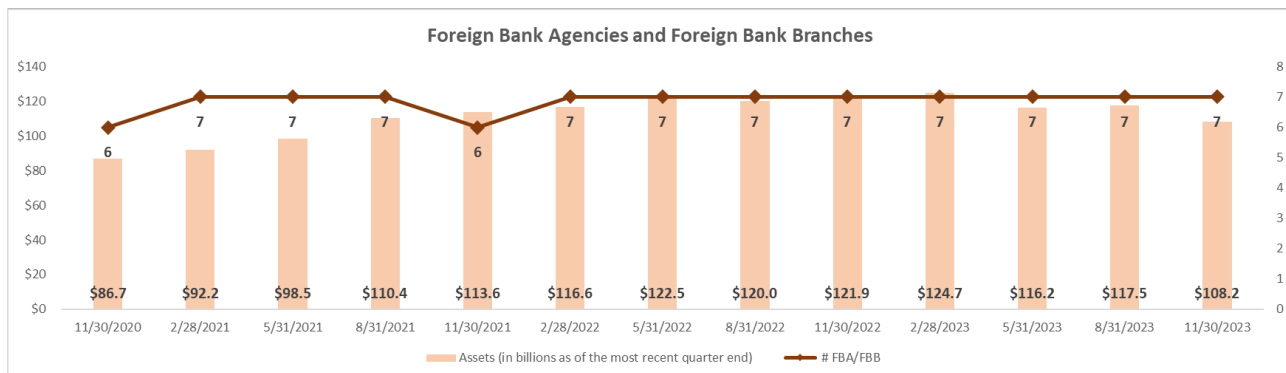
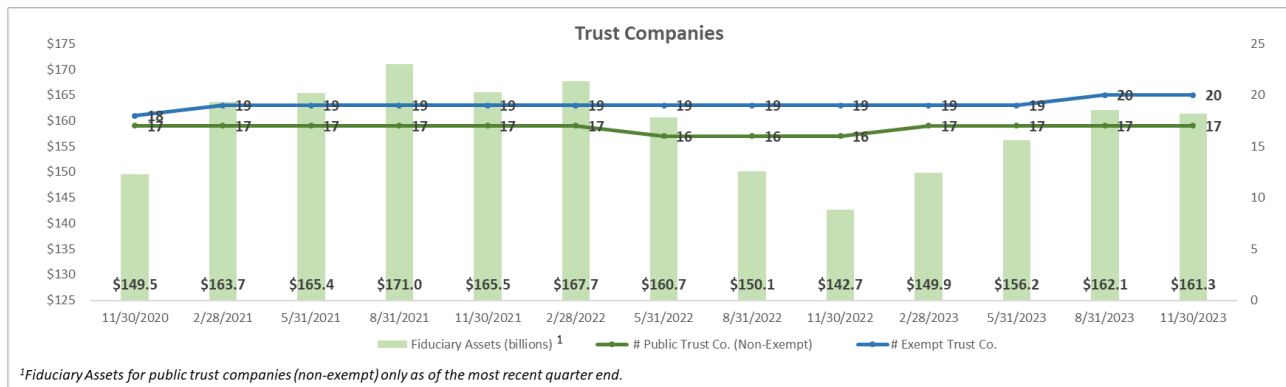
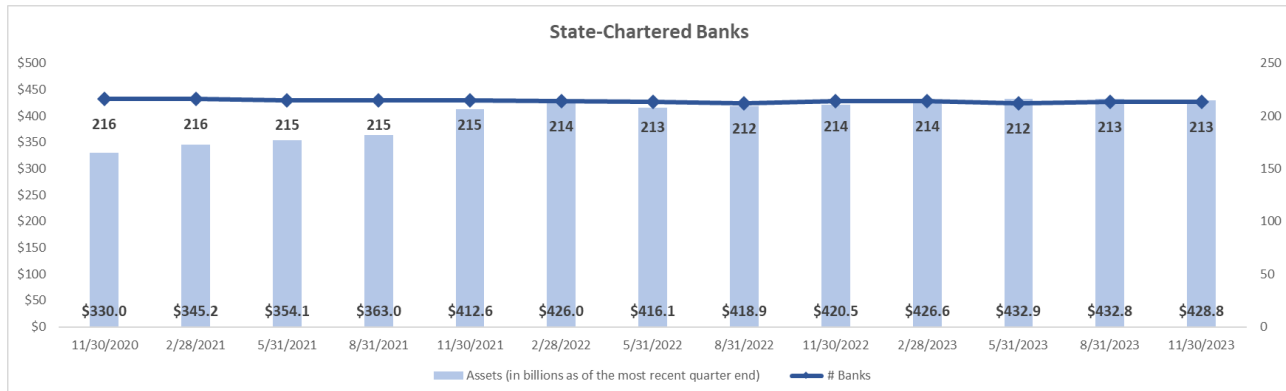
From: Jared Whitson, Director of Bank & Trust Supervision 

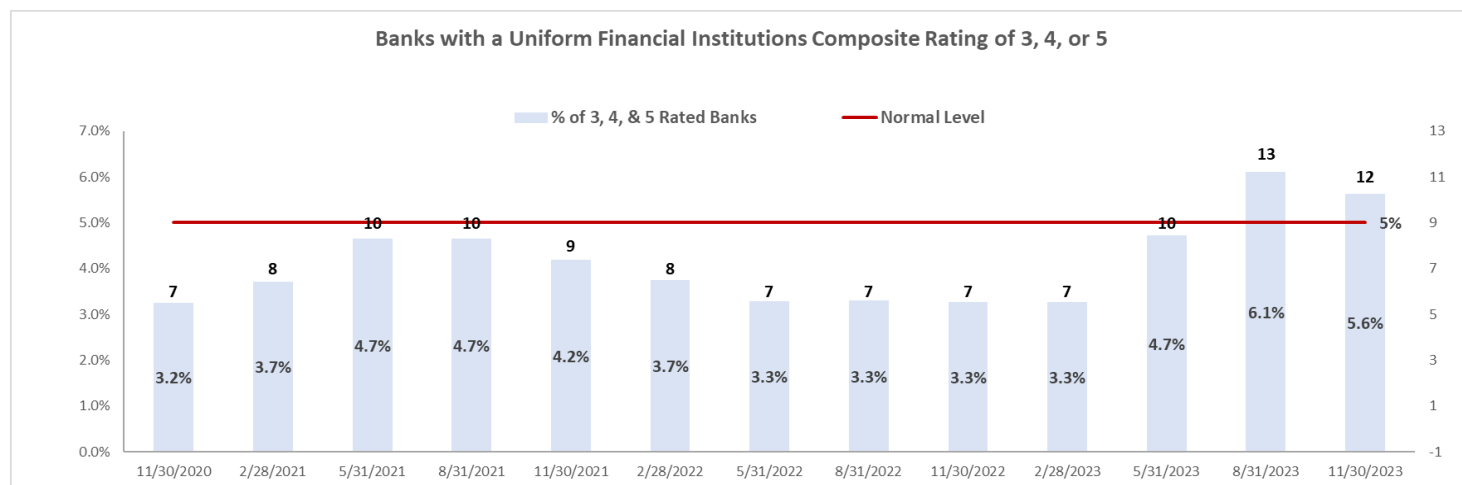
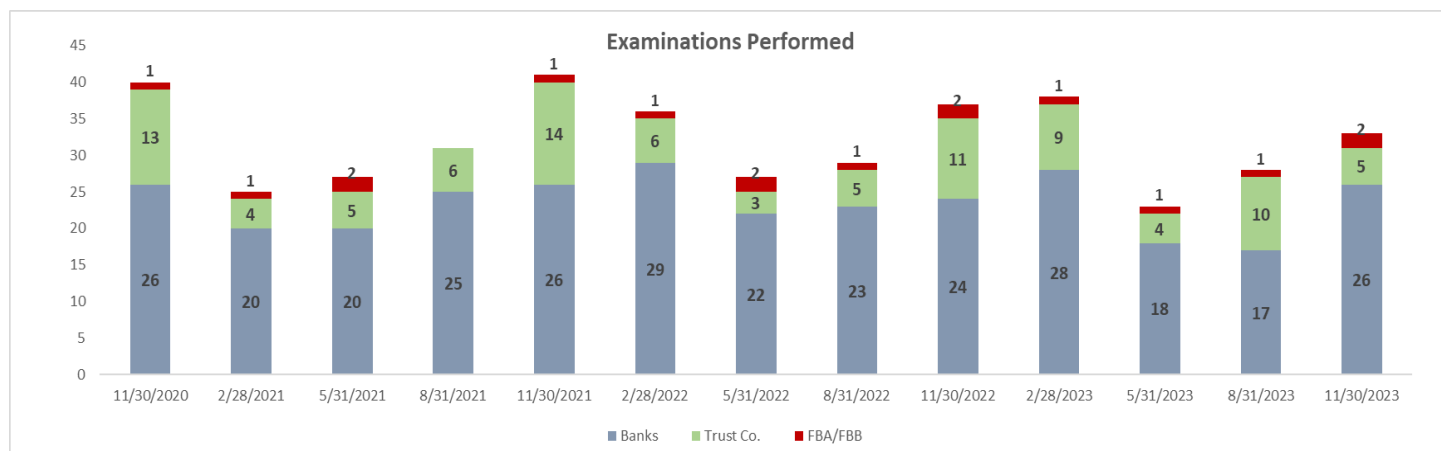
Date: January 31, 2024

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles

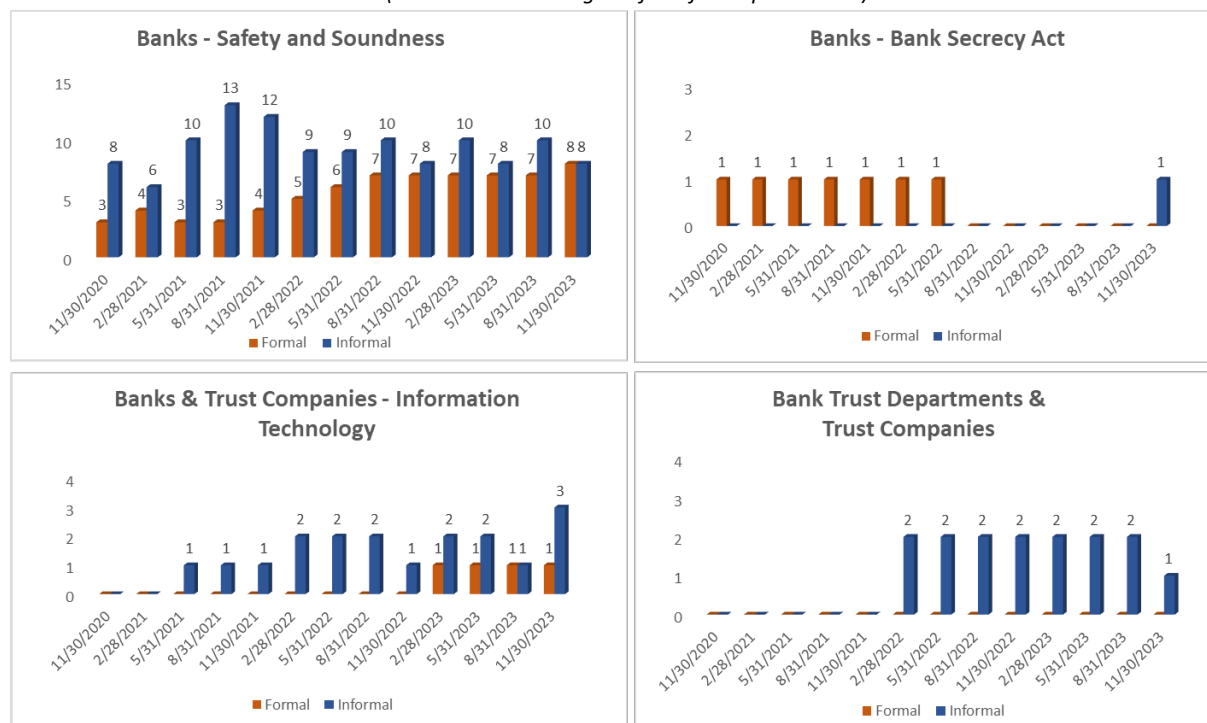
As of fiscal quarter-end (assets as of the preceding calendar quarter)





The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. As illustrated above, the number of problem banks increased to 13 in August 2023 and above the normal range of 3% and 5% of the total number of institutions. The rapid increase in interest rates since March 2022 coupled with inadequate risk management practices have negatively impacted some institutions. In addition, liquidity pressures within the industry and increased competition for deposits is compressing net interest margins, which is likely to continue for the foreseeable future.

Enforcement Actions Outstanding by Type (Number outstanding as of the fiscal quarter-end)



Formal actions include Orders to Cease and Desist, Consent Orders, Written Agreements and Supervisor Actions. Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions. Compliance actions are not included.

Compliance with Examination Priorities

Percent of examinations conducted within Department guidelines.

Entity Type	FY 2023	FY 2024 (YTD – December 2023)
Commercial Banks	92%	88%
IT	91%	88%
Trust Departments	86%	88%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	81%	92%
IT	82%	80%

Examination categories with less than 95% of examinations conducted within guidelines for FY 2024 include:

- Bank Examinations – 7 exams past due by an average of 32 days.
- IT Examinations of Banks – 7 exams past due by an average of 31 days.
- Trust Department Examinations of Banks – 1 exam past due by 21 days.
- Trust Company Examinations – 1 exam past due by 23 days.
- IT Examinations of Trust Companies – 1 exam past due by 9 days.

Compliance with commercial bank and IT examination priorities are expected to be challenging for the remainder of the fiscal year due to more problem bank and IT examinations being performed coupled with staffing constraints.

Division Highlights

- **Interest Rate Risk:** The Department continues monitoring higher interest rates and its effects on banks' financial condition. Banks' net interest margins generally improve in a rising rate environment as short-term assets reprice at higher yields. However, financial institutions with a sizable portion of their assets in long-term securities and/or loans could see net interest margin compression as funding costs increase faster than asset yields. Furthermore, banks' fixed rate investments decline in value in a rising rate environment.
- **Liquidity Monitoring:** The Bank & Trust Supervision Division continues monitoring the liquidity posture of Texas state-chartered banks. This monitoring includes contacting banks about their liquidity positions, including obtaining current information on liquidity and deposit trends. Competition for deposits is noticeable as consumers are now more rate sensitive.
- **Newly Commissioned Examiners:** The Bank & Trust Supervision Division is proud to congratulate five examiners for passing the Department's Bank Examination Testing System (BETS) and thereby earning their promotion to Commissioned Examiner. Since January 2023, the following examiners earned their commission: Emmanuel Salinas, Jared Chalson, Kaden Sikes, Kimberly Sherrill, and Matthew Barber.
- **Senior Leadership Meeting:** At least semi-annually, the Bank & Trust Supervision Division holds a meeting with senior leaders of the division. This generally includes Commissioner Charles G. Cooper, Deputy Commissioner Wendy Rodriguez, Regional Directors, Chief Trust Examiner, and Chief IT Security Examiner. The most recent meeting was held in Austin the week of January 8, 2023, and included discussions on the state of the division, staffing, training, region specific updates, and supervisory challenges.
- **Special Operations and Conferences:**
 - Beginning on December 4, 2023, Commissioner Charles G. Cooper represented the Department on the regulatory panel at the Conference of State Bank Supervisors (CSBS) Board Meetings and Supervisors Symposium in New Orleans, Louisiana.
 - On December 11, 2023, Commissioner Cooper, Chairman of the Federal Financial Institutions Examination Council (FFIEC) State Liaison Committee, attended the Fourth Quarter FFIEC meeting in Washington, D.C.
 - On January 17, 2024, Director of IT Security Phillip Hinkle represented the Department at the CSBS District V Meeting in San Francisco, California.
 - Beginning on January 28, 2023, Director of Bank and Trust Supervision Jared Whitson represented the Department on the regulatory panel at the Independent Bankers Association of Texas (IBAT) 2024 Winter Summit in Avon, Colorado.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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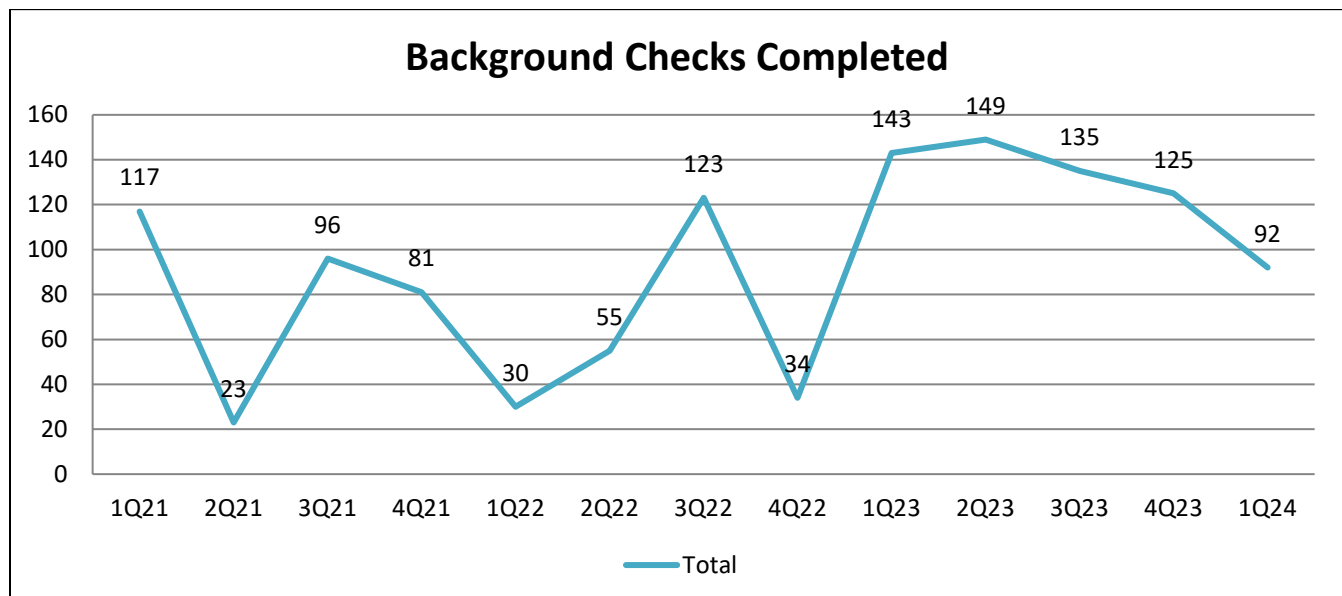
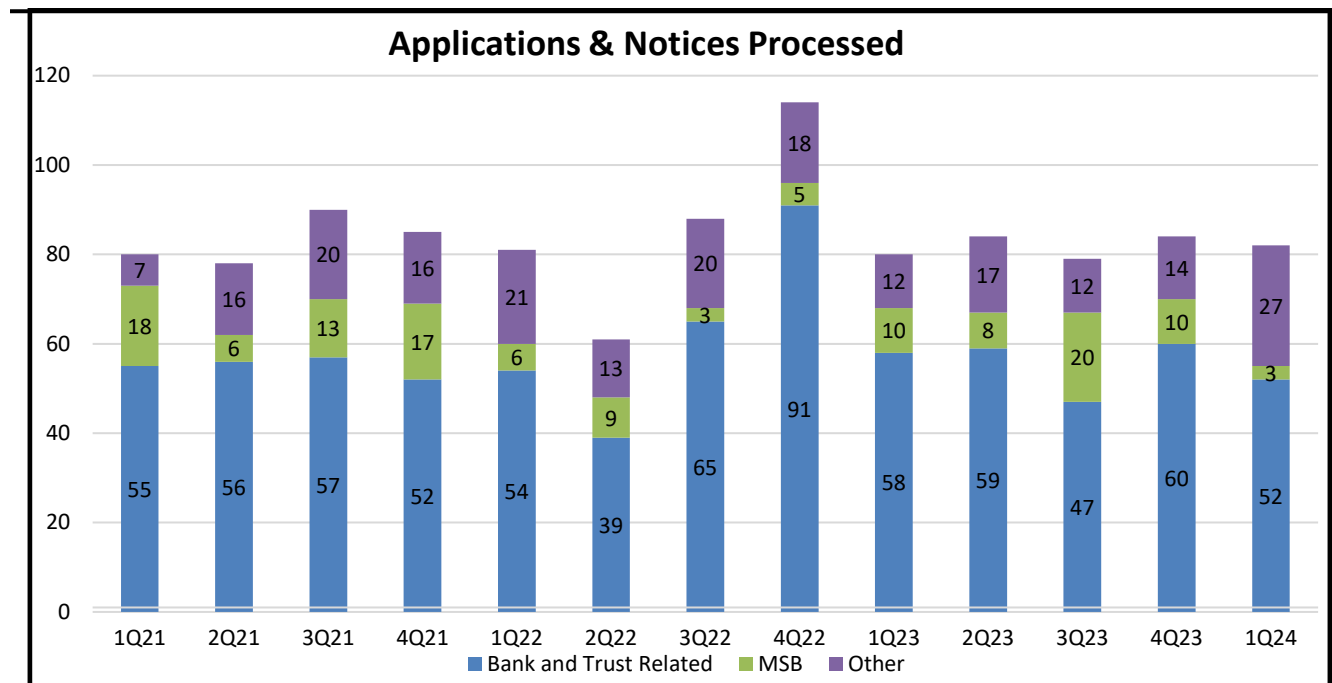
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To: Finance Commission Members

From: Dan Frasier, Director of Corporate Activities and Financial Innovation DBF

Date: January 31, 2024

Subject: Summary of Corporate Division Activities



Entities	Applications and Notices Currently Under Review (as of December 31, 2023)	Change Since Last Finance Commission Report	
		Change in Open Filings	Percent Change
Bank Related	20	0	0%
Trust Companies	2	-1	-33%
Money Services Business (MSB)	26	-1	-4%
Others	1	-3	-75%
Totals	49	-5	-9%

The number of open filings decreased by 9% compared to the level reported at the last Finance Commission meeting. The decrease is predominantly from fewer open other applications.

Division Highlights

- **Staffing:** The Corporate Division hired an administrative assistant who started on January 8th and a corporate analyst which starts on February 1st. With these hires, the Division is staffed in accordance with the Department's 2024 Staffing Plan.
- **Significant Applications:** Since the last report, the following significant bank applications have been received:
 - Texas Global Trust Company, Dallas, has applied for a de novo trust company charter.
- **Charter, Conversion, and Merger Activity:** Since the last report, the following transactions have consummated:
 - *Banks*
 - None.
 - *Trust Companies*
 - Advance Trust & Life Escrow Services, LTA, Waco, converted to a Texas limited liability company under the name of ATLES Management Services, LLC.



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To: Finance Commission Members
From: Jesus "Jesse" Saucillo, Director of Non-Depository Supervision
Date: February 1, 2024
Subject: Summary of Non-Depository Supervision (NDS) Activities

			FY 2024							
Entity	FY 2023		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	194	\$342.5	195	\$342.7						
Prepaid Funeral Contract (PFC)	337	\$4.9	337	\$4.9						
Perpetual Care Cemeteries (PCC)	244	\$460.7*	245	\$469.1*						
Check Verification Entities (CVE)	2	n/a	2	n/a						
Examinations Performed										
MSB	98		23							
MSB Limited Scope	2		0							
MSB Accepted other State	4		0							
PFC	220		50							
PFC Limited Scope	2		0							
PCC	138		41							
PCC Limited Scope	1		1							
Ratings (# / %) Assigned to All Regulated Entities										
1	277	36.84%	267	35.41%						
2	414	55.05%	423	56.10%						
3	55	7.31%	56	7.43%						
4 & 5	6	0.80%	8	1.06%						
Noncompliance with Examination Priorities (Past Due)										
MSB	6		10							
PFC	18		15							
PCC	12		22							

NOTES:

Limited scope examinations do not receive a rating.

*PCC \$ amounts reflected in the millions.

Industry Profile and Ratings

A comparison of the ending totals for first quarter of fiscal year 2024 to the end of fiscal year 2023 reflects that the regulated areas, MSB and PCC, increased by one license holder. The increase in the PCC count represents the approval of a certificate of authority for the operation of a new perpetual care cemetery in Prosper, Texas. The MSB count increase is the net of two license surrenders and the issuance of three new licenses. The two MSB license surrenders were due to: 1) a strategic change in the MSB's business model and focus and 2) a bankruptcy filing by the MSB license holder. The services and products to be offered by the three newly licensed MSBs are: stored-value accounts allowing users to add funds, store balances, and initiate peer-to-peer payments; offer U.S. consumers and businesses the ability to transmit funds worldwide using a payment platform; and the sale of money orders to the public.

The other industry statistics totals remain comparable with no material variations.

Examination Activities

Although NDS currently has examiner vacancies, the division met the Quarterly Output Measure – Number of Licensees Examined in the first quarter of FY 2024. In January 2024, an entry level PFC/PCC financial examiner resigned. A job posting for this vacancy is currently open with the anticipation of filling the vacancy in March 2024. An MSB job posting is also posted to fill several financial examiner vacancies with goal of onboarding new hires in March 2024.

Below is further explanation of the past due examinations noted in the prior page:

- Of the 10 past due MSB examinations, six were conducted in December 2023 and January 2024; two will be conducted in February 2024; and the remaining two were delayed to coordinate and participate in multi-state examinations. As noted in prior memorandums, the Department actively participates in the coordination of examinations with other state MSB regulators to strengthen the supervision of MSBs.
- Of the 15 past due PFC examinations, three were conducted in December 2023, 10 were conducted in January 2024, and the remaining two are scheduled to be completed in February 2024.
- Of the 22 past due PCC examinations, four were conducted in December 2023, 15 were conducted in January 2024, and the remaining three are scheduled to be completed in February 2024.

Division Activities

- On January 11, 2024, the Department issued Emergency Order to Cease and Desist No. 2024-002 (Order) to Bellwood Memorial Park (Bellwood), Temple, Texas. Bellwood holds certificate of authority number 175 from the Department to operate a perpetual care cemetery. The Order was issued due to Bellwood failing to demonstrate that all required perpetual care deposits were made as required, selling burial markers to consumers in violation of previously issued orders; and for failing to provide all required examination documents. The Department's Legal Division is actively monitoring the matter and evaluating options to get Bellwood to correct the noted violations.
- On January 26, 2024, the Department issued Emergency Order to Seize Prepaid Funeral Accounts and Records No. 2024-005 to Cremation Service International, Inc. D/B/A Arlington National Funeral as a result of the permit holder failing to make available the required records and documents to perform an

examination. The division will continue to coordinate with the Legal Division to ensure that the consumers' interests are protected.

- On January 30, 2024, the Department issued Emergency Order to Seize Prepaid Funeral Accounts and Records No. 2024-006 to Lois Washington D/B/A Lewis Funeral Home (Lewis) due to unauthorized withdrawals of prepaid funeral funds. During the routine examination, it was noted that most of the funds from the restricted PFC fund had been withdrawn and Lewis did not provide the required documentation to support the withdrawn amounts. The division will continue to coordinate with the Legal Division to ensure that the consumers' interests are protected.
- The division is processing both the annual reports of 2023 PFC activity (annual reports) and the annual statements of perpetual care for year ending 2023 (annual statements) that prepaid funeral contract sellers and perpetual care cemeteries are required to submit by March 1, 2024. The statements and reports are annual filings that include brief questionnaires, summaries of the cemeteries' deposits and prepaid funeral contract activities and the ending depository balances. The yearend totals are utilized in determining the corresponding annual assessments for the following fiscal year.

Department of Banking
Actual Performance for Output Measures
Fiscal Year 2024

Type/Strategy/Measure	2024 Target	2024 Actual	2024 YTD	Percent of Annual Target	
Output Measures-Key					
1-1-1 Bank Examination					
1. # Bank Examinations Performed					
Quarter 1	103	26	26	25.24%	
2. # Foreign/Trust/IT Examinations Performed					
Quarter 1	229	45	45	19.65%	*
FY 2024, Quarter 1 - The number of bank examinations is below the target due to performing less IT examinations than anticipated.					
1-2-1 Non-Bank Examination					
1. # NDS Licensees Examined					
Quarter 1	500	115	115	23.00%	
1-3-1 Application Processing					
1. # License Applications Completed					
Quarter 1	315	88	88	27.94%	

*Varies by 5% or more from target.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

To: Finance Commission Members
From: Wendy Rodriguez, Deputy Commissioner
Date: February 1, 2024
Subject: Summary of the Human Resources Division Activities

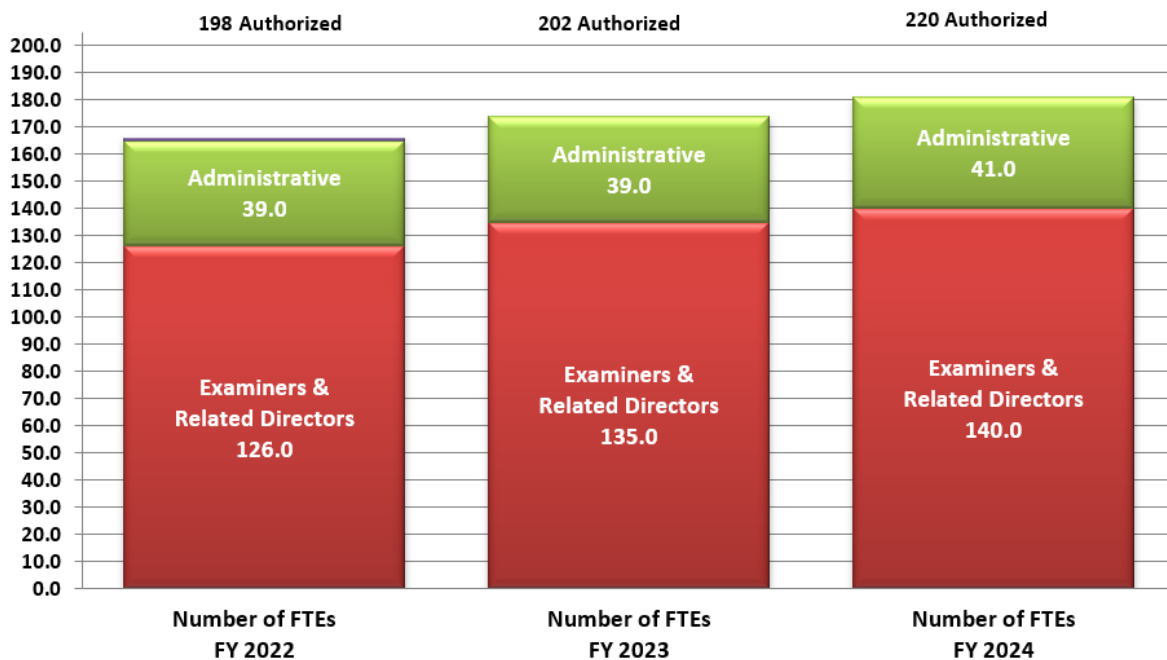
Active Postings				
Number of Positions	Position	Division	Status	Activities
1	Compliance Analyst I-II: Consumer Assistance Specialist (HQ)	DSS	Open Until Filled	Recruiting
1	PCC PFC Examiner I -II (Houston)	NDS	February 17, 2024	Recruiting
1	Director VI: Chief of Staff (HQ)	Admin Services	Open Until Filled	Recruiting
1	Financial Examiner V: Review Examiner	Bank and Trust	March 10, 2024	Recruiting
1	Accounting Project Manager III – IV	Admin Services	Open Until Filled	Recruiting
2	MSB Financial Examiner I – II (Houston)	NDS	Open Until Filled	Recruiting
2	Financial Examiner V: Bank Secrecy Act/Anti-Money Laundering Specialist (Dallas, Houston, or San Antonio)	Bank and Trust	March 31, 2024	Recruiting
3	Financial Examiner IV -VII: Information Technology Specialist (Houston)	Bank and Trust – IT	Open Until Filled	Recruiting
2	Attorney II – III (HQ)	Legal	Open Until Filled	Recruiting
1	Financial Examiner III – IV: Corporate Analyst (HQ)	Corporate	Open Until Filled	Recruiting
2	Financial Examiner VI – VII: Commercial Bank Examiner (Houston)	Bank and Trust	Open Until Filled	Recruiting
2	Financial Examiner IV – V Commercial Bank Examiner (Houston)	Bank and Trust	Open Until Filled	Recruiting
1	Financial Examiner IV – VI: Financial Analyst / Training Coordinator	DSS	Open Until Filled	Recruiting

Status of Postings that Closed before February 1, 2024				
Number of Positions	Position	Division	Status	Activities
3	Financial Examiner I -III: Asst IT Examiner (Dallas, Houston, or Lubbock)	Bank and Trust – IT	January 21, 2024	Screening
1	Information Security Officer (HQ)	MIS	January 16, 2024	Selection
1	Legal Assistant III (HQ)	Legal	November 17, 2023	Selection
2	Financial Examiner V: Credit Specialist (Houston)	Bank and trust	December 21, 2023	Selection
1	Compliance Analyst I-II: Consumer Assistance Specialist (HQ)	DSS	January 23, 2024	Reposted
1	Strategic Support Director III-IV	DSS	January 8, 2024	Reposting

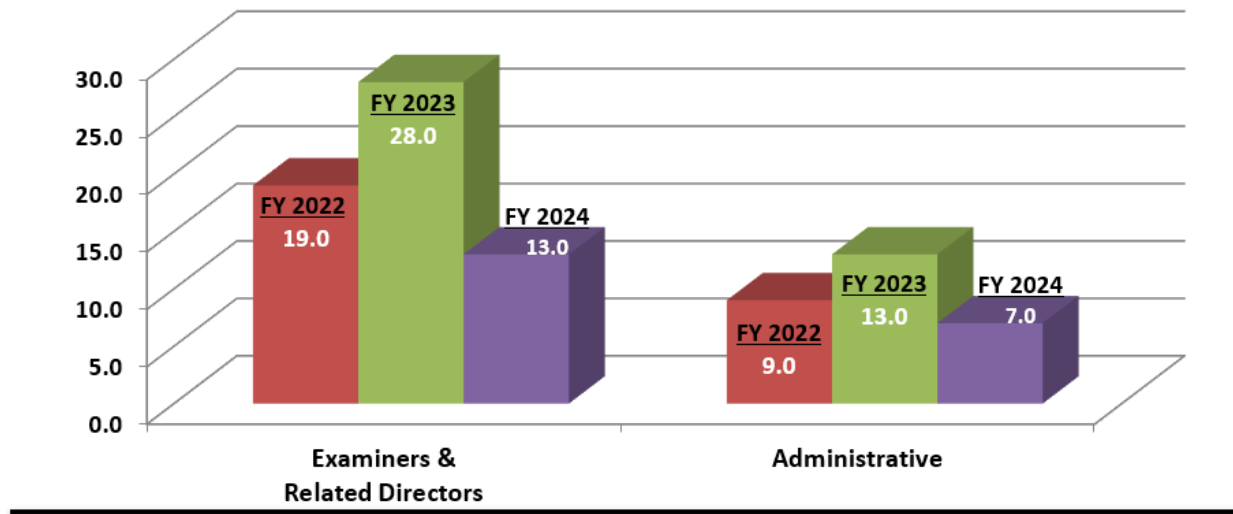
Division Activities:

- *Texas Workforce Commission Personnel Policy and Procedure System Review:*
 - Official review will begin in the 3rd Quarter of FY 2024.
- *New Employee Orientation (NEO)*
 - Held on January 8, 2024, with a total of 15 attendees.
- *Annual Performance Evaluations:*
 - Staff performance appraisals are in process and will be completed by the end of February.
- *CAPPS Onboarding Module:*
 - This is in working status. Projected go live is June 2024.
- Survey of Employee Engagement (SEE) was conducted and completed in December 2023. Reports were made available to management in January 2024 and is expected to be published to all DOB staff March 2024.

**Texas Department of Banking
Employee Data for Fiscal Years 2022, 2023 and 2024 as of
01/31/2024**

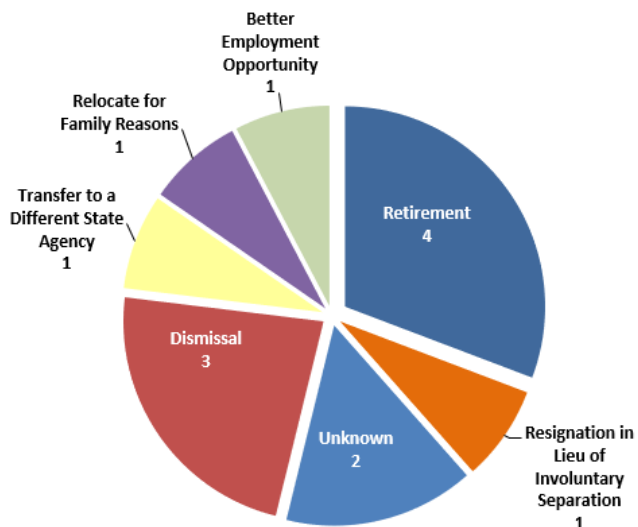


New Hire Data for Fiscal Years 2022, 2023 and 2024

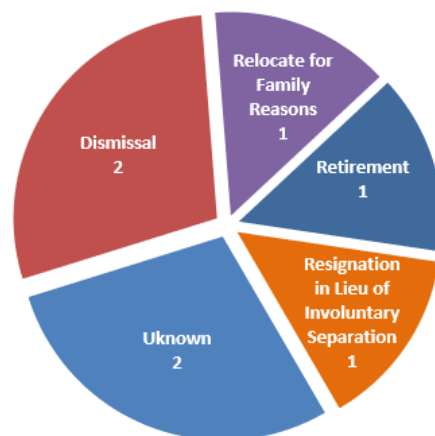


FY 2024 Employee Turnover Reasons

All Employees
13 Resignations



Financial Examiners Only
7 Resignations



As of 01/31/24



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

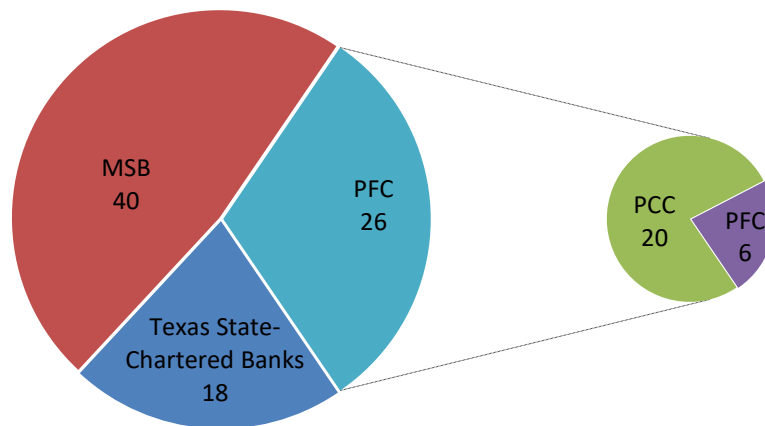
2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

To: Finance Commission Members
From: Phil Lena, Financial Analyst
Date: February 1, 2024
Subject: Summary of the Strategic Support Division Activities

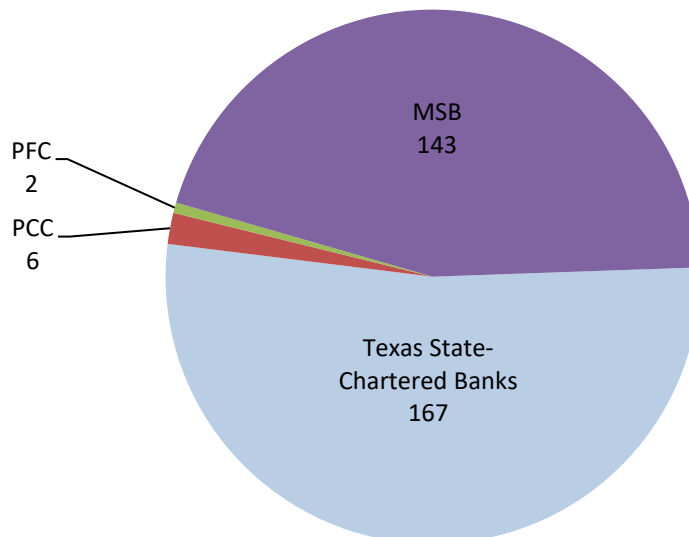
Jurisdictional Written Complaints September 2023-December 2023



Recoveries = \$55,595.80

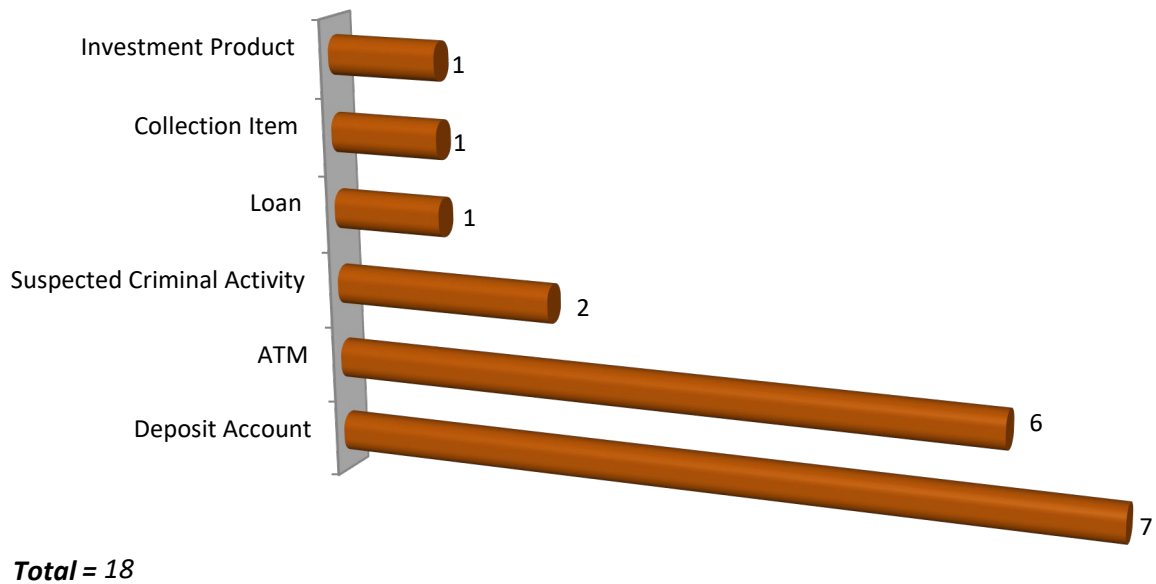
Total = 84

Inquiries on Jurisdictional Entities September 2023-December 2023

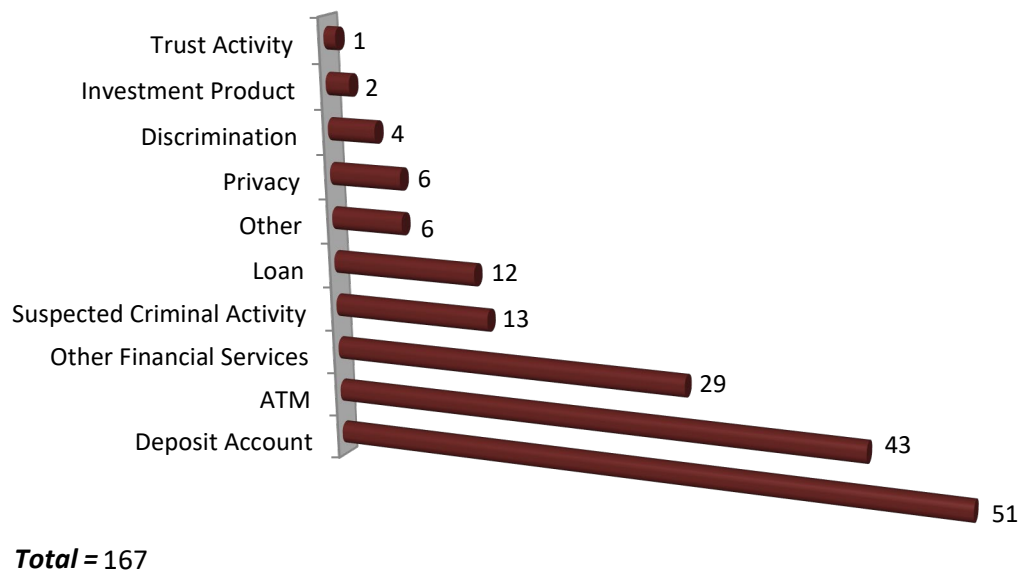


Total = 318

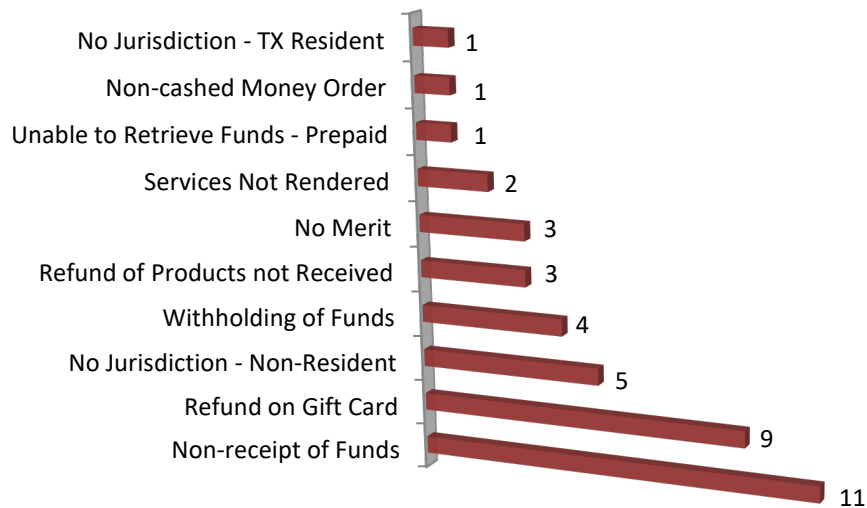
**State-Chartered Banks and Trust Companies
Written Complaints by Type
September 2023-December 2023**



**State-Chartered Banks and Trust Companies
Inquiries by Type
September 2023-December 2023**

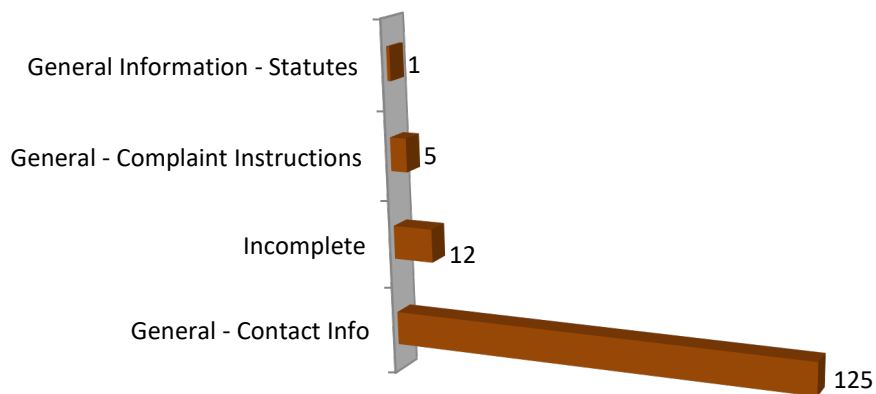


**Money Services Businesses
Written Complaints by Type
September 2023-December 2023**



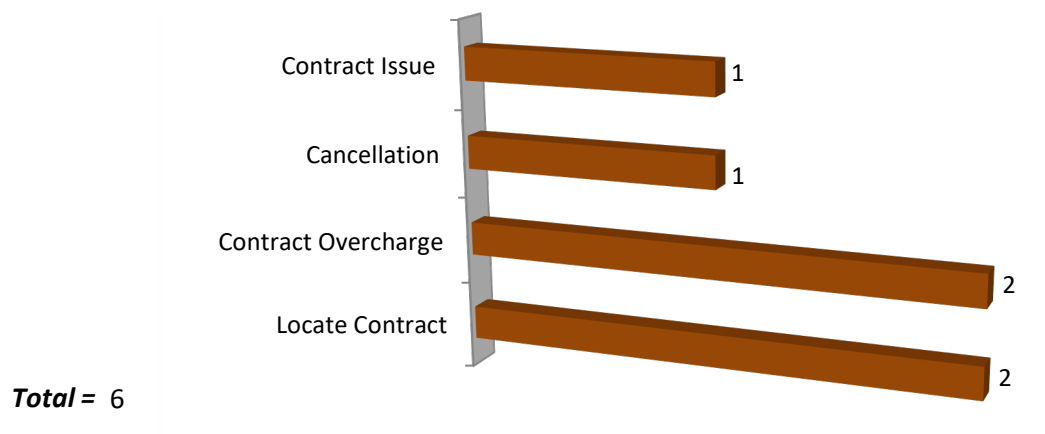
Total = 40

**Money Services Businesses
Inquiries by Type
September 2023-December 2023**

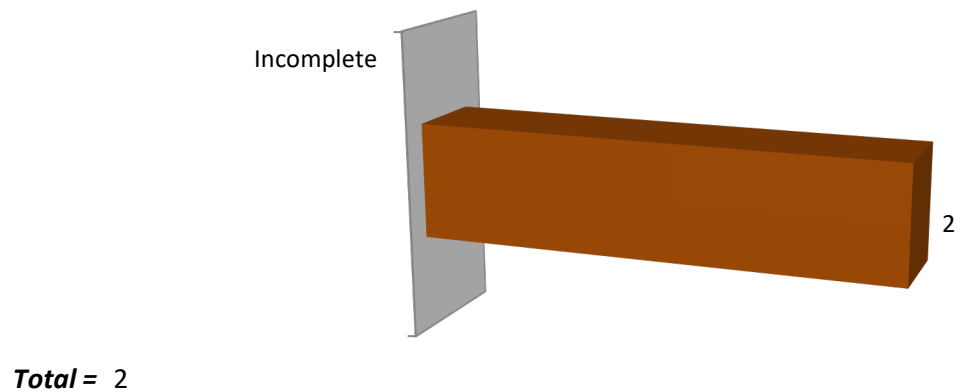


Total = 143

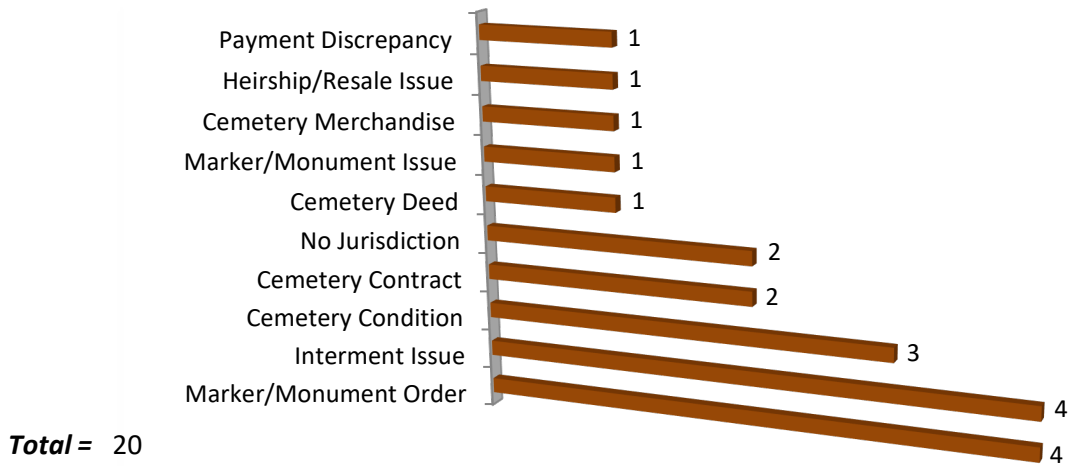
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2023-December 2023**



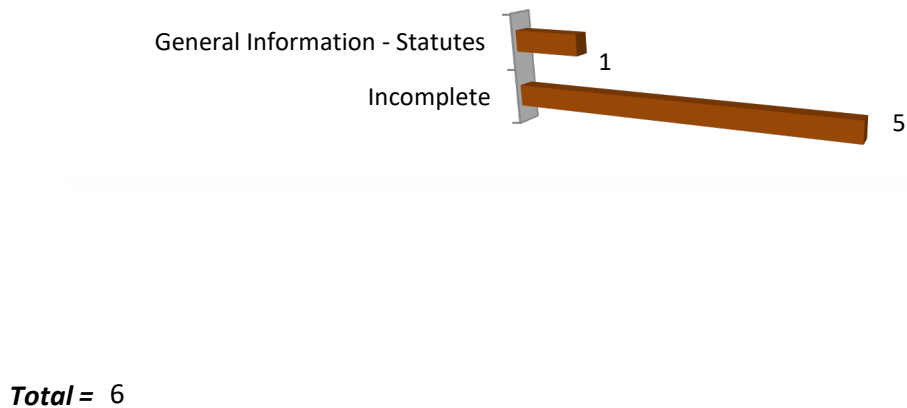
**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2023-December 2023**



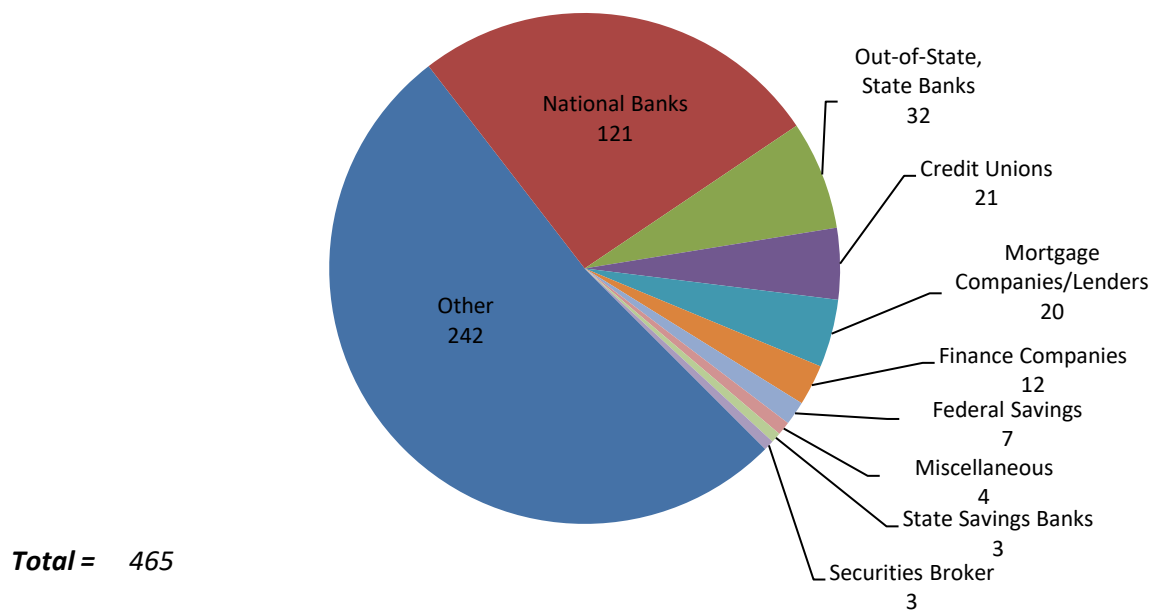
**Perpetual Care Cemeteries
Written Complaints by Type
September 2023-December 2023**



**Perpetual Care Cemeteries
Inquiries by Type
September 2023-December 2023**



Complaints and Inquiries Against Non-Jurisdictional Entities September 2023-December 2023



Often, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.

Complaint Activities Information by Quarter

	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.
State-Chartered Banks				
Avg. Number of Days to Close a Written Complaint	17	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	N/A	N/A	N/A
Number of Written Complaints Resolved	18	N/A	N/A	N/A
Trust				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	N/A
Number of Written Complaints Resolved	N/A	N/A	N/A	N/A
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	39	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	N/A	N/A	N/A
Number of Written Complaints Resolved	26	N/A	N/A	N/A
MSB				
Avg. Number of Days to Close a Written Complaint	21	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	100%	N/A	N/A	N/A
Number of Written Complaints Resolved	40	N/A	N/A	N/A

Closed Account Notification System (CANS) Activity
January 1, 2020 – January 31, 2024

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	183	383
Texas State-Chartered Savings Banks	23	58
Federal Savings Banks	10	0
State Credit Unions	135	714
Federal Credit Unions	229	617
National Banks	171	101
Out-of-State State-Chartered Banks	12	68
Out-of-State National Banks	6	0
Total	769	1,941

Bank Examination Testing System (BETS) Activity
Number of Candidates Passing Each Phase

	FY 2021	FY 2022	FY 2023	FY 2024 As of 1/30/2024
I. General Knowledge	6	5	4	3
II. Loan Analysis	1	3	3	3
III. Panel	3	3	4	3
IV. Test Bank	5	3	6	2
Total FE3	17	13	14	13

Promotions

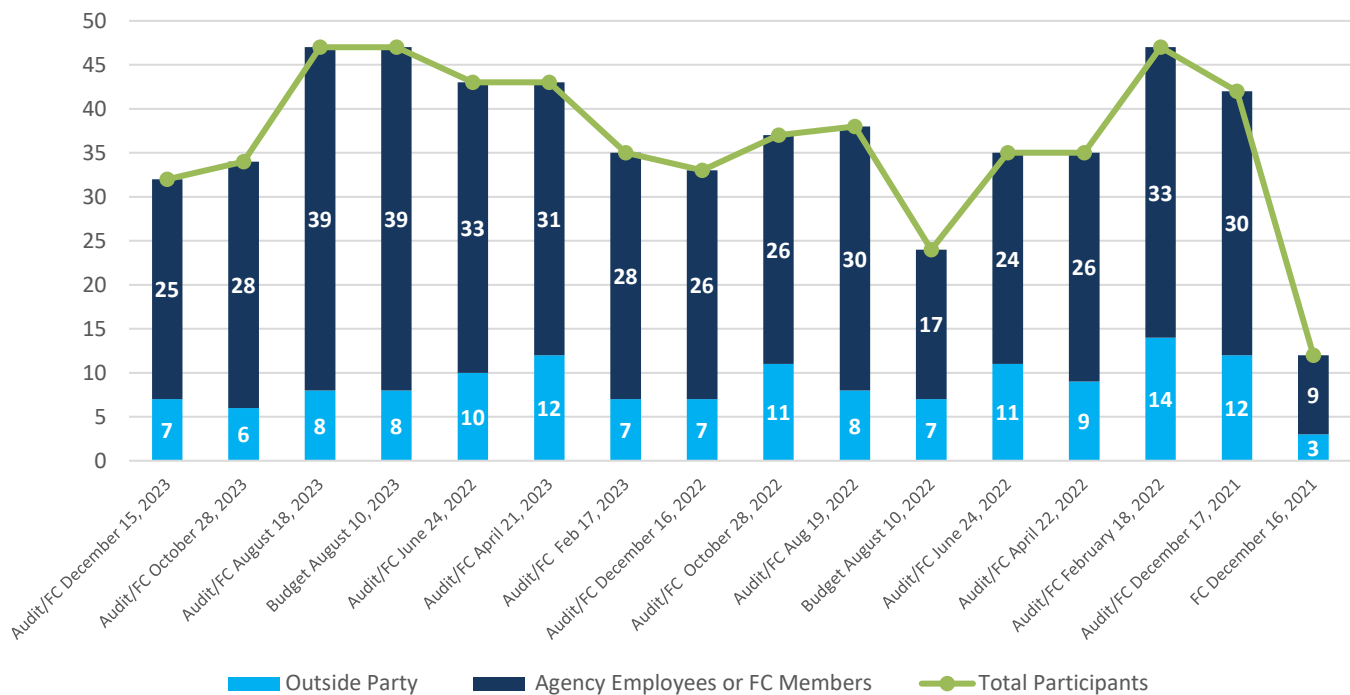
Commissioned Examiners	5	3	5	2
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Other Divisional Items:

- *Training:*
 - The Department will hold an Examiner Training Conference March 4-7, 2024, at the Embassy Suites in Denton, Texas. The Department's last conference was held in September 2019.
- *Financial Education:*
 - The Texas Department of Banking and the Office of Consumer Credit Commissioner are co-hosting the Financial Document Organizing webinar on February 21, 2024. The webinar will focus on educating the public on best practices for financial document organization and financial document retention.
- *Publications:*
 - The Texas Bank Report was published in December 2023.
 - The next Texas Bank Report will be published in February 2024.

- *Policy Revisions/Updates:*
 - Examiner Bulletins (XB)
 - XB 2024-01 Guidelines for Imaging Examination Work Papers (January 2024)
- *Examination Procedure Revisions/Updates:*
 - Commercial Procedures
 - Examination Planning
 - Loans and Leases
 - Management

Finance Commission Webcast Historical Data





Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

To: Finance Commission Members
From: Robert Nichols, General Counsel
Date: January 31, 2024
Subject: Legal Division Update

Contested Case Hearings

Banking Commissioner of Texas v. Ray Harper (Bellwood Memorial Park); SOAH Docket No. 451-24-10062.NDS. This matter concerns an Emergency Cease and Desist Order issued on January 11, 2024, which ordered Bellwood Memorial Park to cease and desist from the sale of cemetery spaces, interment rights, and memorials, and to cease and desist from cemetery operations. Mr. Harper requested a hearing and the matter is set for February 12, 2024.

Orders Issued December 1, 2023 – January 31, 2024

The Commissioner issued five enforcement orders during this period:

Bank and Trust Supervision

- Order to Cease and Desist Activity dated January 10, 2024; AMBUL Islamic Impact Equity Fund, Inc. d/b/a AMBUL Islamic-Banking Corporation and Mehboob Manji, Round Rock, Texas
- Consent Order Prohibiting Further Participation, Requiring Restitution, and Imposing an Administrative Penalty dated January 25, 2024; Courtney Mayfield Sitkowski, McKinney, Texas

Non-Depository Supervision

- Emergency Order to Cease and Desist Activity dated January 11, 2024; Bellwood Memorial Park, Temple, Texas
- Emergency Order to Seize Prepaid Funeral Accounts and Records dated January 26, 2024; Cremation Service International, Inc., Houston, Texas
- Emergency Order to Seize Prepaid Funeral Accounts and Records dated January 30, 2024; Lois Washington d/b/a Lewis Funeral Home, San Antonio, Texas

Public Information Requests

From December 1, 2023, through January 31, 2024, staff received and responded to 15 requests for public information addressed to the Department of Banking and received 8 inquiries through the “Ask a Question” feature. During the same period, we received two public information requests addressed to the Finance Commission. No requests for an OAG opinion were submitted during this period.

Gifts

Commissioner Cooper attended the Federal Financial Institutions Examination Council (FFIEC) Meeting in Washington, D.C., on December 11, 2023. The FDIC paid his airfare (\$631.80), lodging, and per diem (\$504.41). The Commissioner is the FFIEC State Liaison Committee (SLC) Chair.

FY 2024 Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	1	1	0	0
Cease & Desist	0	1	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	1	2	0	0

TRUST COMPANY				
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	0	0	0	0

MONEY SERVICES BUSINESS				
Consent Order	4	0	0	0
Cease & Desist	0	0	0	0
Final Order after hearing	0	0	0	0
Total	4	0	0	0

PERPETUAL CARE CEMETERY				
Consent Order	0	0	0	0
Cease & Desist	0	1	0	0
Refusal to Renew Cert/Auth	0	0	0	0
Final Order after Hearing	1	0	0	0
Total	1	1	0	0

PREPAID FUNERAL CONTRACT				
Consent Order	0	0	0	0
Cease & Desist	0	2	0	0
Final Order	0	0	0	0
Total	0	2	0	0

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 2, Chapter 15, Concerning Corporate Activities by State-Chartered Banks.

PURPOSE: Amendments to these sections of Chapter 15 to conform the rules to changes in applicable Texas law, federal regulation, and accounting standards.

RECOMMENDED ACTION: No comments were received regarding the proposed amendments in 7 TAC, Part 2, Chapter 15. The Department recommends that the Commission approve adoption of amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments in 7 TAC, Part 2, Chapter 15 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 15. Corporate Activities***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to Chapter 15 of Title 7 of the Texas Administrative Code, concerning loans and investments by state banks. Sections 15.1, 15.3, 15.4, 15.5, 15.6, 15.7, 15.103, 15.121, and 15.122 are the affected sections. These amendments are adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8077). The amended rules will not be republished.

The amendments conform these rules to changes in applicable Texas law, federal regulation, and accounting standards. The amendments do not materially change the requirements of the rules.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code §11.301, which authorizes the commission to adopt rules applicable to state banks, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of state banks.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to state banks, contained in Finance Code, Subtitle A. No other statutes are affected by this proposal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

<rule>

§15.1. Definitions

Words and terms used in this chapter that are defined in the Finance Code, Title 3, Subtitle A or Subtitle G, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accepted filing--An application, request, notice, or protest filed with the banking commissioner pursuant to the Finance Code, Title 3, Subtitle A or G, this chapter, or another rule adopted pursuant to the Finance Code if:

(A) the appropriate fee has been paid pursuant to §15.2 of this title (relating to Filing and Investigation Fees); and

(B) the banking commissioner has received sufficient information to reach an informed decision and has notified the person or entity who submitted the filing, in writing, that the submission is complete and has been accepted for filing.

(2) Community--The area delineated by a state bank as the local community or communities that comprise a state bank's entire community pursuant to the Community Reinvestment Act (CRA), 12 United States Code (USC), §§2901 et seq and any rules or regulations adopted pursuant to CRA. The community may include the delineated area for the purposes

of CRA in which the person or entity that is required or authorized to publish public notice proposes to engage in business, is currently engaged in business, or wishes to abandon.

(3) Day--A calendar day.

(4) Eligible bank--A state bank that:

(A) is well capitalized as defined in Section 38, Federal Deposit Insurance Act, 12 USC §1831o, or is operating in compliance with a capital plan approved in writing by the banking commissioner;

(B) received a composite rating of either 1 or 2 as defined by the Uniform Financial Institutions Rating System at the most recent examination by the department or federal regulatory agencies;

(C) received a CRA rating of either outstanding or satisfactory at the bank's most recent inspection by the appropriate federal regulatory agency;

(D) is not presently operating in violation of a regulatory condition or commitment letter imposed by a state or federal banking regulatory agency; and

(E) is not presently operating under a memorandum of understanding; determination letter or other notice of determination; order to cease and desist, or other state or federal administrative enforcement order issued by a state or federal banking regulatory agency.

(5) General interest items--Include, but are not limited to, local and international news, weather, sports, features, comics, entertainment and advertisements directed to

the general public.

(6) Low or moderate income area--A designated geography for CRA purposes, as defined in 12 CFR, §228.12(m)(1) and (m)(2), for state member banks, or 12 CFR, §345.12(m)(1) and (m)(2), for state nonmember banks.

(7) Newspaper of general circulation--A newspaper that:

(A) devotes not less than 25% of its total column lineage to general interest items, provided that a newspaper of general circulation does not include a specialized newspaper or other periodical directed to a specific interest group or occupation, such as a legal notice or court related newspaper;

(B) is published at least once a week;

(C) is entered as second class postal matter in the county where published; and

(D) has been published regularly and continuously for at least 12 months before the applicant, protesting party or other entity publishes notice, provided that a weekly newspaper is considered to have been published regularly and continuously if the newspaper omits not more than three issues in a 12-month period.

(8) Public notice--A notice published in a newspaper of general circulation concerning the subject matter of a submitted filing.

(9) Submitted filing--An application, request, notice, or protest, that is neither an accepted filing nor an abandoned filing, filed under the Finance Code, Title 3, Subtitle A or G, this chapter, or another rule adopted pursuant to the Finance Code.

§15.3. Expedited Filings

(a) An eligible bank may file an expedited filing according to forms and instructions provided by the department solely for the following matters, together with the fee required by §15.2 of this title (relating to Filing and Investigation Fees):

(1) a branch application pursuant to Finance Code, §32.203, and §15.42 of this title (relating to Establishment and Closing of a Branch Office); and

(2) home office relocations less than one mile with no abandonment of the community pursuant to the Finance Code, §32.202(c), and §15.41 of this title (relating to Written Notice or Application for Change of Home Office).

(b) Notwithstanding another provision of this section, the banking commissioner may deny expedited filing treatment to an eligible bank, in the exercise of discretion, if the banking commissioner finds that the filing involves one or more of the following:

(1) the proposed transaction involves significant policy, supervisory, or legal issues;

(2) approval of the proposed transaction is contingent on additional statutory or regulatory approval by the banking commissioner or another state or federal regulatory agency;

(3) the proposed transaction will result in a fixed asset investment in excess of the limitation contained in the Finance Code, §34.002(a);

(4) the proposed transaction requires the

approval of the banking commissioner under the Finance Code, §33.109(b);

(5) the proposed transaction involves an issue of parity between state and national banks pursuant to the Finance Code, §32.009;

(6) the proposed transaction significantly impacts the strategic plan of the bank;

(7) the proposed transaction will result in a decrease in capital below the levels required to qualify as an eligible bank;

(8) the proposed transaction will result in an abandonment of the community pursuant to the Finance Code, §32.202(d);

(9) the proposed transaction involves an issue of regulatory concern as determined by the banking commissioner in the exercise of discretion; or

(10) the application is deficient and specific additional information is required, or the filing fee has not been paid.

(c) The department shall notify the applicant on or before the 15th day after receipt of the application if expedited filing treatment is not available under this section. Such notification of denial must be in writing and must indicate the reason why expedited treatment is not available. Notification is effective when mailed by the department and is not subject to appeal.

(d) If expedited filing treatment is denied, the applicant shall submit any additional fee required by §15.2 of this title on or before the fifth business day after receipt of the notice.

(e) Unless the applicant is otherwise notified by the department, an expedited filing is

approved on the 15th day after the later of the date the application is complete and accepted for filing, or expiration of the period for filing a comment, protest, response or reply, whichever is the last to occur, unless a protest is filed. If a protest is filed, the application will be processed under §15.41 or §15.42 of this title, whichever is applicable.

§15.4. Required Information and Abandoned Filings

(a) Required information. The banking commissioner may investigate and evaluate facts related to a submitted filing or accepted filing to the extent necessary to reach an informed decision. The banking commissioner may require any person or entity connected with the matter to which the submitted or accepted filing pertains to submit additional information, including, but not limited to, an opinion of counsel with respect to a matter of law or an opinion, review or compilation prepared by a certified public accountant.

(b) On or before the 15th day after initial submission of an application, the banking commissioner shall issue a written notice informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(c) Time limit for providing required information. An applicant must provide all information necessary for the banking commissioner to declare that a submission is an accepted filing, whether the information is required by form or rule or is requested by the department. The information must be provided to the department on or before the

61st day after the date of initial submission of the filing, except as otherwise provided by law. Upon a finding of good and sufficient cause, the banking commissioner shall grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period.

(d) Abandoned filing. The banking commissioner may determine any submitted or accepted filing to be abandoned, without prejudice to the right to refile, if the information required by the Finance Code, this chapter, or any rule or regulation adopted pursuant to the Finance Code, or additional requested information, is not furnished within the time period specified by subsection (c) of this section or as requested by the department, in writing, to the person or entity making the submission. The banking commissioner may determine a submitted or accepted filing, for which additional fees or costs are required by the Finance Code or by this chapter to be abandoned if those amounts are not paid by the deadline stated by the department, which shall be at least 14 days from the date the deadline is communicated in writing to the applicant.

(e) Notice. The banking commissioner shall give written notice of any submitted or accepted filing considered to be abandoned. Notice of abandonment shall be effective upon mailing by the department. Fees paid related to an abandoned filing are nonrefundable.

§15.5. Public Notice

(a) General. A person or entity required or authorized to file public notice, including a person or entity requesting authorization for

a merger, purchase of assets, a conversion, an applicant for a foreign bank agency, or another application requiring public notice, shall publish notice in a newspaper of general circulation in its specified community or in an alternative form of publication acceptable to the banking commissioner and in such other locations as may be required by the banking commissioner.

(b) Contents. The public notice must state that a filing is being made; the date (or expected date) of the filing; sufficient information describing the proposed transaction, and other related information required by the Finance Code, Title 3, Subtitle A or G, this chapter, or another rule adopted pursuant to the Finance Code. The notice must also contain any other information as may be required by the banking commissioner. In addition, the notice must include substantially the following text as a separately stated paragraph: "Any person wishing to comment on this application, either for or against, may file written comments with the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294 on or before the 14th day after the date of this publication. Such comments will be made a part of the record before and considered by the banking commissioner. Any person wishing to formally protest and oppose (describe type of application in general terms) and participate in the application process may do so by filing a written notice of protest with the Texas Department of Banking on or before the 14th calendar day after the date of this publication accompanied by a protest filing fee of \$2,500. The protest fee may be reduced or waived by the banking commissioner upon a showing of substantial hardship."

(c) Publisher's affidavit. A person or entity required to file public notice under this section shall file with the banking commissioner a copy of the notice and a publisher's affidavit attesting to the date of publication.

(d) One Publication Sufficient. Unless otherwise required by the Finance Code or rules and regulations adopted pursuant to the Finance Code, one public notice publication per submitted or accepted filing in each community specified by the banking commissioner is sufficient if in substantial compliance with this section and chapter and with the Finance Code, as determined by the banking commissioner. The banking commissioner reserves the right to require additional publication based on a determination that a particular publication is insufficient or is otherwise not in compliance.

*§15.6. Credit Exposure Arising from
Derivative and Securities Financing
Transactions*

(a) Form of application. An application to engage in a business under the Finance Code, §32.003, must be filed on a form prescribed by the banking commissioner.

(b) Notice to applicant. The banking commissioner shall issue a written notice as required by §15.4 of this title (relating to Required Information and Abandoned Filings) informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required. If a protest is timely filed, the department will notify the applicant of the protest.

(c) Action on applications. If an application is not protested and if the banking commissioner has not ordered a hearing, the banking commissioner shall approve or deny an application for a state bank charter or an application for conversion of a financial institution to a state bank on or before the 180th day after the date the application is accepted for filing, unless extended by written agreement between the applicant and the banking commissioner. If the application is protested, the application will be acted on in accordance with §15.10 of this title (relating to Protested Applications).

(d) Violation of Processing Times. If an application is not protested or a hearing is not convened, an applicant may appeal directly to the banking commissioner for a timely resolution of a dispute arising from a violation of a processing period set forth in this section. An applicant may appeal by filing a written request with the banking commissioner on or before the 30th day after the date the decision is made on the application, requesting review by the banking commissioner to determine whether the established period for the granting or denying of the application has been exceeded. The decision on the appeal shall be based on the written appeal filed by the applicant, any response by the department, and any agreements between the parties. The banking commissioner may convene a hearing to take evidence on the matter.

(e) Decision on Appeal. The banking commissioner shall decide the appeal in the applicant's favor if the banking commissioner determines that the time periods established in this section have been exceeded and the department has failed to establish good cause for the delay. The

banking commissioner shall issue a written decision to the applicant on or before the 60th day after the filing of an appeal. If an appeal is decided in an applicant's favor, the department will reimburse the application fee paid by the applicant. A decision in favor of the applicant under this subsection does not affect a decision to grant or deny the application based on applicable substantive law without regard to whether the application was timely processed.

§15.7 Submission of Documents and Reproductions

(a) Scope. This section governs submission of documents to the department for processing by the corporate activities division of the department pursuant to this chapter, and does not permit, prohibit, or affect correspondence with or documents submitted to the department for another purpose, including:

(1) applications submitted to the non-depository supervision division of the department; and

(2) documents submitted to the department as required or permitted by Government Code, Chapter 2001, and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(b) Reproduction. For purposes of this section, the term reproduction means:

(1) a photographic or photostatic copy or similar reproduction of an original document that is submitted to the department by mail or hand delivery;

(2) a facsimile copy of an original document

**ADOPTION OF AMENDMENTS TO
7 T.A.C. Ch. 15
Page 7 of 15**

submitted by telephonic document transmission to the fax number specified by the department; or

(3) if permitted by the department with respect to a specific filing, an electronic copy of an original document submitted by electronic means as authorized by the department.

(c) Filings. Subject to the length limitations of subsection (d) of this section, a document required or authorized to be filed with the department may be a reproduction, including an application or a supplement to or substitution for a portion of a previously filed and accepted application. Receipt of a reproduction by the department is not equivalent to accepted for filing.

(d) Page limitations. A document submitted by telephonic document transmission to the department's fax machine may not exceed 25 pages in total length, including the transmittal document required by subsection (e) of this section, or it will be rejected for filing. The transmission of portions of any particular filing at different times is treated as one reproduction for purposes of this subsection.

(e) Transmittal document. A cover sheet or transmittal document must accompany every reproduction submitted under this section and must:

(1) clearly identify the sender by name, address, and phone number, the documents being delivered or transmitted, and the number of pages in the submission;

(2) contain clear and concise instructions concerning the sender's request with respect to the submission; and

(3) contain complete and accurate information regarding the payment of required filing fees, if any.

(f) Time of receipt. To be considered received by the department, a document must be in clearly legible form. Documents submitted by mail or hand delivery must be delivered during regular business hours of the department. For documents submitted by mail or hand delivery, the date and time the submission is actually received by the department will determine the time of receipt. For reproductions submitted by telephonic document transmission, [or] the date and time imprinted by the department's fax machine on the last page of a reproduction submitted by telephonic document transfer will determine the time of receipt. For reproductions submitted by email, the date and time reflected by the department's email system will determine the time of receipt. Any document received after 4:30 p.m. on a business day, or on a non-business day, is considered received at 8:00 a.m. on the next business day. A document will not be considered received until the department receives the entire document and the required filing fee, if any.

(g) Equivalent of original. For all purposes attendant to filing, a reproduction of a document filed with the department under this section, including reproduction of signatures thereon, is considered an original document.

§15.103. Expedited Filings

(a) A financial institution that would be an eligible bank as defined in §15.1 of this title (relating to Definitions) if it was a state bank may file an expedited filing in lieu of an

**ADOPTION OF AMENDMENTS TO
7 T.A.C. Ch. 15
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application required under §15.104 of this title (relating to Application for Merger or Share Exchange), §15.105 of this title (relating to Application for Authority to Purchase Assets of Another Financial Institution), or §15.108 of this title (relating to Conversion of a Financial Institution into a State Bank), and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing and Investigation Fees).

(b) An expedited filing consists of a letter application including, except to the extent waived by the banking commissioner, these items:

- (1) a summary of the transaction;
- (2) a current pro forma balance sheet and income statement for all parties to the transaction, with adjustments, reflecting the proposed transaction as of the most recent quarter ended immediately prior to the filing of the application, demonstrating that each resulting state bank is well capitalized as defined in Section 38, Federal Deposit Insurance Act, 12 USC §1831o;
- (3) a completed Worksheet to Determine Eligibility form as prescribed by the commissioner;
- (4) a completed Worksheet for Expedited Filings form as prescribed by the commissioner;
- (5) an executed opinion of counsel conforming to the requirements of the section of this subchapter that would apply had the applicant not filed an expedited filing;
- (6) copies of all other required regulatory

notices or filings submitted concerning the transaction; and

(7) a copy of the public notice published in conformity with the section of this subchapter that would apply had the applicant not filed an expedited filing.

(c) The banking commissioner must notify the applicant on or before a date that is 15 days after receipt of the application if expedited filing treatment is not available under this section for any reason. Notification must be in writing and must indicate the reason expedited treatment is not available. Notification is effective when mailed by the banking commissioner and is not subject to appeal.

(d) The banking commissioner, in the exercise of discretion, may withdraw an application from expedited processing or may deny expedited filing treatment to an otherwise eligible applicant if the banking commissioner finds that the application involves one or more of these issues:

- (1) the proposed transaction involves significant policy, supervisory, or legal issues;
- (2) approval of the proposed transaction is contingent on additional statutory or regulatory approval by the banking commissioner or another state or federal regulatory agency;
- (3) the proposed transaction contemplates a resulting entity that is not a financial institution;
- (4) the proposed transaction involves a financial institution or other entity that is not

domiciled in Texas;

(5) the proposed transaction would cause the assets of a resulting state bank to increase more than:

(A) 100% if it had total assets of one billion dollars or less prior to the transaction; or

(B) 35% if it had total assets of more than one billion dollars prior to the proposed transaction;

(6) the proposed transaction involves a state bank that has experienced, since the last commercial examination by a state or federal regulatory agency, asset growth, through acquisition or otherwise, greater than:

(A) 100% if it had total assets of one billion dollars or less at the last examination; or

(B) 35% if it had total assets of more than one billion dollars at the last examination;

(7) the proposed transaction involves a resulting state bank that would not be well capitalized as defined in Section 38, Federal Deposit Insurance Act, 12 USC §1831o;

(8) the proposed transaction involves an issue of regulatory concern as determined by the banking commissioner in the exercise of discretion; or

(9) the banking commissioner determines that a conversion examination is necessary for financial institutions converting into a state bank.

(e) The banking commissioner must approve or deny an expedited filing on or before a date that is 30 days after the date the expedited filing is accepted for filing pursuant to §15.4

of this title (relating to Required Information and Abandoned Filings). The banking commissioner may, in the exercise of discretion, before the expiration of the period for decision, give the applicant written notice that the banking commissioner will convene a hearing to obtain evidence related to the application, and the decision will thereafter be made in accordance with §15.113 of this title (relating to Approval; Conditional Approval; Denial of Application; Hearings).

(f) The applicant must supply all material information necessary for the banking commissioner to make a fully informed decision on the expedited filing.

*§15.121. Acquisition and Retention of
Shares as Treasury Stock*

(a) Permitted acquisition of treasury stock. Pursuant to Finance Code, §34.102, a state bank may acquire its own shares to be held as treasury stock if the acquisition is necessary to avoid or minimize a loss on a loan or investment previously made in good faith or is made in compliance with this section. An acquisition under the authority of this section may constitute an isolated transaction or a continuing plan of acquisition and may not be made for speculation or as a means of evading a requirement or obligation under federal or state banking laws.

(b) Application. A state bank that desires to acquire its own shares to be held as treasury stock under the authority of this section must file an application regarding its plan of acquisition with the banking commissioner, setting forth or including as exhibits:

(1) consistent with subsection (f) of this section, the pro forma effects of the plan of

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acquisition on the bank's liquidity and equity capital, and disclosure of the basis for calculations, including:

(A) the price or price range per share at which the shares will be acquired;

(B) the number of shares sought to be acquired, expressed as a maximum; and

(C) the source of funds for the acquisition;

(2) the date by which the plan of acquisition will be completed;

(3) a certified copy of a resolution duly adopted by the board of directors, approving the plan of acquisition; and

(4) a current draft of the securities offering document or other disclosure materials proposed to be delivered to shareholders considering the sale of bank shares to the bank.

(c) Action on application. The banking commissioner will approve or deny the application not later than the 30th day after the application is complete and accepted for filing pursuant to §15.4(b) of this title (relating to Required Information and Abandoned Filings), and may impose conditions on an approved plan of acquisition, including limitations on the number of shares to be acquired or a condition that the approval expire as of a specified date. The banking commissioner may deny the application if the banking commissioner concludes that the bank's plan of acquisition:

(1) will result in acquisition of treasury stock at an aggregate cost in excess of its undivided profits, or may otherwise threaten the

adequacy of the bank's equity capital or its liquidity;

(2) appears to be for speculation or a means of evading a requirement or obligation under federal or state banking laws; or

(3) could otherwise place the bank in an unsafe or unsound condition.

(d) Compliance with securities law.

(1) An issuer's purchase of its own shares is a transaction subject to the antifraud provisions of federal securities law, see 15 United States Code, §78j, 17 Code of Federal Regulations, §240.10b-5, and *Spector v. L Q Motor Inns, Inc.*, 517 F.2d 278 (5th Cir. 1975), cert. denied, 423 U.S. 1055 (1976). The transaction is also subject to the antifraud provisions of state securities law, see Texas Government Code, Title 12. Potential liability of the state bank to the selling shareholder can therefore arise if the state bank withholds or misrepresents material facts that the seller would have considered important in making the decision to sell.

(2) Approval of an application under this section by the commissioner does not constitute a determination that the bank has complied with applicable securities law.

(e) Retention of treasury stock. Notwithstanding Finance Code, §34.102(c), treasury stock acquired by a state bank, whether to avoid or minimize a loss on a loan or investment previously made in good faith or under an approved plan of acquisition, may be held indefinitely as treasury stock; provided that the banking commissioner may require a state bank to cancel and retire all or part of shares held as treasury stock to the

status of authorized and unissued shares if the banking commissioner concludes that holding treasury stock in the amount held by the bank creates safety and soundness or other regulatory concerns.

(f) Accounting for treasury stock. A state bank must account for the acquisition and retention of treasury stock in accordance with generally accepted accounting principles as prescribed by Financial Accounting Standard Board Accounting Standard Codification Topic 505-30, Treasury Stock. The method used for accounting for treasury stock must be clearly reflected in the bank's accounting records.

(g) Status of treasury stock. Shares held by a state bank as treasury stock may not be voted, directly or indirectly, at any meeting of shareholders, and may not be counted in determining the total number of outstanding shares at any given time.

§15.122. Amendment of Certificate to Effect a Reverse Stock Split

(a) Definitions. When these words and terms are used in this section they will have these meanings, unless the context clearly indicates otherwise.

(1) Affiliate--A person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with a state bank seeking to effect a reverse stock split. A person who is not an affiliate of the state bank at the commencement of its reverse stock split will not be considered an affiliate of the bank prior to the completion of the reverse stock split.

(2) Appraisal report--A report, opinion (other than an opinion of counsel), or appraisal from an outside party which is materially related to the reverse stock split, including a report, opinion, or appraisal relating to the consideration or the fairness of the consideration to be offered to shareholders in connection with the reverse stock split or the fairness of the transaction to the state bank or to unaffiliated shareholders.

(3) Reverse stock split--An amendment to the certificate of formation of a state bank that achieves a reduction in the number of issued shares of the bank by requiring exchange of all issued shares in a particular class for a proportionately smaller number of shares, generally with a proportionately increased par or stated value. The equity capital of the state bank remains substantially the same.

(4) Share--A unit representing ownership of at least part of the proprietary interests of a state bank, whether or not divided or subdivided by means of classes, series, relative rights, or preferences; and includes a stock or similar security; or a security convertible, with or without consideration, into such a security, or carrying a warrant or right to subscribe to or purchase such a security; or such warrant or right; or another security determined by the banking commissioner to be an equity security pursuant to the Finance Code, §31.002(a)(9)(B).

(5) Unaffiliated shareholder--A shareholder of a share subject to a reverse stock split who is not an affiliate of the state bank that issued the share.

(b) Procedure. Pursuant to the Finance Code, §32.101, to effectuate a reverse stock split in

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compliance with this section, a state bank must:

(1) obtain the approval of its shareholders as required by law; and

(2) obtain the approval of the banking commissioner pursuant to subsection (d) of this section, by filing an application setting forth the information and documents required by subsection (c) of this section and the filing fee required by §15.2 of this title (relating to Filing and Investigation Fees).

(c) Application. A state bank proposing a reverse stock split transaction must file with the banking commissioner a written application seeking approval of the proposed amendment to its certificate of formation, stating the results of the vote of shareholders regarding the proposed reverse stock split and stating the percentage of shares of unaffiliated shareholders that were voted in favor of the proposed reverse stock split, or undertaking to supplement the application after conditional approval is obtained to provide shareholder approval information, setting forth or including as exhibits:

(1) the original and one copy of the proposed amendment to the certificate of formation, to be processed in the manner required by the Finance Code, §32.101(c), and a description of the material terms of the proposed reverse stock split, including terms or arrangements relating to any shareholder of the state bank which are not identical to those relating to other shareholders of the same class;

(2) any plan or proposal of the state bank, regarding activities or transactions which are to occur after the reverse stock split which relate to or would result in:

(A) an extraordinary corporate transaction, such as a merger, reorganization, or liquidation, involving the state bank or any of its subsidiaries;

(B) a sale or transfer of a material amount of assets of the state bank or any of its subsidiaries;

(C) a change in the present board of directors or management of the state bank, including a plan or proposal to change the number or term of directors, to fill an existing vacancy on the board or to change a material term of the employment contract of an executive officer;

(D) a material change in the present dividend rate or policy or indebtedness or capitalization of the state bank;

(E) any other material change in the state bank's corporate structure or business;

(3) the corporate purpose or purposes of the state bank for the reverse stock split, and alternative means, if any, considered by the state bank to accomplish the purposes and the reasons for their rejection, and the reason for choosing the structure of a reverse stock split and for undertaking the transaction at this time;

(4) a certified resolution of the board of directors of the state bank approving the proposed amendment to the certificate of formation, accompanied by a statement whether or not the board of directors of the state bank reasonably believes that the reverse stock split is fair or unfair to unaffiliated shareholders that:

(A) identifies each director, if any, that

dissented to or abstained from voting on the merits of the reverse stock split, and describes, if known to the state bank after making reasonable inquiry, the reasons for each dissent or abstention; and

(B) states the number and percentage of disinterested directors that voted in favor of the proposed reverse stock split;

(5) whether or not the state bank obtained an appraisal report and, if an appraisal report was obtained, a copy of the appraisal report. To the extent not addressed in the appraisal report, the state bank must disclose:

(A) the identity, qualifications, and method of selection of the outside party that prepared the appraisal report, any material relationship between the outside party or its affiliates and the state bank or its affiliates which existed during the past two years or is mutually understood to be contemplated, and any compensation received or to be received as a result of the relationship;

(B) a summary of the performance of the appraisal report, including the procedures followed, the findings and recommendations, the bases for and methods of arriving at the findings and recommendations, instructions received from the state bank, and any limitation imposed by the state bank on the scope of the investigation; and

(C) whether the appraisal report will be made available for inspection and copying at the home office of the state bank during its regular business hours by any shareholder of the state bank or any shareholder's representative who has been so designated in writing;

(6) with respect to the class of shares to which the reverse stock split relates, the aggregate amount and percentage of shares beneficially owned by any pension, profit sharing, or similar plan of the state bank, and by each officer, director, principal shareholder, and subsidiary of the state bank;

(7) with respect to any purchases of the shares made by the state bank since the commencement of the bank's second full fiscal year preceding the date of the application, the amount of the shares purchased, the range of prices paid for the shares, and the average purchase price for each quarterly period of the bank during this period;

(8) to the extent known to the state bank after reasonable inquiry, any transaction in the class of shares subject to the proposed reverse stock split that was effected during the past 60 days by the state bank or by an officer, director, principal shareholder, or subsidiary of the state bank, including the identity of the person who effected the transaction, the date of the transaction, the amount of shares involved, the price per share, and where and how the transaction was effected;

(9) to the extent known to the state bank after reasonable inquiry, a description and/or a copy of any contract, arrangement, understanding, or relationship (whether or not legally enforceable) in connection with the reverse stock split between the state bank (or an officer, director, principal shareholder, or subsidiary of the state bank) and any person with respect to any shares of the state bank (including a contract, arrangement, understanding, or relationship concerning the transfer or the voting of these shares, joint ventures, loan, or option arrangements, puts

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or calls, guaranties of loans, guaranties against loss or the giving or withholding of proxies, consents, or authorizations), naming the persons with whom these contracts, arrangements, understandings, or relationships have been entered into and giving the material provisions thereof, including information for any of these shares that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of these shares, except that disclosure of standard default and similar provisions contained in loan agreements need not be included;

(10) to the extent known to the state bank after reasonable inquiry, whether or not any officer, director, principal shareholder, or subsidiary of the state bank has made a recommendation in support of or opposed to the reverse stock split and, if so, the reasons for the recommendation;

(11) whether or not appraisal rights are being voluntarily accorded by the state bank to shareholders in connection with the reverse stock split and whether or not any provision has been or will be made to allow unaffiliated shareholders to obtain counsel or appraisal services at the voluntary expense of the state bank and, if so, a detailed description of these appraisal rights or counsel or appraisal services;

(12) a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the reverse stock split, including filing fees, legal, accounting, and appraisal fees, solicitation expenses, and printing costs, and disclosure of the person who has paid or will be responsible for paying such expenses;

(13) the proxy statement furnished to shareholders of the state bank in connection with obtaining shareholder approval for the reverse stock split, or a draft of the proxy statement to be furnished to shareholders in the event approval of the banking commissioner is sought prior to a shareholder vote; and

(14) such other information that the banking commissioner considers necessary to make an informed decision to approve or reject the proposed amendment effectuating a reverse stock split.

(d) Standards for approval.

(1) The banking commissioner will process the proposed reverse stock split in accordance with the Finance Code, §32.101(c). The banking commissioner will require that the reverse stock split be for valid business purposes of the bank itself, viewed as an entity distinct from its affiliates, and be accomplished through fair dealing with and a fair price to unaffiliated shareholders. The banking commissioner may impose conditions on approval, including a condition that an independent appraisal report be obtained regarding the value of the unaffiliated shareholders' shares, exclusive of any element of value arising from the accomplishment or expectation of the proposed transaction, and without minority discount. Share value determined by an independent and properly prepared appraisal report that is fully disclosed to bank shareholders or by the market price of publicly traded shares will be presumed to be a fair value unless extenuating circumstances to the contrary are specifically noted.

(2) In the event approval of the banking

commissioner is obtained prior to approval by shareholders, the state bank must file a statement with the banking commissioner certifying that any future event or condition upon which the approval of the transaction was conditioned has been satisfied and the date that each such condition was satisfied. Upon receipt of such statement, the banking commissioner will file the approved amendment to the certificate of formation in accordance with the Finance Code, §32.101(c).

(3) An issuer's purchase of its own shares is a transaction subject to the antifraud provisions of federal securities law, see 15 United States Code, §78j, 17 Code of Federal Regulations (CFR), §240.10b-5, and *Spector v. L Q Motor Inns, Inc.*, 517 F.2d 278 (5th Cir. 1975), cert. denied, 423 U.S. 1055 (1976). Such a transaction is also subject to the antifraud provisions of state securities law, see Texas Government Code, Title 12. Potential liability of the state bank to the selling shareholder can therefore arise if the state bank withholds or misrepresents material facts that the seller would have considered important in making the decision to sell. Consequently, a state bank must disclose to the shareholders in writing, prior to or simultaneously with the written notice of the shareholders meeting, all material information necessary to make an informed decision regarding the proposed reverse stock split. If the reverse stock split involves publicly traded shares and is subject to 15 CFR, §240.13e-3, the registration statement required by federal law is considered to satisfy this disclosure obligation. Approval of an application under this section by the banking commissioner does not constitute a determination that the bank has complied with applicable securities law.

(e) Exemptions.

(1) This section does not apply to a reverse stock split that:

(A) will not result in fractional shares;

(B) permits each shareholder to choose to cash in the resulting fractional share by selling it to the state bank or to round up to the next highest whole share by purchasing fractional interests, provided that:

(i) the specified sale and purchase prices are equivalent and reasonable; and

(ii) no fractional share resulting from the reverse stock split is less than 10% of a full share;

(C) is adopted by means of a unanimous written consent of shareholders; or

(D) the banking commissioner expressly exempts after written application as not within the purposes of this section.

(2) An amendment to the certificate of formation that implements a reverse stock split exempt from this section is filed and processed in accordance with the Finance Code, §32.101.

(3) The availability of an exemption from the requirements of this section does not relieve a state bank from its obligation to comply with applicable securities law.

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3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, § 33.27, Concerning Fees to Obtain and Maintain a License.

PURPOSE: Amendments to Title 7, Part 2, § 33.27 of the Texas Administrative Code for the purpose of ensuring fees collected by the Department keep up with the rising cost of regulation and supervision of money services businesses.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed rulemaking actions to 7 TAC, Part 2, Section 33.27 in the *Texas Register* for comment.

***Title 7. Banking and Securities
Part 2. Finance Commission of Texas
Chapter 33. Money Services Businesses
7 TAC, § 33.27.***

The Finance Commission of Texas (the “commission”), on behalf of the Texas Department of Banking (the “department”), proposes to amend 7 Tex. Admin. Code § 33.27 (“§ 33.27”), concerning fees to obtain and maintain a license.

The proposed amendments to § 33.27 will: (i) update the fee assessment schedules in subsections (e)(1) and (e)(2) to reflect the assessments set forth in the attached Figure: 7 TAC § 33.27(e)(1) and Figure: 7 TAC § 33.27(e)(2), respectively; (ii) add subsection (e)(4) permitting the department to increase assessments based on the percentage change in an inflation index beginning September 1, 2025; and (iii) increase the hourly examination fees in subsections (d)(1)(A), (e)(3), (f)(1), (g)(3), (h)(2), and (h)(4) to \$120 per hour.

Annual Assessments

The primary regulatory programs administered by the department are supported by assessments, like those in §§ 33.27(e)(1) and (e)(2), requiring each regulated industry to pay its proportionate share of the cost of regulation. The purpose of most fees charged by the department, whether for an application, an examination, or another purpose, is to enable the department to be self-supporting and each regulatory program to be self-sustaining. Further, the department may not directly or indirectly cause the State’s General Revenue Fund to incur such costs. Therefore, the department must periodically evaluate its operations and financial forecasts to determine whether the

fee structure equitably funds the cost of regulation, as required by statute, and adequately supports the department and relevant regulatory programs.

The department determined that key regulatory functions are not adequately funded by the existing fee structure primarily due to increase in labor and other costs. The proposed amendments to § 33.27 will increase the allowable annual assessments paid by money services businesses to offset forecasted funding shortfalls. These adjustments are long overdue, as operational expenses have significantly increased while assessments for money services businesses have not increased in over nine years. See Texas Register, Vol. 39, No. 35, August 29, 2014, p. 6827.

As discussed in the Fiscal and Regulatory Section below, penalties assessed to both licensed and unlicensed money services businesses during the fiscal year may be used to offset the assessments collected by the department. However, the department’s forecasting of assessments is calculated independently of any penalties as penalties are inherently inconsistent from year to year and the department seeks to ensure projected budgets are based on reliable sources of revenue instead of enforcement actions.

Increases in operational costs are primarily responsible for driving the proposed fee increases. The department’s costs for money services business programs, such as the required periodic examination of each licensed business, have increased over the years due to a variety of factors including the following: rising inflation impacting items such as travel costs; the necessity to attract, hire, and retain qualified personnel; and the additional time, resources, and

attention required by the increasing complexity of money services business operations. As a result, the staffing plan for full-time money services business financial examiners has increased from six in fiscal year 2021 to 12 in fiscal year 2023. Fiscal year 2024's staffing plan further increases the number of examiners to 15 in order to properly, and timely, examine license holders and anticipated new licensees based on applications.

The department is also incurring new costs related to the passage of Chapter 160 of the Finance Code ("Chapter 160"), which became effective September 1, 2023. Chapter 160 charges the department with ensuring money transmitters that qualify as digital asset service providers comply with certain standards. The build out of an expanded regulatory scheme to administer the new Chapter 160, which includes an expanded examination scope for the eligible digital asset service providers, generate costs to the department which have not been previously incurred.

Based on historical examination data and costs, coupled with the increased complexity of the examinations, the department believes the proposed fee adjustments will provide the funding required to administer and enforce Finance Code, Chapters 152 and 160 in a manner that is fair and equitable to licensees.

Inflation Adjustments

The addition of § 33.27(e)(4) will eliminate the need for future, large, one-time increases in annual assessments by allowing the department to increase those assessments proportionate to inflation. The proposed inflation index is the Gross Domestic Product Implicit Price Deflator (the "GDPIPD"),

published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The GDPIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate inflation at the corporate or governmental level. The GDPIPD is used for similar purposes in Title 7, Tex. Admin. Code Chapters 3, 25, and 26.

Examination Fees

This rule amendment also proposes an increase in the rate of each examiner hour to \$120, specifically in § 33.27 subsections (d)(1)(A), (e)(3), (f)(1), (g)(3), (h)(2), and (h)(4). These hourly fees are charged to money services businesses in the following limited instances: the examination of a new money services business that has not yet filed the first annual report and thus not paid an annual assessment; review of a change of control application that requires more than eight employee hours; an additional examination required in the same fiscal year due to a money services business's failure to comply with Finance Code, Chapter 152 ("Chapter 152"); on-site review of money services business' authorized delegates; and an on-site examination of an applicant, as deemed necessary.

To determine the proposed rate, the department compiled the salaries of all money services business examiners (based on fully staffed projections) and related direct and indirect expenses, including overhead, and divided by available billable hours (excluding vacation leave, sick leave, and holidays).

Fiscal and Regulatory Impact

Jesus “Jesse” Saucillo Director of Non-Depository Supervision, Texas Department of Banking, has determined that the public benefit anticipated as a result of adopting the rule amendment, for each year of the first five years the proposed amended rule is in effect, will enhance consumer protection and provide assurance that the department can continue to meet its regulatory mandate under Finance Code, Chapters 152 and 160.

For each year of the first five years that the amended rule will be in effect, the rule is not expected to:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- create a new regulation;
- expand, limit, or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule’s applicability; and
- positively or adversely affect this state’s economy.

Director Saucillo also determined that for the first five-year period it is in effect, the amended rule will require an increase in fees paid to the department and that there will be fiscal implications for state government (but not for local government). The amended rule itself is an increase in fees charged to applicable businesses, generating additional revenues to the department, with additional increases contemplated by the inflation adjustments proposed in subsection (e)(4).

Director Saucillo conservatively estimates that the proposed assessment fee adjustments will generate an average increase of \$1,068,115 in revenue for each year of the first five-year period the proposed rule is in effect, to cover projected expenses. The projected increases in revenue are not based on the maximum amounts allowed under the amended rule, rather it is an average of the increase in revenue to cover the division’s forecasted increases in expenses. The department monitors actual expenses on a quarterly basis to balance revenues with expenses and allow for the reduction of charged assessments if revenues sufficiently exceed expenses in a fiscal year.

Expenses were determined using established knowledge-based forecasts and past, current, and projected financial information. The major expenses included in the analysis were salaries, in-state examination travel expenses, and employee training and development fees. For salaries, anticipated promotions and the hiring of additional staff and related costs were included in the projected expenses. A three percent year-over-year inflationary increase was included when calculating the five-year average increase in expense. However, these increases may be offset to some extent by fines and penalties collected by the department during the fiscal year. In those circumstances, the commissioner may reduce payable assessments pursuant to § 33.27, as discussed further below.

For each year of the first five years during which the amended section will be in effect, there will be economic costs applicable to persons who are required to comply with the amended section, as proposed. There will be an adverse economic effect on small

businesses and micro-businesses due to the increases in fees, though these effects are mitigated as there will be smaller proportionate increases for small and micro-businesses, as described further in the following paragraphs.

There are 184 money services business licensees paying assessment fees this fiscal year. Of these licensees, the department has identified seven as small businesses, 19 as micro-businesses, and no licensees in rural communities, each as defined in Government Code, §2006.001.

A money service business may obtain one of two licenses under Chapter 152: a license for money transmission, or a license for currency exchange. The department currently has 22 currency exchange licensees of which three were identified as small businesses, and 19 as micro-businesses. Since examining a currency exchange licensee is substantially less complex than examining a money transmission licensee, the proposed increase in assessments for a currency exchange licensee is substantially less than the proposed increase for a money transmission licensee. The average increase in assessments for currency exchange licensee will be 14%, or \$734.

Each of the four money transmission licensees identified as a small business will, on average, pay 14% or \$1,126 more in fees for each year of the first five years the proposed rule is in effect. No money transmission licensees were identified as micro-businesses.

The assessment table is a tiered system segregated into eight categories based on Texas transaction volume. The average increase in fees for money transmitters is

based on the volume of money transmission activity conducted in Texas and summarized as follows:

- 15% or \$1,012 for annual money transmission volume of less than \$200 million;
- 22% or \$2,963 for annual money transmission volume of greater than or equal to \$200 million but less than \$1 billion;
- 50% or \$10,548 for annual money transmission volume of greater than or equal to \$1 billion but less than \$2 billion; and
- 236% or \$50,247 for annual money transmission volume of greater than or equal to \$2 billion.

The department believes this proposed assessment fee structure best satisfies the mandate of Finance Code § 152.052(b) that fees be proportionate and equitable and provide for recovery of the department's costs related to administering and enforcing the Chapters 152 and 160.

The two largest percentage increases for money transmitters will affect approximately 40 licensees conducting greater than or equal to \$1 billion in annual transmission. Currently, assessments are capped at \$21,250 and those money transmitters conducting more than \$1.1 billion in annual money transmission volume are eligible to be assessed this maximum assessment cap. However, this maximum assessment is not sufficient to cover the increased and forecasted, direct and indirect costs required to administer and regulate these large and complex money services businesses.

Of the 40 licensees discussed in the paragraph above, 24 money transmitter

licensees conduct more than \$2 billion in annual money transmission volume. These licensees account for over 89% of total transmission volume of all money transmission licensees in this state. With this significant volume comes a disproportionate regulatory burden compared to the average money transmitter licensee. Increasing the maximum assessment amount reflects an appropriate allocation of costs to those money transmitter licensees conducting the largest amount of money transmission volume in this state. Based on current licensee data, the department expects 13 licensees will be subject to the proposed increased maximum assessment.

The department has adopted and continues to apply strategies to mitigate adverse economic impacts on affected entities. Assessments are collected on a quarterly basis, preventing money services businesses from incurring a one-time financial load. Additionally, while the average increase of \$734 in the annual assessment for currency exchange licensees is significantly lower than the money transmitter licensees' average increase of \$1,126, 7 Tex. Admin. Code § 33.27(j) outlines an option to which currency exchanges can obtain a temporary reduction in the assessment for one year if they are experiencing financial difficulties. Money services businesses must still demonstrate the financial condition and responsibility to protect the interests of purchasers of money services and the public.

As provided by 7 Tex. Admin. Code § 33.27(i)(3), the department may reduce assessments otherwise due in a year when a lesser amount is necessary to fund the department's cost of operations. In fiscal years 2019, 2020, 2021, 2022, and 2023, the

department reduced total billable annual assessments by 38%, 33%, 26%, 29%, and 22%, respectively. This was largely a result of penalties collected by the department for unlicensed money services business activity, non-compliance by licensed money services businesses, and/or staff vacancies. Therefore, an increase in assessment rates will not necessarily result in a proportionate increase in assessments collected. As noted above, penalties are not relied on for budgeting purposes.

Comments

The department is requesting comments from any interested party to be provided to the department. To be considered, comments on the proposals must be submitted no later than 5:00 p.m. on April 1, 2024. Comments must be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

Proposed Amendments

The amendments to § 33.27 are proposed under Finance Code, §§ 152.052 and 160.006, which authorize the commission to adopt rules to administer and enforce Texas Finance Code, Chapter 152, and Chapter 160, respectively. The commission may by rule impose and collect proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to recover the cost of maintaining and operating the department, administering, and enforcing Chapter 152 and other applicable law, and achieve the purposes of Chapter 152 and Chapter 160. Chapter 152 was enacted by Senate Bill 895

and Chapter 160 was enacted by House Bill 1666 during the 88th Legislative Session.

Texas Finance Code §§ 152.107 and 160.005 are affected by the proposed amended sections.

§33.27 What Fees Must I Pay to Get and Maintain a License?

(a)-(c) (No change.)

(d) What fees must I pay to obtain a new license?

(1) You must pay a \$10,000 application fee to obtain a new money transmission license or a \$5,000 application fee to obtain a currency exchange license. If your application is accepted for processing pursuant to Finance Code, §152.106, your application fee will be nonrefundable. You may also be required to pay the following additional fees:

(A) If the commissioner determines that it is necessary to conduct an on-site investigation of your business, you must pay a non-refundable investigation fee at a rate of \$120 [75] per hour for each department examiner required to conduct the investigation and all associated travel expenses;

(B) If the commissioner determines that it is necessary to employ a third-party screening service to assist with the investigation of your license application, you must pay the department for the reasonable costs for the third-party investigation; and

(C) If the commissioner determines it is necessary to perform

background checks using fingerprint identification records, you must either submit payment for the costs of this service at the time you file your application or pay the department upon request.

(2) The commissioner may reduce the fees required under paragraph (1) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 152, and this chapter.

(e) What fees must I pay to maintain my money transmission or currency exchange license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and/or currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §152.107(d)(2).

(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(1)

~~[Figure: 7 TAC §33.27(e)(1)]~~

(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(2)

~~[Figure: 7 TAC §33.27(e)(2)]~~

(3) If you are a new license holder and have not yet filed your first annual report under Finance Code, §152.107(d)(2), you must pay an examination fee of \$120 [75] per hour for each examiner and all associated travel expenses for an examination.

(4) Adjustments for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(A) Beginning September 1, 2025, and each September 1 thereafter, the tables in subsections (e)(1) and (2) of this section, as most recently revised before such date pursuant to this subsection, may be revised by the commissioner as follows:

(i) the base assessment amount, listed in column three of each table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars;

(ii) each factor listed in column three of each table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to the number of decimal places set forth in the applicable row; and

(iii) the maximum assessment amount, listed in column three, row eight of each table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars.

(B) If the table in subsections (e)(1) and (2) of this section are revised for inflation (or deflation), then not later than August 1 of each year, the department shall calculate and prepare revised tables reflecting the inflation-adjusted values to be applied effective the following September 1, and will provide each license holder with notice of and access to the revised table.

(f) What fees must I pay in connection with a department investigation?

(1) If the commissioner considers it necessary or appropriate to investigate you or another person in order to administer and enforce Finance Code, Chapter 152, as authorized under §152.056, you or the investigated person must pay the department an investigation fee calculated at a rate of \$120 [75.00] per employee hour for the investigation and all associated travel expenses.

(2) If the commissioner determines that it is necessary to employ a third-party screening service to assist with an investigation, you must pay the department for the costs incurred for the third-party investigation.

(3) If the commissioner determines it is necessary to perform background checks using fingerprint identification records in an investigation, you must pay the department the costs incurred for this service.

(g) What fees must I pay in connection with a proposed change of control of my money transmission or currency exchange business?

(1) You must pay a non-refundable \$1,000 fee at the time you file an application requesting approval of your proposed change of control.

(2) You must pay a non-refundable \$500 fee to obtain the department's prior determination of whether a person would be considered a person in control and whether a change of control application must be filed. If the department determines that a change of control application is required, the prior determination fee will be applied to the fee required under paragraph (1) of this subsection.

(3) If the department's review of your change of control application or prior determination request requires more than eight employee hours, you must pay an additional review fee of \$120 ~~[75]~~ per employee hour for every hour in excess of eight hours.

(4) The commissioner may reduce the filing fees described in paragraph (1) or (2) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 152, and this chapter.

(h) What other fees must I pay?

(1) If the department does not receive your completed annual report on or before the due date prescribed by the commissioner under Finance Code, §152.107, you must pay a late fee of \$100 per day for each business day after the due date that the department does not receive your completed annual report.

(2) If more than one examination is required in the same fiscal year because of your failure to comply with Finance Code, Chapter 152, this chapter, or a department directive, you must pay for the additional examination at a rate of \$120 ~~[75]~~ per hour for each examiner required to conduct the additional examination and all associated travel expenses. A fiscal year is the 12-month period from September 1st of one year to August 31st of the following year.

(3) If the department travels out-of-state to conduct your examination, you must pay for all associated travel expenses.

(4) If the commissioner determines it is necessary to conduct an on-site examination of your authorized delegate to ensure your compliance with Finance Code, Chapter 152, you must pay an examination fee of \$120 ~~[75]~~ per hour for each examiner and any associated travel expenses.

(i)-(j) (No change.)

Figure: 7 TAC §33.27(e)(1)

Annual Assessment Fee Schedule for CEX License Holders:

If the total dollar amount of your annual transactions is:		Then your annual assessment is:
Over --	But not over --	
-----	\$249,999.99	\$3,150.00
\$250,000.00	\$499,999.99	\$3,150.00 plus the amount of your transactions over \$250,000 multiplied by a factor of .00235
\$500,000.00	\$999,999.99	\$3,850.00 plus the amount of your transactions over \$500,000 multiplied by a factor of .00175
\$1,000,000.00	\$9,999,999.99	\$4,900.00 plus the amount of your transactions over \$1 million multiplied by a factor of .000115
\$10,000,000.00	\$24,999,999.99	\$6,000.00 plus the amount of your transactions over \$10 million multiplied by a factor of .0000835
\$25,000,000.00	\$49,999,999.99	\$7,150.00 plus the amount of your transactions over \$25 million multiplied by a factor of .0000735
\$50,000,000.00	\$199,999,999.99	\$9,150.00 plus the amount of your transactions over \$50 million multiplied by a factor of .00001155
\$200,000,000.00	-----	\$10,500.00 plus the amount of your transactions over \$200 million multiplied by a factor of .00001125, but not more than \$24,450.00.

If the calculation result is greater than \$24,450, your annual assessment is \$24,450.

Figure 7 TAC §33.27(e)(2)

**Annual Assessment Fee Schedule for MT
License Holders:**

If the total dollar amount of your annual transactions is:		Then your annual assessment is:
Over --	But not over --	
-----	\$249,999.99	\$4,500.00
\$250,000.00	\$499,999.99	\$4,550.00 plus the amount of your transactions over \$250,000 multiplied by a factor of .0024675
\$500,000.00	\$999,999.99	\$5,250.00 plus the amount of your transactions over \$500,000 multiplied by a factor of .0018375
\$1,000,000.00	\$9,999,999.99	\$6,250.00 plus the amount of your transactions over \$1 million multiplied by a factor of .00011500
\$10,000,000.00	\$24,999,999.99	\$7,500.00 plus the amount of your transactions over \$10 million multiplied by a factor of .00008768
\$25,000,000.00	\$49,999,999.99	\$9,000.00 plus the amount of your transactions over \$25 million multiplied by a factor of .00007350
\$50,000,000.00	\$199,999,999.99	\$10,750.00 plus the amount of your transactions over \$50 million multiplied by a factor of .00001559
\$200,000,000.00	-----	\$13,000.00 plus the amount of your transactions over \$200 million multiplied by a factor of .00001575, but not more than \$90,000.00.

If the calculation result is greater than \$90,000, your annual assessment is \$90,000.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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www.dob.texas.gov

To: Finance Commission Members

Date: February 1, 2024

Subject: Supplemental Information for Proposed Amendments to 7 TAC §33.27

Background and MSB Evolution

- The MSB industry has grown as fintech companies develop innovative technology such as peer-to-peer payments and cryptocurrency mobile apps.
 - From FY 2014 to FY 2023, the number of Texas MSB license holders increased by **58 or 43%** and Texas transaction volume increased by approximately **\$233 billion or 275%**.
 - MSBs operating nationally has more than doubled since 2015. The Department must meet the challenges associated with the evolving technology, and increasingly sophisticated cybersecurity threats.
 - Examples include digital assets, blockchain technology, and multilayer organizational structures.
 - Due to the size and increasing complexity of MSBs, examination procedures have been expanded requiring additional examiner resources.
- The passage of House Bill 1666 by the 88th Legislature requires new compliance reviews of digital asset service providers doing business in Texas. This new regulation (Chapter 160 of the Texas Finance Code) became effective September 1, 2023.
- Given the continuous growth and sophistication in MSB licensees, additional examiners are needed to perform the examinations due. In FY 2022, 10 examiners were allocated, but to effectively meet the Department's mission, five additional examiners are required starting in FY 2024.

Penalties

- MSB penalties have helped fund the Department's operations as illustrated in **Exhibit A**. However, they are not used to increase expenditures.
 - Collected penalties are included when determining actual assessments. In previous years, penalties have resulted in the reduction of assessments collected from the industry.
 - As noted in **Exhibit A**, for the past five years, penalties comprised between 30% to 51% of total revenues.
 - The exhibit further illustrates that penalties have been on a downward trend since FY 2021. This is due to the improvement in overall compliance and the maturing of the industry.
 - Since penalties are unpredictable and cannot be forecasted, they are not utilized in the budget process.

Revenues and Expenditures

- As a Self-Directed, Semi-Independent (SDSI) agency, the Department is self-leveling and self-funding. The Department is responsible for all direct and indirect costs and receives no general revenue funds from the state.
- Each of the Department's regulated industries must support its regulatory expenditures by paying annual assessments.
- Employee salaries, related overhead costs, and travel expenditures are the primary expenditures.
- In **Exhibit B**, accounting for the 15 examiners in FY 2024, results in shortfalls between forecasted revenues and expenditures going forward, necessitating changes to the annual assessment table. Note the last assessment increase was in 2014.
- Notably, the Department only collects assessments to cover the cost of administration for this regulated industry. The Department monitors and evaluates its budget position at least quarterly to determine if any reductions in assessments are warranted.

Exhibit A

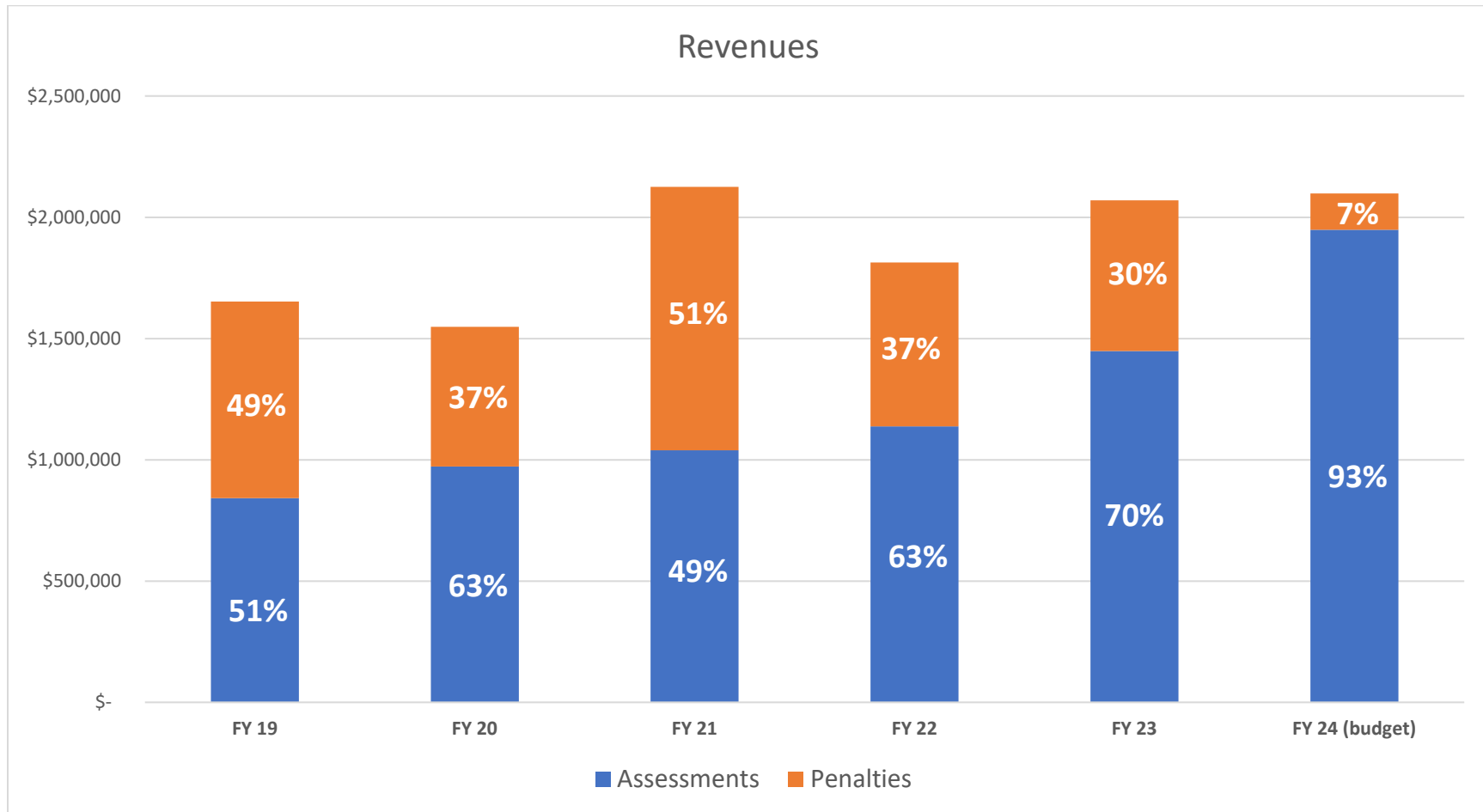


Exhibit B

	FY 24 (budget)	FY 25 (forecast)	FY 26 (forecast)	FY 27 (forecast)	FY 28 (forecast)	FY 29 (forecast)
REVENUES						
Assessments*	\$1,948,000	\$1,948,000	\$1,948,000	\$1,948,000	\$1,948,000	\$1,948,000
EXPENDITURES						
Salaries	\$1,523,600	\$1,669,260	\$1,719,338	\$1,770,918	\$1,824,045	\$1,878,767
Travel	\$101,000	\$100,000	\$103,000	\$106,090	\$109,273	\$112,550
Other Operating and Training	\$66,000	\$69,680	\$71,830	\$73,918	\$76,145	\$78,411
Indirect Administration	\$914,160	\$1,001,556	\$1,031,602	\$1,062,551	\$1,094,427	\$1,127,261
Total Expenditures	\$2,604,760	\$2,840,496	\$2,925,770	\$3,013,477	\$3,103,890	\$3,196,989
Deficit	\$(656,760)	\$(892,496)	\$(977,770)	\$(1,065,477)	\$(1,155,890)	\$(1,248,989)

*Assessments based on existing table.