

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE**June 21, 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 DATESAugust 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, June 21, 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, A11, and D4, 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 April 19, 2024 Finance Commission Meeting

2. General Public Comment

3. Consent Agenda

4. Recognition of Previous Finance Commission Members – Will Lucas, Cliff McCauley, and Vince Puente

5. Finance Commission Operations

6. Audit Committee Report

A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2024 Payroll and Human Resources Report as Prepared and Presented by Garza/Gonzalez and Associates

7. Strategic Planning Committee Report

A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies 2025-2029 Strategic Plans

1. Department of Savings and Mortgage Lending

2. Texas Department of Banking

3. Office of Consumer Credit Commissioner

B. Discussion of the Finance Commission of Texas 2025-2029 Strategic Plan

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 1, Chapter 9, §§ 9.1 and 9.12, Concerning Rules of Procedure for Contested Case Hearings, Appeals and Rulemakings

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 1, Chapter 10, § 10.40, Concerning Contract Procedures

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Resulting from Rule Review

11. ***Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Chapter 152, Concerning Repair, Renovation and New Construction on Homestead Property, and Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review***
12. 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
13. 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
14. 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
15. 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
16. Discussion of Matters Made Confidential by Law Pursuant to § 551.0811, Texas Government Code, including Information Relating to the Financial Condition or Business Affairs of a Financial Institution

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; 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

C. 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 Proposal and Publication for Comment of Amendments in 7 TAC, Part 2, Chapter 33, § 33.27, Concerning Fees to Obtain and Maintain a License
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 2, Chapter 33, § 33.51, Concerning How to Provide Information to Customers on How to File a Complaint
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New

5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 5, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders
3. 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
4. ***Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review***
5. 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

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.

MINUTES OF THE FINANCE COMMISSION MEETING Friday, April 19, 2024

The Finance Commission of Texas convened at 9:00 a.m., on Friday, April 19, 2024, with the following members present:

Finance Commission Members in Attendance:

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

Sharon McCormick
Roselyn "Rosie" Morris
Vince Puente
Laura Warren

Finance Commission Members Absent:

Hector Cerna

Will Lucas

Commissioner Charles G. Cooper was absent. Texas Department of Banking Deputy Commissioner Wendy Rodriguez announced there was a quorum with eight (8) members present. *(1:09 on audio file).*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the February 16, 2024 Finance Committee Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	1:15 Start of Discussion
3. Consent Agenda – Items A1 and B2	Laura Warren made a motion to Approve Consent Agenda items A1 and B2. Marty Green seconded, and the motion passed.	1:51 Start of Discussion 2:08 Vote
4. Finance Commission Operations	No Action Required.	2:26 Start of Discussion
5. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2024 Second Quarter Investment Officer Reports 1. Texas Department of Banking 2. Office of Consumer Credit Commissioner 3. Department of Savings and Mortgage Lending	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2024 Second Quarter Investment Officer Reports passed.	3:18 Start of Discussion 3:24 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2024 Second Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Texas Department of Banking 2. Office of Consumer Credit Commissioner 3. Department of Savings and Mortgage Lending 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2024 Second Quarter Financial Statements passed.</p>	<p>3:44 Start of Discussion</p> <p>3:51 Vote</p>
<p>6. Discussion of the Process for the 2025-2029 Strategic Plans for the Finance Commission Agencies</p>	<p>No Action Required.</p>	<p>4:04 Start of Discussion</p>
<p>7. Discussion of and Possible Vote to Take Action on the Finance Commission Agencies' Fiscal Year 2024 Mid-Term Accomplishment Reports</p>	<p>Marty Green made a motion to Approve the Finance Commission Agencies' Fiscal Year 2024 Mid-Term Accomplishment Reports. Bob Borochoff seconded, and the motion passed.</p>	<p>4:52 Start of Discussion</p> <p>5:03 Vote</p>
<p>8. Discussion of the Condition of the Texas State Banking System Report</p>	<p>No Action Required.</p>	<p>5:22 Start of Discussion</p>
<p>9. 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</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>10. 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</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>11. 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</p>	<p>No Discussion.</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
12. 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 Texas Government Code §§ 551.076 and 551.089	No Discussion.	n/a
13. 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	No Discussion.	n/a
B. 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; 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	No Action Required.	6:35 Start of Discussion
2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 35, Concerning Check Verification Entities, Resulting from Rule Review	On Consent Agenda – Item B2 This item Approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
C. 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; 3) Legal Division Activities; and f) Legislative Activities	No Action Required.	20:32 Start of Discussion
2. Discussion of and Possible Vote to Take Action on the Proposal of Amendments in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors	Laura Warren made a motion to Approve the Proposal of Amendments in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors. Sharon McCormick seconded, and the motion passed. Vince Puente was the only opposing vote.	35:23 Start of Discussion 45:37 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
3. 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</i> , in the First Court of Appeals, Houston, Texas	No Discussion.	n/a
D. 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.	46:05 Start of Discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Tim Schoenbauer v. Texas Department of Savings and Mortgage Lending; Cause No. JPC-23-02334-32</i> , in the Justice Court, Precinct 3, Place 2, Dallas County, Texas <i>Julius Lamunn North v. Texas Department of Savings and Mortgage Lending; Cause No. 2023-50470</i> , in the District Court, 270th Judicial District, Harris County, Texas	No Discussion.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 10:01 a.m. (1:01:55 on the audio file).

Phillip Holt, Chairman
Finance Commission of Texas

Wendy Rodriguez, Deputy Commissioner
Texas Department of Banking

Ruth Wright, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

June 21, 2024

A. Finance Commission Matters

1. Review and Approval of the Minutes of the April 19, 2024 Finance Commission Meeting
11. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Chapter 152, Concerning Repair, Renovation and New Construction on Homestead Property, and Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review

D. Office of Consumer Credit Commissioner

4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review

Finance Commission Strategic Plan Timeline

Date	Action
July 5, 2024	DOB provides draft Plan to SML and OCCC
July 12, 2024	Comments due from SML and OCCC
July 19, 2024	Provide draft Plan to Strategic Planning Committee and Finance Commission Chair
July 26, 2024	Comments due from Strategic Planning Committee and Finance Commission Chair
August 2, 2024	Provide draft Plan to full Finance Commission
August 2 - 9, 2024	Finance Commission members provide feedback
August 16, 2024	Finance Commission meeting to vote on the Plan

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 1, Chapter 9, §§ 9.1 and 9.12, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings.

PURPOSE: Amendments to these sections of Chapter 9 to conform the rules to changes in applicable Texas law, federal regulation, and accounting standards and improve their clarity.

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 amendments in 7 TAC, Part 1, Chapter 9 in the *Texas Register* for comment.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings
7 TAC §§ 9.1 and 9.12.

The Finance Commission of Texas (the finance commission) proposes amendments to §9.1, concerning Application, Construction, and Definitions; and §9.12, concerning Default in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings.

The purpose of the proposed amendment to §9.1 is to clarify the authority of the Texas Department of Banking (DOB) to employ a hearings officer.

The purpose of the proposed amendments to §9.12 is to clarify the procedures used by the finance agencies to dispose of a contested case in the event of default. The finance agencies are the DOB, the Department of Savings and Mortgage Lending (SML), and the Office of Consumer Credit Commissioner (OCCC). The amendments are necessary to ensure 9.12 conforms to the State Office of Administrative Hearings (SOAH) procedural default rule (1 TAC §155.501), which was updated November 20, 2020.

The proposed amendment to §9.1 adds a reference to Texas Finance Code, §11.202 which provides the statutory authority for the DOB to employ a hearings officer to serve the finance agencies. The effect is to ensure the public is aware of the source of this authority.

The proposed amendments to §9.12 consist of minor technical corrections ensuring that the language is consistent with SOAH's default rule found in 1 TAC

§155.501. §9.12 governs default proceedings for contested case hearings involving the finance agencies. Subsection (b) specifies the default procedures that apply to hearings conducted by SOAH, specifically referencing default proceedings conducted pursuant to 1 TAC §155.501. The proposed amendments to §9.12 are a result of substantive updates to §155.501 by SOAH in 2020, with the effect of ensuring the finance agencies' procedural rule remains consistent.

Wendy Rodriguez, Deputy Commissioner, Texas Department of Banking, on behalf of the Finance Commission of Texas, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Deputy Commissioner Rodriguez also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be that the finance commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no difference in the cost of compliance for these entities. There will be no effect on individuals required to comply with the amendments as proposed.

PROPOSED AMENDMENTS TO 7 TAC §§ 9.1, 9.12
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For each year of the first five years that the amended rules will be in effect, the amended rules will not:

- 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;
- require an increase or decrease in fees paid 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.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on August 5, 2024. Comments should 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.

The amendments are proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also proposed under specific rulemaking authority in the substantive statutes administered by the

agencies. Texas Finance Code, §11.301 and §31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §152.052(a) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 152. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or savings banks. Texas Finance Code, §66.002(3) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Texas Finance Code, Title 3, Subtitle B. Texas Finance Code, §96.002(a)(2) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Finance Code, Title 3, Subtitle C. Texas Finance Code, §11.306 authorizes the finance commission to adopt residential mortgage loan origination rules as provided by Texas Finance Code, Chapter 156; and, Texas Finance Code, §156.102(a) authorizes the finance commission to adopt rules to enforce such chapter. Texas Finance Code, §157.0023 authorizes the finance commission to adopt rules to enforce Chapter 157. Texas Finance Code, §158.003(b) authorizes the finance commission to adopt rules to enforce Chapter 158. Texas Finance

Code, §159.108 authorizes the finance commission to adopt rules to Chapter 159. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §393.622 authorizes the finance commission to adopt rules to enforce Chapter 393. Texas Finance Code, §394.214 authorizes the finance commission to adopt rules to enforce Chapter 394. Texas Occupations Code, §1956.0611 authorizes the finance commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the proposal are contained in Texas Finance Code: Chapters 11, 14, 152, 154, 156-159, 180, 393, 394; Title 3, Subtitles A-C; Title 4; Texas Health and Safety Code, Chapter 712; and Texas Occupations Code, Chapter 1956.

§9.1. Application, Construction, and Definitions

(a) This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency under Texas Finance Code, §11.202. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code and §9.12(b) of this title (relating to Default).

(b) – (c) (No change.)

§9.12. Default

(a) (No change.)

(b) SOAH hearings. In a hearing conducted by the State Office of Administrative Hearings (SOAH), the agency may request that the administrative law judge make a finding of default under 1 TAC §155.501 (relating to Failure to Attend Hearings and Default Proceedings).

(1) Service of notice of hearing. A notice of hearing may be served to the party's last known address. Applicants and holders of licenses, registrations, charters, and permits shall keep the agency informed as to their correct current mailing addresses and may be served with initial process by registered or certified mail, return receipt requested, to the address provided to the agency.

(2) Adequate proof of notice of hearing. At the time of the request, the agency must present adequate proof to the administrative law judge that the agency

properly served the party with the notice of hearing, as required by 1 TAC §155.501(b).

(3) Effect of default. If the administrative law judge receives the required showing of proof to support a default, the allegations contained in the notice of hearing may be deemed admitted, and the relief sought in the notice may be granted with respect to any party given proper notice of the hearing.

(4) Disposing of default case. The agency may request that the administrative law judge dismiss the case from the SOAH docket and remand it to the agency for informal disposition as permitted by Texas Government Code, §2001.056 and §2001.058(d-1).

(5) Final order after default. If the administrative law judge issues an [a ~~conditional~~] order of default dismissal [~~and remand~~] that provides the defaulting party with adequate notice and opportunity to set aside the default under 1 TAC §155.501(e) and the case is remanded to the agency, [~~conditional order of dismissal and remand has become final,~~] the agency may issue a final order that:

(A) finds that the agency served the party with a notice of hearing stating that if the party failed to attend the hearing, then the allegations contained in the notice of hearing could be deemed admitted, and the relief sought might be granted;

(B) describes how the notice of hearing was served on the party;

(C) finds that the party failed to attend the hearing;

(D) finds that the allegations described in the notice are deemed admitted;

(E) concludes that the party has defaulted as a matter of law; and

(F) grants the relief described in the notice of hearing.

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 1, Chapter 10, § 10.40, Concerning Contract Procedures.

PURPOSE: Amendments to these sections of Chapter 10 to conform the rules to changes in applicable Texas law, federal regulation, and accounting standards and improve their clarity.

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 amendments in 7 TAC, Part 1, Chapter 10 in the *Texas Register* for comment.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 10. Contract Procedures
Subchapter C Contract Monitoring
7 TAC §10.40

The Finance Commission of Texas (the commission) proposes to amend 7 Texas Administrative Code §10.40 (§10.40), concerning enhanced contract and performance monitoring, and the posting of certain contracts on commission supervised finance agency websites. The proposed amendments would remove a redundant provision of the current rule and ensure §10.40 conforms with Texas Government Code, §2261.253.

Adopted in 2017, §10.40 contains the finance agencies' (defined below) procedures concerning contracting for the purchase of goods or services from private vendors. The finance agencies are the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (the finance agencies).

Subsection (b)(2) currently limits application of §10.40 to contracts for which requests for bids or proposals were made public on or after September 1, 2015 and contracts exempt from competitive bidding entered into on or after September 1, 2015. Subsection (b)(2) is no longer necessary because the finance agencies no longer have any outstanding contracts for which requests were made before September 1, 2015. The proposed amendments thus remove the now superfluous subsection.

Subsection (b)(3) currently identifies certain documents that are not subject to

§10.40, consistent with Texas Government Code, §2261.253(d). A proposed amendment to the heading of subsection (b)(2) would specify that the documents are not subject to “this section,” replacing current text referring only to “enhanced monitoring.” Other proposed amendments would specify that documents not subject to §10.40 “include” the four documents listed in subsection (b)(2). This is intended to clarify that the list in subsection (b)(2) is not an exhaustive list, and other documents might not be subject to the rule (e.g., documents excluded under another provision of Texas Government Code, §2261.253).

Texas Government Code, §2261.253(c) requires state agencies to “by rule [...] establish a procedure to identify each contract that requires enhanced contract or performance monitoring.” While each finance agency has prescribed and implemented a procedure for identifying those contracts for enhanced monitoring, the proposed amendments add a new paragraph to subsection (c), ensuring full compliance with §2261.253(c).

Subsection (d) currently describes website posting of contracts. A proposed amendment to subsection (d)(1) replaces a specific reference to Texas Government Code, §2261.253(a) with a more general reference to posting in compliance with Texas Government Code, §2261.253. This is intended to clarify that the agencies will comply with respect to contracts that meet the requirements of §2261.253 as a whole.

Wendy Rodriguez, Deputy
Commissioner, Texas Department of
Banking, on behalf of the Finance
Commission of Texas, has determined that

PROPOSED AMENDMENTS TO 7 TAC §10.40
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for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Deputy Commissioner Rodriguez has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be that the commission's rules are more easily understood by licensees subject to the rules, and are more easily enforced by the finance agencies.

There is no anticipated cost to persons who are required to comply with the proposed amendments. There will be no adverse economic effect on small or micro-businesses. There will be no difference in the cost of compliance for these entities. There will be no effect on individuals required to comply with the amendments as proposed.

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

- 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;
- require an increase or decrease in fees paid 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.

To be considered, comments on the proposed amendment to §10.40 must be submitted no later than 5:00 p.m. on August 5, 2024. Comments should 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.

The amendments are proposed under Texas Government Code, §2261.253(c), which requires each state agency to adopt rules establishing a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The statutory provisions affected by the proposed new rule are contained in Texas Government Code, Chapter 2261.

§10.40. Enhanced Contract and Performance Monitoring; Website Posting

(a) (No change.)

(b) Applicability.

(1) Finance agencies. This section applies to the agencies governed by the Finance Commission of the State of Texas: the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

~~[(2) Date of contracts subject to enhanced monitoring. This section applies to~~

~~the following:]~~

~~[(A) contracts for which the request for bids or proposal is made public on or after September 1, 2015; and]~~

~~[(B) for contracts exempt from competitive bidding, contracts entered into on or after September 1, 2015.]~~

(2) [(3)] Documents not subject to this section. Documents not subject to this section include the following: [enhanced monitoring. This section does not apply to:]

(A) memoranda of understanding;

(B) interagency contracts;

(C) interlocal agreements; and
[or]

(D) contracts that do not involve a cost.

(c) Contract evaluation and monitoring.

(1) Use of finance agency policies and contract management handbook. Contracts are evaluated and monitored in accordance with each respective finance agency's policies and contract management handbook. Each finance agency maintains a contract management handbook in accordance with Texas Government Code, §2261.256.

(2) Identifying contracts that require enhanced monitoring. Each finance agency will include risk assessment factors in its contract management handbook to identify contracts that require enhanced contract or performance monitoring. The risk assessment

factors must include the following:

(A) the total contract amount;

(B) the type of contract purchase;

(C) the impact to the agency and its mission; and

(D) the compliance history of the contractor.

(3) [(2)] Finance Commission notice. If a finance agency identifies a contract that requires enhanced monitoring, the finance agency will notify the Finance Commission in accordance with its policies and contract management handbook. The finance agency will include in the notification any serious issues or risks identified with the contract.

(d) Website posting.

(1) Posting on finance agency website. Each finance agency will post on its website contracts that meet the posting requirements provided by Texas Government Code, §2261.253 [~~§2261.253(a)~~].

(2) Redaction of confidential information. Before posting the contracts under paragraph (1) of this subsection, each finance agency must redact information that is confidential by law, information excepted from public disclosure by the Texas Public Information Act (Texas Government Code, Chapter 552), and the social security number of any individual in accordance with Texas Government Code, §2261.253(e).

A. FINANCE COMMISSION MATTERS

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Resulting from Rule Review

PURPOSE: The purpose of the proposed rule changes to 7 TAC Chapter 151 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

RECOMMENDED ACTION: The Joint Financial Regulatory Agencies request that the Finance Commission approve the amendments to 7 TAC Chapter 151 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 151.

*Title 7, Texas Administrative Code
Part 8. Joint Financial Regulatory Agencies
Chapter 151. Home Equity Lending Procedures*

The Finance Commission of Texas and the Texas Credit Union Commission (commissions) propose amendments to §151.1 (relating to Interpretation Procedures) in 7 TAC Chapter 151, concerning Home Equity Lending Procedures.

The rules in 7 TAC Chapter 151 govern the procedures for requesting, proposing, and adopting interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the proposed rule changes to 7 TAC Chapter 151 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the *Texas Register* on March 29, 2024 (49 TexReg 2095). The commissions received no official comments in response to that notice.

The rules in 7 TAC Chapter 151 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review. The agencies did not receive any informal precomments on the rule text draft.

Currently, §151.1(d) describes the requirements for formally requesting a home equity interpretation. Proposed amendments to §151.1(d)(1) would specify that any petition for the Finance Commission to issue

a home equity interpretation must be sent to the Department of Savings and Mortgage Lending, replacing current language that refers to the Office of Consumer Credit Commissioner. The Department of Savings and Mortgage Lending has the primary responsibility to license and regulate companies providing mortgage loans in Texas. The agencies anticipate that the Department of Savings and Mortgage Lending will take a leading role in coordinating future home equity interpretations.

Wendy Rodriguez (Deputy Commissioner, Texas Department of Banking), Antonia Antov (Director of Operations, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing, Finance and Human Resources, Office of Consumer Credit Commissioner), and Michael Riepen (Commissioner, Texas Credit Union Department) have 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.

Wendy Rodriguez (Deputy Commissioner, Texas Department of Banking), William Purce (Director of Mortgage Regulation, Department of Savings and Mortgage Lending), Karl Hubenthal (Assistant Director of Exam Operations, Office of Consumer Credit Commissioner), and Michael Riepen (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be

that the commissions' rules will provide clear guidance for interested parties to file a formal petition for a home equity interpretation.

The agencies do not anticipate any economic cost to persons who are required to comply with the amendments as proposed.

The agencies do not anticipate 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 agencies invite 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 rule 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 agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would not expand, 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 agencies do 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 commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001. The rule changes are also proposed under Texas Government Code, §2001.021(b), which authorizes state agencies to adopt rules prescribing the procedure for submitting petitions for rulemaking.

The constitutional and statutory provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

§151.1. Interpretation Procedures

(a) Issuing interpretations. The Finance Commission and Credit Union Commission may on their own motion issue interpretations of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. The commissions will propose and adopt interpretations in accordance with the rulemaking requirements of Texas

Government Code, Chapter 2001, Subchapter B.

(b) Agency recommendations. The Office of Consumer Credit Commissioner, Department of Banking, or Department of Savings and Mortgage Lending may recommend proposed interpretations to the Finance Commission. The Credit Union Department may recommend proposed interpretations to the Credit Union Commission. The four agencies may seek informal input from stakeholders and the other agencies before recommending a proposed interpretation to the commissions.

(c) Informal request for interpretation. A person may submit an informal request for an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution. An informal request may be submitted to the Office of Consumer Credit Commissioner, Department of Banking, Department of Savings and Mortgage Lending, or Credit Union Department. A request should:

(1) cite the specific provision of the Texas Constitution to be interpreted;

(2) explain the factual and legal context for the request; and

(3) explain the requestor's opinion of how the request should be resolved.

(d) Petition for rulemaking. An interested person may formally request an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution by submitting a petition to initiate rulemaking.

(1) Any petition for the Finance Commission to issue an interpretation must be submitted to the Department of Savings

and Mortgage Lending [~~Office of Consumer Credit Commissioner~~] and must include the information required by §9.82 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

(2) Any petition for the Credit Union Commission to issue an interpretation must be submitted to the Credit Union Department and must include the information required by §97.500 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

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 June 21, 2024, and July 19, 2024.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies

A. FINANCE COMMISSION MATTERS

11. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Chapter 152, Concerning Repair, Renovation and New Construction on Homestead Property, and Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the Joint Financial Regulatory Agencies have completed the review of 7 TAC Chapters 151, 152, and 153 and believe that the reasons for initially adopting the rules contained in these chapters continue to exist.

RECOMMENDED ACTION: The agencies request that the Finance Commission readopt 7 TAC Chapters 151, 152, and 153 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that the Finance Commission readopt 7 TAC Chapters 151, 152, and 153 following rule review, because the reasons for the rules continue to exist.

Title 7. Banking and Securities

Part 8. Joint Financial Regulatory Agencies

Chapter 151. Home Equity Lending Procedures

Chapter 152. Repair, Renovation, and New Construction on Homestead Property

Chapter 153. Home Equity Lending

The Finance Commission of Texas and the Texas Credit Union Commission (commissions) have completed the rule review of the following chapters in Texas Administrative Code, Title 7, Part 8, in their entirety: Chapter 151, concerning Home Equity Lending Procedures; Chapter 152, concerning Repair, Renovation, and New Construction on Homestead Property; and Chapter 153, concerning Home Equity Lending. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapters 151, 152, and 153 was published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2095). The commissions received no official comments in response to that notice. The commissions believe that the reasons for initially adopting the rules contained in these chapters continue to exist.

Before publishing notice of the review in the *Texas Register*, the Joint Financial Regulatory Agencies (Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department) issued an informal advance notice of the rule review to stakeholders. The agencies received three informal precomments in response to the advance notice. The agencies appreciate the thoughtful input provided by stakeholders.

In informal precomments, two industry attorneys recommended amendments to 7 TAC §153.8 (relating to Security of the Equity Loan: Section 50(a)(6)(H)) to provide guidance for factually complex situations involving multiple-unit homestead property, homestead ownership by unmarried cotenants, and multigenerational homestead ownership. At this time, it is unclear whether further rule text addressing these factually complex situations is appropriate in addition to the current text of §153.8. The agencies intend to monitor this issue to determine whether interpretation amendments may be appropriate in the future.

As a result of internal review by the agencies, the commissions have determined that certain revisions are appropriate and necessary in 7 TAC Chapter 151. Those proposed changes are published elsewhere in this issue of the *Texas Register*.

As a result of the rule review, the commissions find that the reasons for initially adopting the rules in 7 TAC Chapters 151, 152, and 153 continue to exist, and readopt these chapters in accordance with the requirements of Texas Government Code, §2001.039.

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B.

**Department of Savings and
Mortgage Lending**

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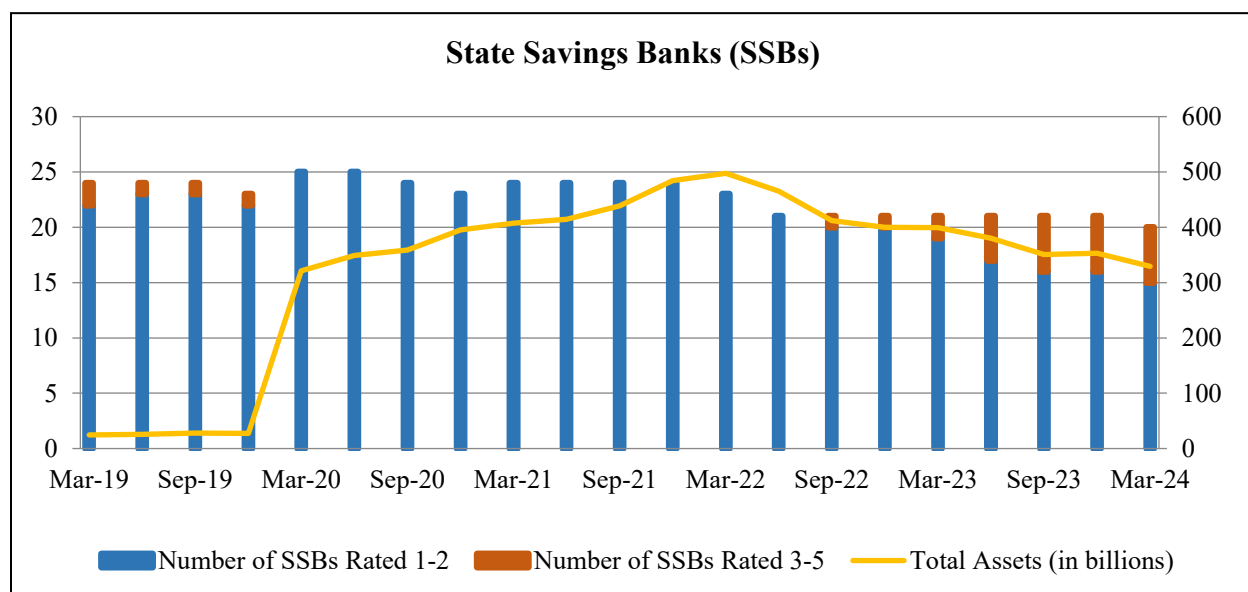
B. Department of Savings and Mortgage Lending

a) Thrift Regulation Division Activities

Industry Status

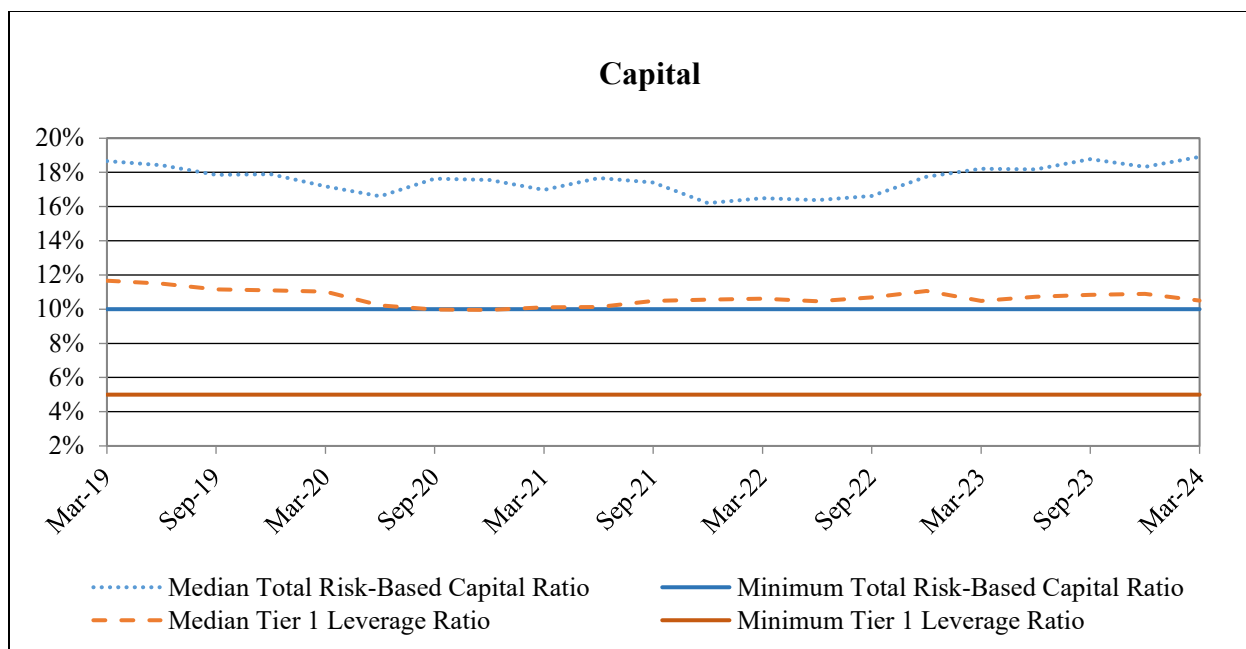
The Department continues to monitor various local, state, and national data sources to understand the risks facing the industry and individual savings banks.

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 20 state savings banks with assets totaling \$329.4 billion as of March 31, 2024. The industry consists of 75% of banks being well rated as of March 31, 2024, and four informal and one formal supervisory actions are in place.

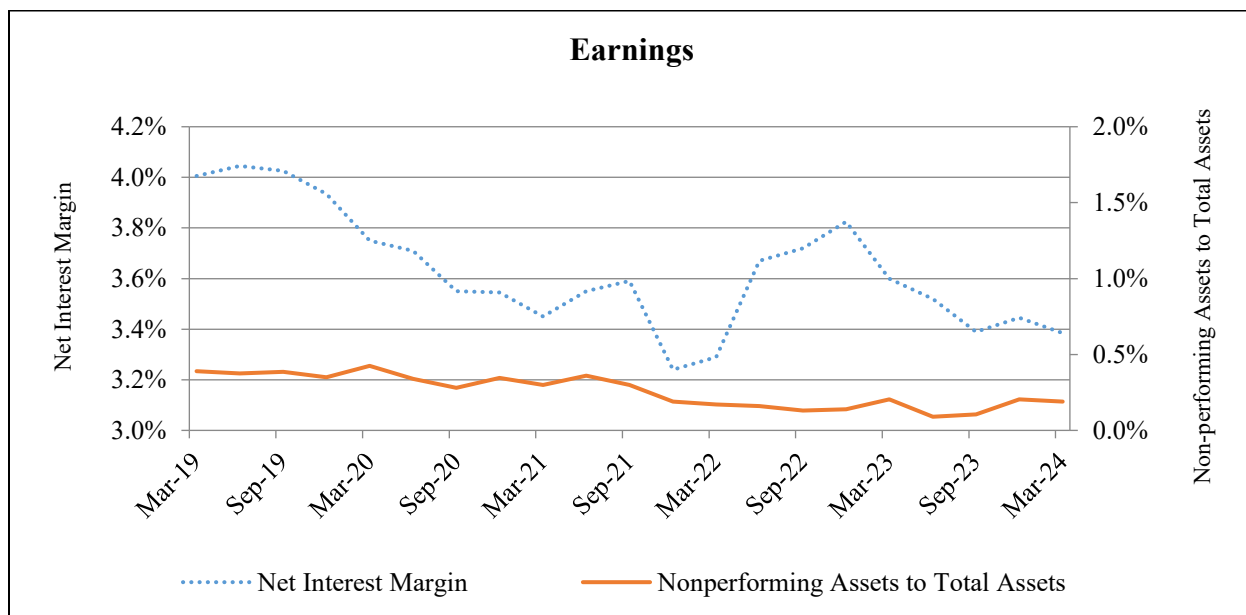


All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and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

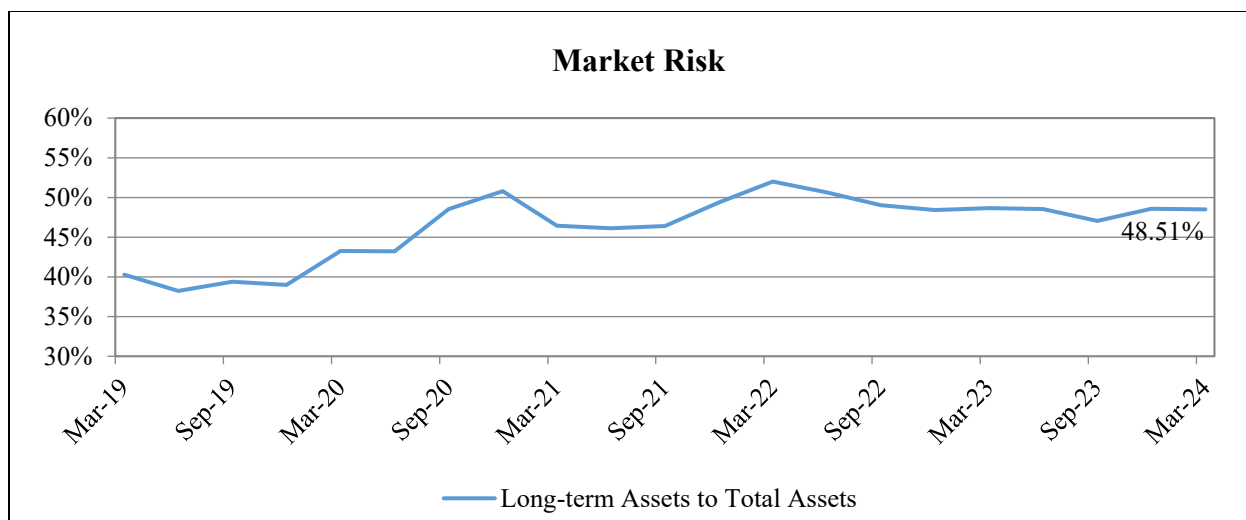
Bank capital performs several very important functions, including absorbs losses, promotes public confidence helps restrict excessive asset growth and provides protection to the depositors. Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of March 31, 2024, all SSBs remain well above regulatory capital minimums. The portfolio median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 18.91% and 10.51%, respectively.



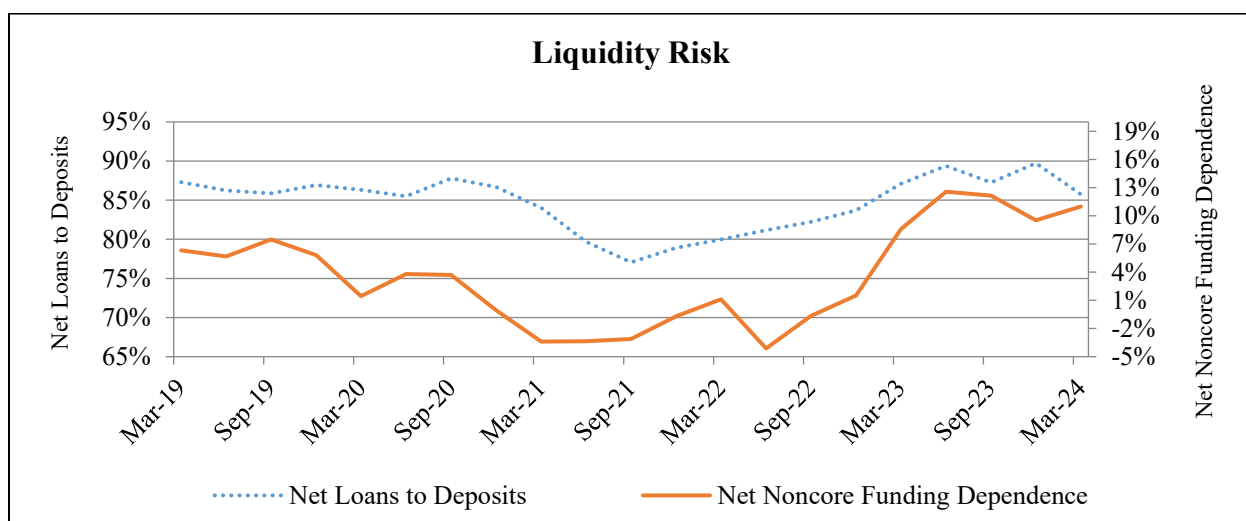
Earnings is the initial safeguard against the risk of engaging in the banking business, and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management's strategic initiatives. The net interest or profit margin is 3.39%. Non-performing asset levels remain low at 0.19% of total assets.



Market risk primarily reflects exposures to changing interest rates over time. Long-term asset exposure can be an indicator of the degree of market risk taken by a state savings bank. As of March 31, 2024, long-term assets to total assets ratio increased to 48.51%.



Liquidity risk reflects the bank's ability to fund assets and meet financial obligations under various scenarios, including adverse conditions. Liquidity risk is increasing. The Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies, is 10.98%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 85.76%.



Thrift Examination Activity Report

On-site examinations are being conducted based on a risk priority schedule.

Thrift Supervision Activity Report

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

Outreach

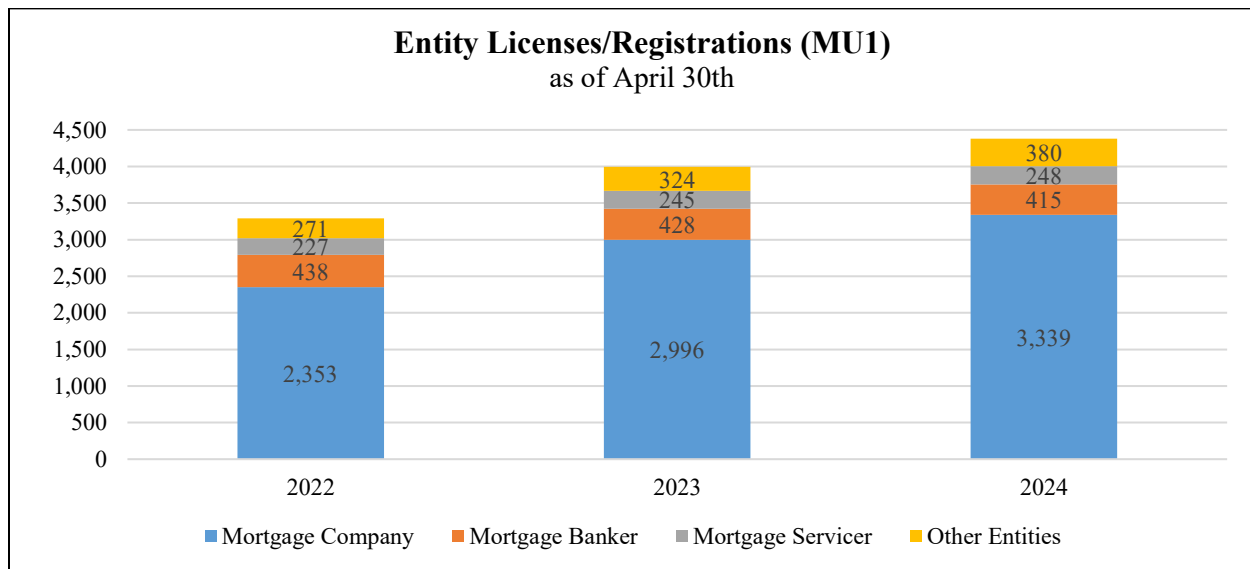
Commissioner Retta and Deputy Commissioner/Director of Thrift Regulation Trotti both attended the Texas Bankers Association (TBA) Annual Convention held in Arlington, Texas.

b) Mortgage Regulation Division Activities

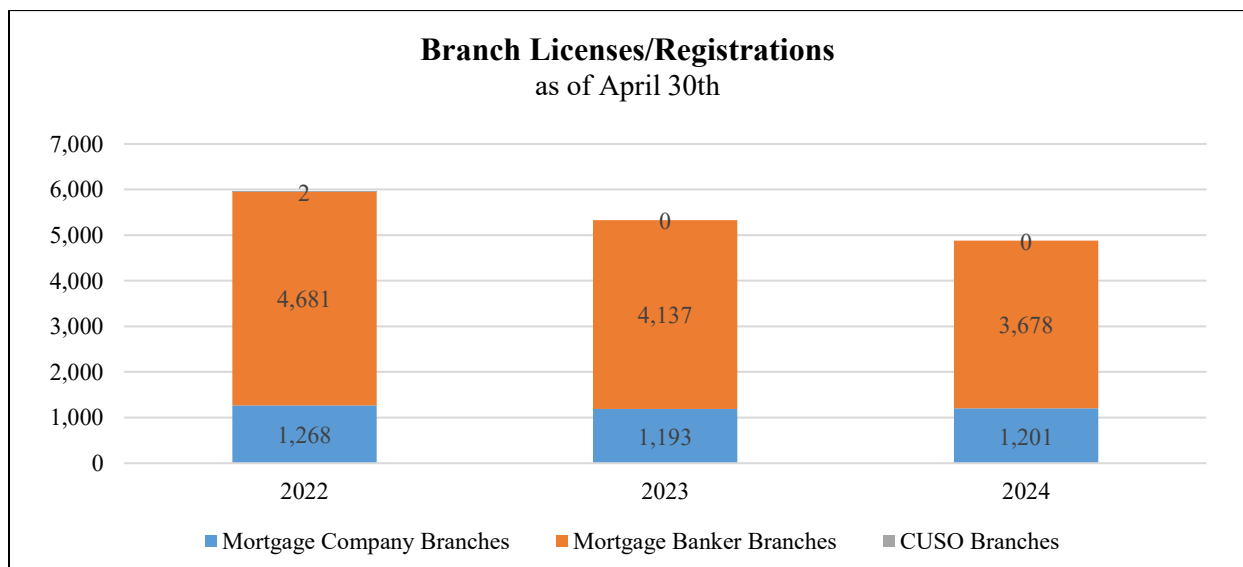
Industry Status

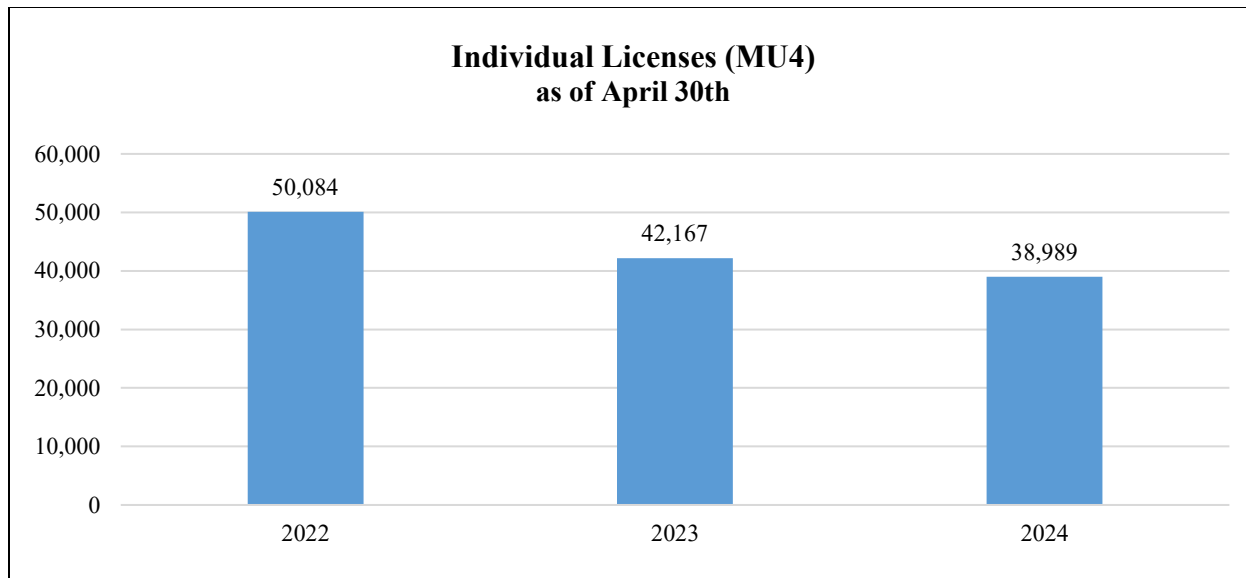
The Department continues to monitor various local, state, and national sources to identify issues impacting the mortgage industry including interest rate changes, housing supply and demand, availability and affordability of homeowner's and flood insurance, mortgage-backed securities (MBSs) market, and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

The charts below reflect historical information regarding the number of licenses and registrations in an approved status as of April 30th for the respective years shown below.



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





The most notable elements from the three graphs shown above are the growth in the number of licensed mortgage companies and the declining number of licensed residential mortgage loan originators over the past three years. From FY2020 to FY2024, the number of licensed mortgage companies has increased over 115.14% (1,552 to 3,339). Although the number of licensed residential mortgage loan originators has been declining over the past two fiscal years, the current number of licensed residential mortgage loan originators still exceeds the historical average for the Department.

The aggregate Mortgage Call Report information reported by licensees and registrants for calendar years 2021, 2022, and 2023, is shown in the table below.

CY2023 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
Direct	\$91,680,294,149	301,663	\$303,916
3 rd Party	\$20,615,473,108	58,793	\$350,645
CY2022 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
Direct	\$126,842,565,891	422,439	\$300,262
3 rd Party	\$21,591,681,729	63,244	\$341,403
CY2021 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
Direct	\$201,239,741,506	740,744	\$271,672
3 rd Party	\$29,279,643,239	97,181	\$301,290
Aggregate information as reported by licensees.			

Higher interest rates, reduced housing supply, and other macro issues have substantially impacted the number and dollar amount of residential mortgage loans made over the past three years.

Licensing Activity Report

From March 1, 2024, to April 30, 2024, the Mortgage Licensing section processed 2,065 applications and approved 1,829 applications, including 176 mortgage entities, 335 branch offices, and 1,318 residential mortgage loan originators. The remaining 236 applications were either withdrawn by the applicant or denied by the Department.

According to NMLS Data Analytics, the Mortgage Licensing section processed 16,836 license amendments, 1,077 credit report reviews, 4,686 sponsorship removals, and 2,962 sponsorship requests from March 1, 2024, to April 30, 2024.

Mortgage Examination Activity Report

From March 1, 2024, to April 30, 2024, the Mortgage Examination section issued 42 examinations covering 1,290 individual licensees. Compared to the same reporting period in FY2023, the overall number of examinations issued (42 versus 80) decreased by 47.50%; however, the number of individual licensees examined (1,290 versus 1,197) increased by 7.77%. The number of examinations issued was impacted by numerous factors including:

- the training for, implementation and adoption of the State Examination System (a secure online nationwide examination platform or system, developed by CSBS and state regulators, that connects agencies and companies in the examination process);
- the departure of two trained Financial Examiners (turnover);
- the attendance of the majority of the examination staff for training at the American Association of Residential Mortgage Regulators (AARMR) Spring 2024 Examiner Training School on topics related to loan originator compensation, advertising, and marketing service agreements;
- the training and development of newly hired examiners (7 new examiners were hired in the past two years which comprises 43.75% of the current mortgage examination staff);
- the inability of the recently licensed mortgage companies to provide adequate records including policies and procedures for the examination; and
- the inclusion of additional compliance elements to the examination process for information security plans, home equity lines of credit, wrap mortgage loans, and other items.

The examinations revealed violations related to 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 Conditional Approval Letters.

For the upcoming quarter, the Department will be participating in several multi-state examinations including a joint origination and servicing examination with the Office of Consumer Credit Commissioner. Outreach and Training

Outreach and Training

During March 19-21, 2024, most of the examination staff attended the AARMR Spring 2024 Examiner Training School that covered mortgage loan originator compensation, Real Estate Settlement Procedures Act Section 8 violations, marketing service agreements, and mortgage advertising.

On May 16, 2024, Director of Mortgage Regulation William Purce provided an in-person presentation to the South Texas Mortgage Bankers Association in Weslaco, Texas. The presentation discussed: (1) agency priorities for FY2024; (2) the current and historical licensing trends; (3) the current and historical examination trends; (4) common examination findings; (5) advertising requirements and limitations; and (6) compliance with affiliated business arrangements.

On May 21, 2024, Senior Review Examiner Justin Accola and Manager of Licensing Chris Osuna attended the 108th Texas Mortgage Bankers Association's Annual Conference in Austin, Texas that included the following topics: State of the Mortgage Industry, Executive Leadership Insights, and current legislative issues impacting the mortgage industry.

On May 21, 2024, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the Greater Houston Association of Mortgage Professionals. The presentation discussed: (1) agency priorities for FY2024; (2) the mortgage grant fund; (3) the current and historical licensing trends; (4) the current and historical examination trends; (5) common examination findings; and (6) loan originator compensation restrictions and limitations.

c) Operations Division Activities

Accounting, Budget, and Financial Reporting

Staff is working on closing out the third quarter of fiscal year 2023 and has started developing the budget for fiscal year 2024.

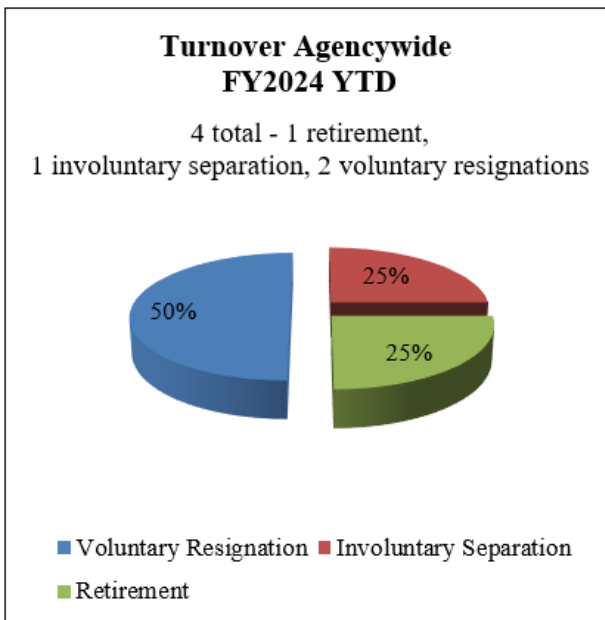
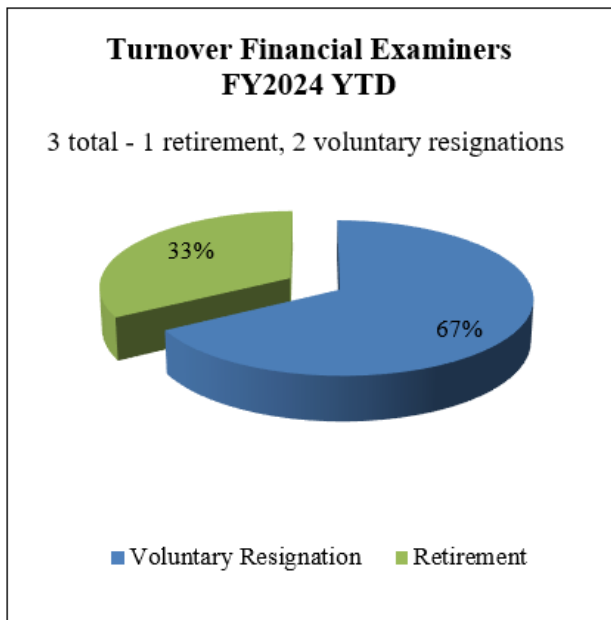
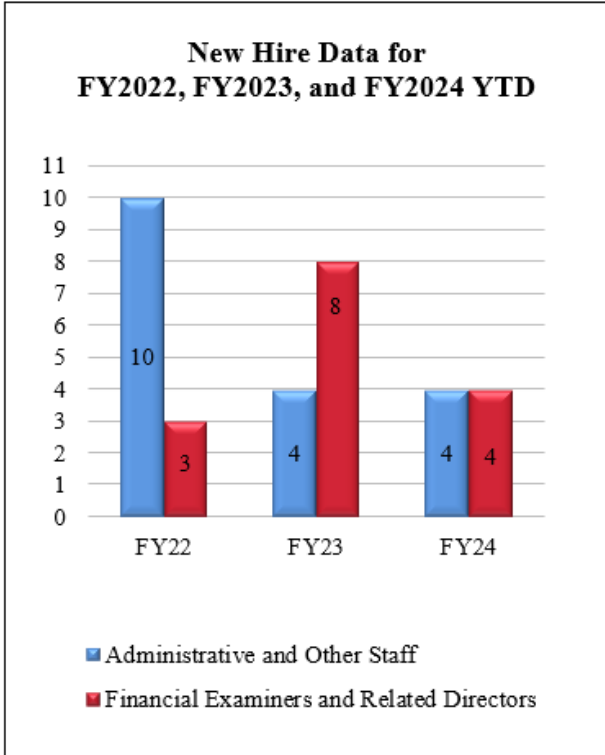
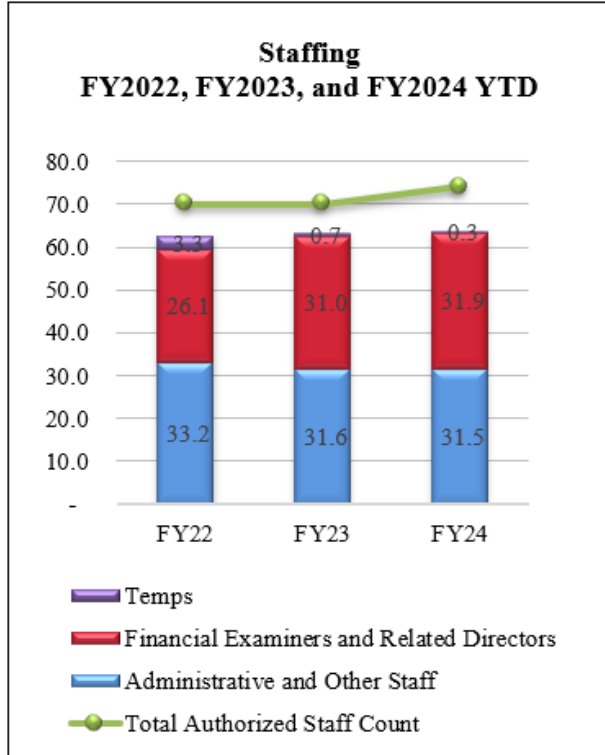
Audit

The Department is currently undergoing a Post-Payment and Procurement Audit conducted by the Comptroller of Public Accounts. The Risk Management Program Review by the State Office of Risk Management was completed, and the report is located elsewhere in the packet.

Human Resources

As of May 31, 2024, the Department was staffed at 65 regular full-time employees. In April, one Mortgage Examiner separated from the Department, and in May, one Thrift Examiner and two Mortgage Examiners joined the Department.

Staffing Charts as of May 31, 2024



Below is the status of the Department's vacancies:

Vacancy Status	
Financial Examiner V – Thrift Examinations (Loan Review) - 1	Position Filled
Financial Examiner I – Thrift Examinations - 2	Collecting and reviewing applications Interviewing applicants
Financial Examiner I-II -Thrift Examinations (Information Technology)	
Financial Examiner VI/VII– Thrift Examinations - 3	
Financial Examiner V – Thrift Examinations (Loan Review) - 2	
Program Specialist I – Mortgage Regulation	
Investigator II-IV – Mortgage Licensing	
Financial Examiner I-II – Mortgage Examinations - 4	

Outreach and Training

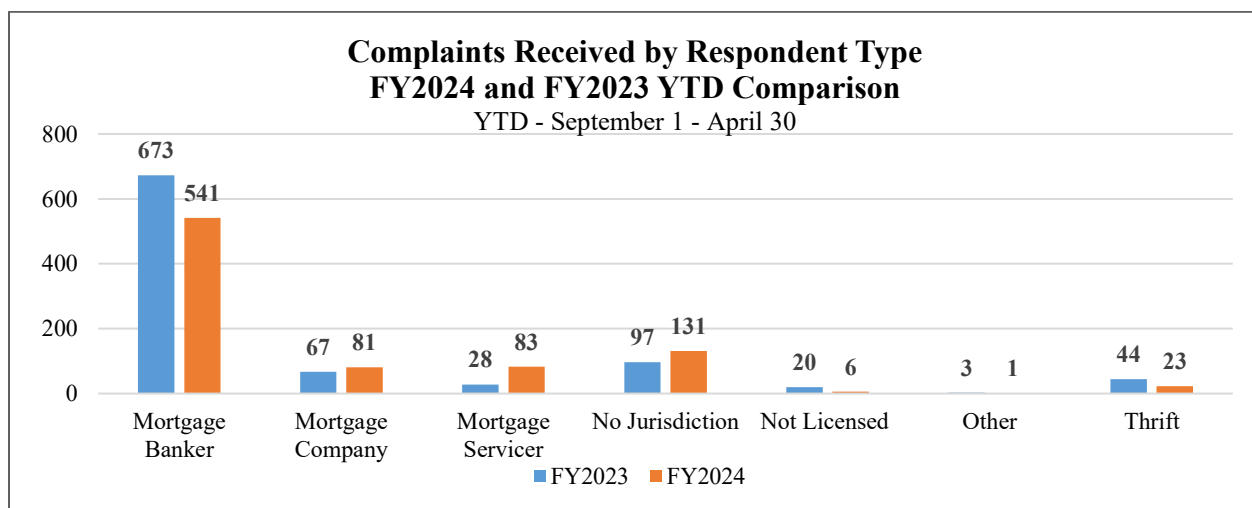
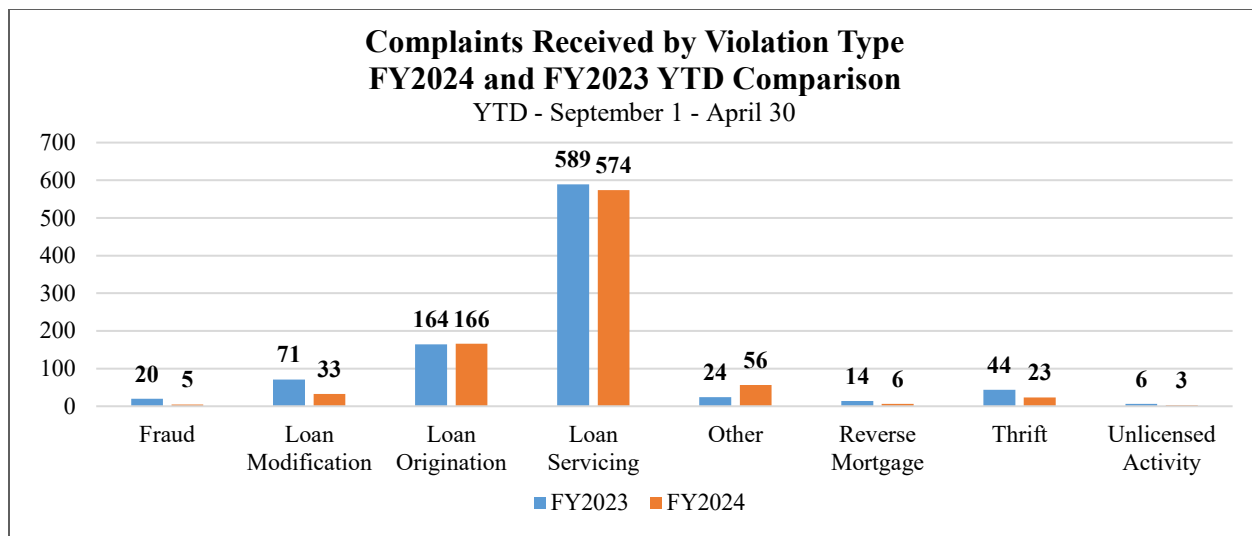
The quarterly agencywide meeting and training held on May 23, 2024, contained agency and division updates, as well as sessions on various information resources and personnel topics. The next agencywide meeting and training is scheduled for August 29, 2024.

As mandated by Section 2054.5191 of the Texas Government Code, at least once each year, state government employees must complete a cybersecurity training program certified by the Department of Information Resources (DIR). All Department employees are in compliance with this requirement.

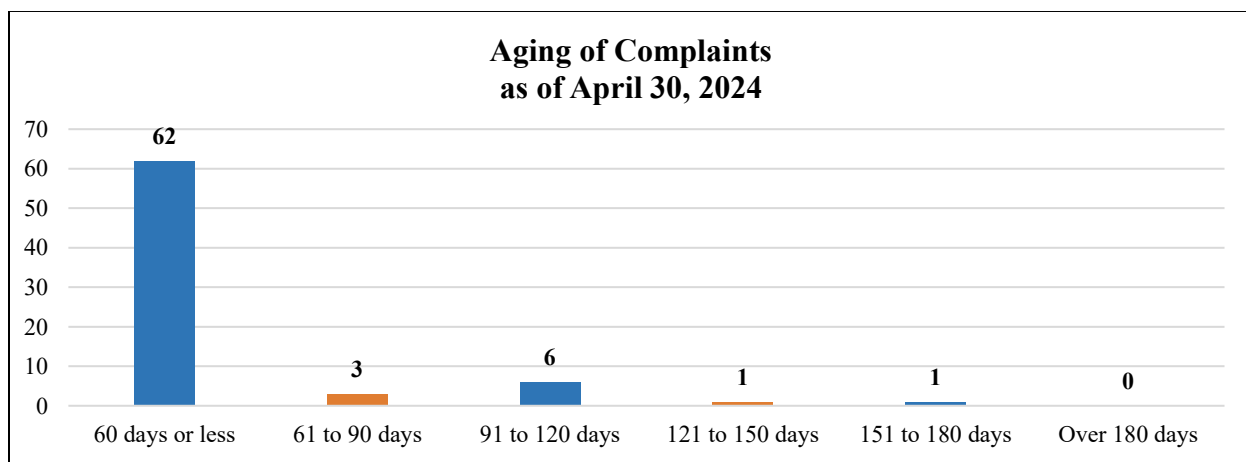
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

Complaints Received – For the fiscal year to date (September 1, 2023 – April 30, 2024), SML received 866 complaints, compared to 932 received during the same period in FY2023, representing a 7.6% decrease.



Aging of Open Complaints – As of April 30, 2024, there were 73 open complaint files. Complaint aging is acceptable with 97% 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	208		
Average Number of Days to Close a Complaint	27	22		
Percentage of Complaints Closed Within 90 Days	90%	94%		
Non-Servicing Complaints				
Number of Non-Servicing Complaints Closed	118	113		
Average Number of Days to Close a Complaint	24	23		
Percentage of Complaints Closed Within 90 Days	92%	94%		
Total	329	321		

Mortgage Enforcement Actions	FY2024			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Advisory Letter	10	4		
Agreed Order to Take Affirmative Action	0	1		
Notice of Suspension/Revocation	1	0		
Order to Cease and Desist	3	7		
Order to Take Affirmative Action	2	0		
Total	16	12		

Recovery Claim Applications Received	FY2024			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
	1	0		

Status of Pending Recovery Claim Applications as of April 30, 2024	
Pending Investigation	3
Pending Preliminary Determination Letter	7
Preliminary Determination Letter Issued, Pending Opportunity to Appeal	0
On Appeal	0
Open to Facilitate Resolution by the Parties	0
Total	10

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

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

SML 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 SML 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, SML, represented by the Office of the Attorney General, filed its original answer. On June 29, 2023, Mr. Schoenbauer filed his response to SML's original answer. On May 15, 2024, SML filed its plea to the jurisdiction seeking to dismiss the case for lack of jurisdiction.

Public Information Requests	FY2024			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Requests Received	39	44		

Rulemaking

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

Gift Reporting

During March 19–21, 2024, Chief Mortgage Examiner Ellena Meier attended the American Association of Residential Mortgage Regulators (AARMR) 2024 Spring Examiner Training School in Baltimore, Maryland. Registration fees and hotel expenses totaling \$1,349.86 were reimbursed by AARMR.

e) Legislative Activities

Lt. Governor Dan Patrick and House Speaker Dade Phelan each issued their interim charges for committees to take up and consider in advance of the 89th Legislature. Notable charges are listed below (the list does not include charges related to the monitoring or implementation of enacted bills).

Senate Interim Charges

❖ Business and Commerce

- **Addressing the Rising Cost of Insurance:** Assess the impact of rising property and casualty insurance costs on Texas property owners, real estate lenders, and commercial and industrial development. Identify ways to increase consumer transparency to better inform coverage decisions and make recommendations to ensure a competitive and affordable insurance market for consumers.
- **Artificial Intelligence:** Examine the development and utilization of artificial intelligence (AI). Evaluate the implications of AI adoption across the public and private sectors. Make recommendations for a responsible regulatory framework for AI development, including data privacy, industry standards, consumer protections, risk mitigation, and compliance processes. Propose any necessary changes to state law to protect the Texas radio, television, music, and film industries against unauthorized use by AI. Monitor the findings of the Texas Artificial Intelligence Council.

❖ Finance

- **Continue Cutting Property Taxes:** Identify the best combination to further increase the amount of homestead exemption and compression to continue cutting Texans' property taxes. Additionally, establish and report on the cost of eliminating: school maintenance and operation property taxes; all school property taxes; and all property taxes. Determine the fiscal consequences of each action, including whether revenue reallocations would be required for public education funding and local government funding, and impacts on the state's ability to respond to disasters and other urgent priorities. For example, determine the effect on other state programs if general revenue were used to fully replace school property taxes, particularly during economic downturns. Evaluate and report on how much state revenue would need to be generated to replace foregone property tax revenue, and from what source.

❖ Local Government

- **Additional Property Tax Relief and Reform:** Report on the effects of prior property tax relief and reform, including the \$18 billion tax cut with the \$100,000 homestead exemption authorized by the 88th Legislature. Focus particularly on the interaction between Senate Bill 2, 88th Legislature, 2nd Called Session, and Senate Bill 2, 86th Legislature. Make recommendations for further property tax relief and reform, including methods to improve voter control over tax rate setting and debt authorization, and mechanisms to dissolve taxing entities such as municipal

management districts (MMDs) and tax increment reinvestment zones (TIRZs) when they have outlived their purpose.

- Housing Affordability: Study issues related to housing, including housing supply, homelessness, and methods of providing and financing affordable housing. Make recommendations to reduce regulatory barriers, strengthen property rights, and improve transparency and accountability in public programs for housing.
- Secure Texas Against “Squatters”: Review current laws relating to “squatters” or those claiming adverse possession of property. Make recommendations to streamline the process for the immediate removal of “squatters” and to strengthen the rights of property owners.

❖ State Affairs

- Protecting Texas Land and Assets: Evaluate strategic land and asset acquisitions in Texas by foreign entities that threaten the safety and security of the United States. Further, evaluate large-scale purchases of single-family homes by domestic entities and its impact on housing affordability for Texas families. Make recommendations to ensure Texans are secure from foreign threats and homes are affordable in our state.

House Interim Charges

❖ Business & Industry

- Housing Affordability: Evaluate the impact on housing prices and rent caused by institutional buyers to determine whether policy changes are needed to ensure families and individuals are not unfairly priced out of homeownership.
- Protections Against Fraudulent Deeds: Examine the proliferation of fraudulent deeds purporting to convey the sale or transfer of real or personal property. Recommend policy changes that will better protect potential victims from this illicit activity.

❖ Defense & Veterans Affairs

- Professional License Portability for Military and Spouses: Evaluate compliance statewide with the Section 19 of the Veterans Auto and Education Improvement Act of 2022 (P.L. 117-333, 50 U.S.C. §4025a), concerning the portability of professional licenses of service members and spouses and make recommendations to ensure that service members and their spouses may, under appropriate circumstances, continue to practice under a license issued by another jurisdiction.

❖ Land & Resource Management

- Housing Affordability: Examine factors affecting housing attainability and affordability in Texas, including state and local laws impacting supply and demand for housing, barriers to construction resulting from zoning practices, and the availability and costs of housing inputs.

❖ Pensions, Investments & Financial Services

- ESG: Examine the ways in which environmental, social, and governance (ESG) policies are contradictory to fiduciary duties and the resultant detrimental effect on investors.

❖ State Affairs

- Economic Challenges Impacting Insurance Premiums: Examine the impact of current economic challenges on the escalating costs of insurance premiums, including factors contributing to the withdrawal of insurance providers from certain markets. Investigate solutions to help Texans more easily and affordably obtain property and casualty insurance coverage. Evaluate long-term strategies for shifting from state-funded insurance programs to sustainable private market alternatives.

❖ Ways & Means

- Property Tax Relief: Study and make recommendations to build on the historic property tax relief provided by the 88th Legislature, including: whether Texas' economic performance and state tax revenues support further compression of school district tax rates; whether to extend the limitation on appraised value of certain non-homestead real property past the current expiration date of December 31, 2026; whether to maintain the homestead exemption at its current rate; and whether to further reduce the limit on appraised value of homesteads.

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)

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C.

Texas Department of Banking

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Commissioner


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To: Finance Commission Members

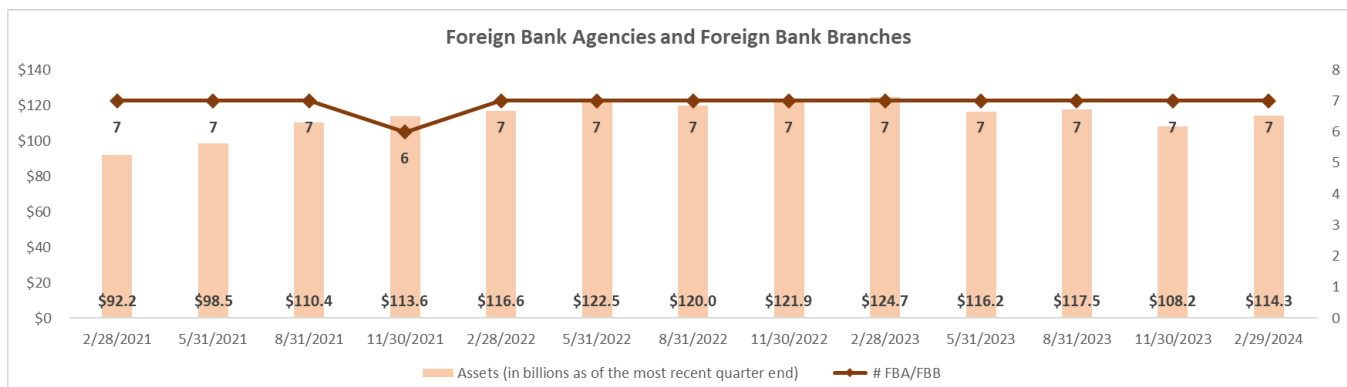
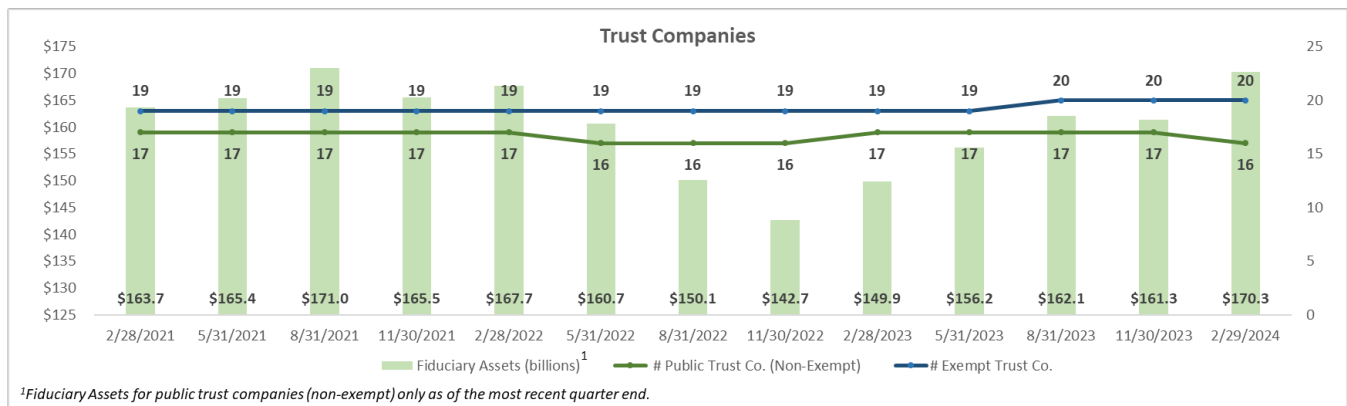
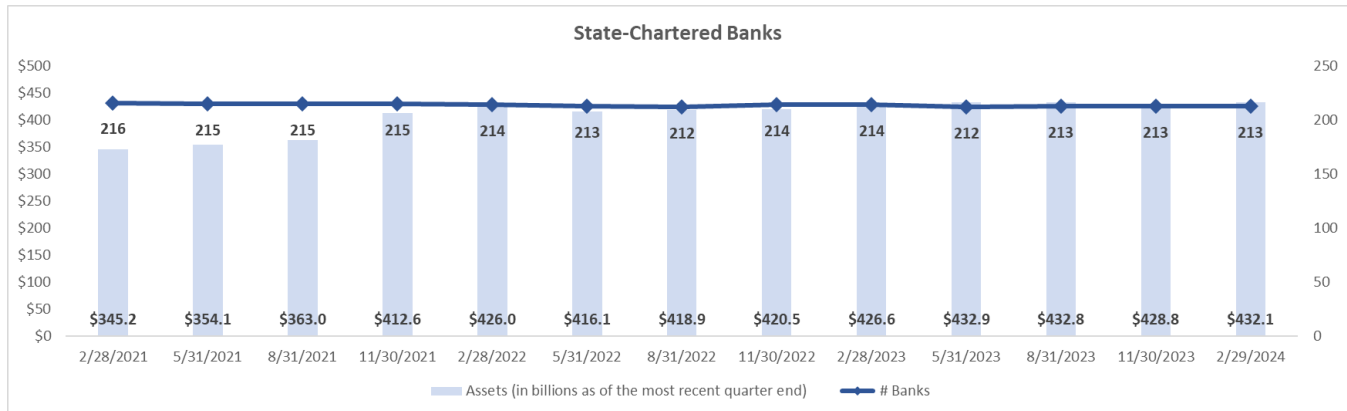
From: Jared Whitson, Director of Bank & Trust Supervision 

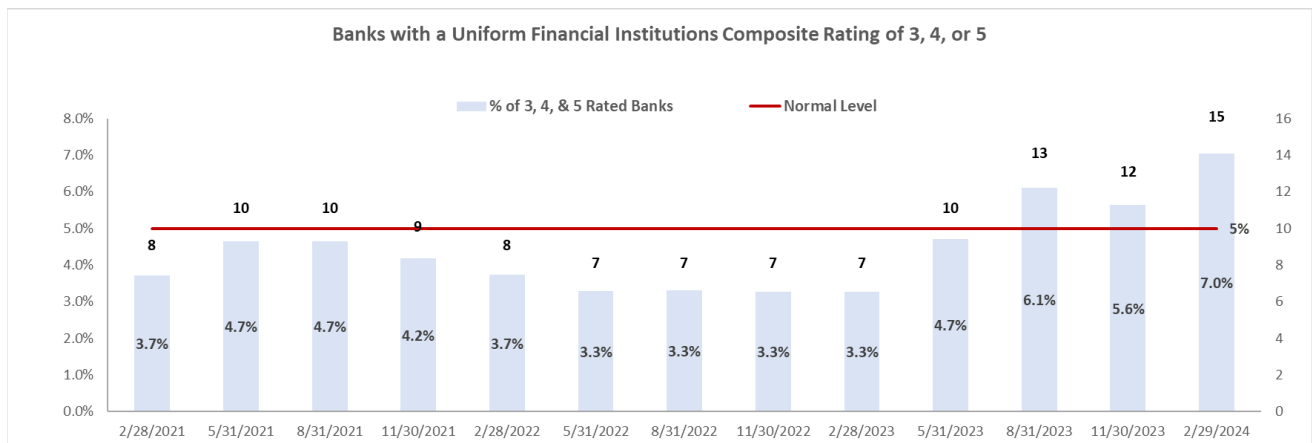
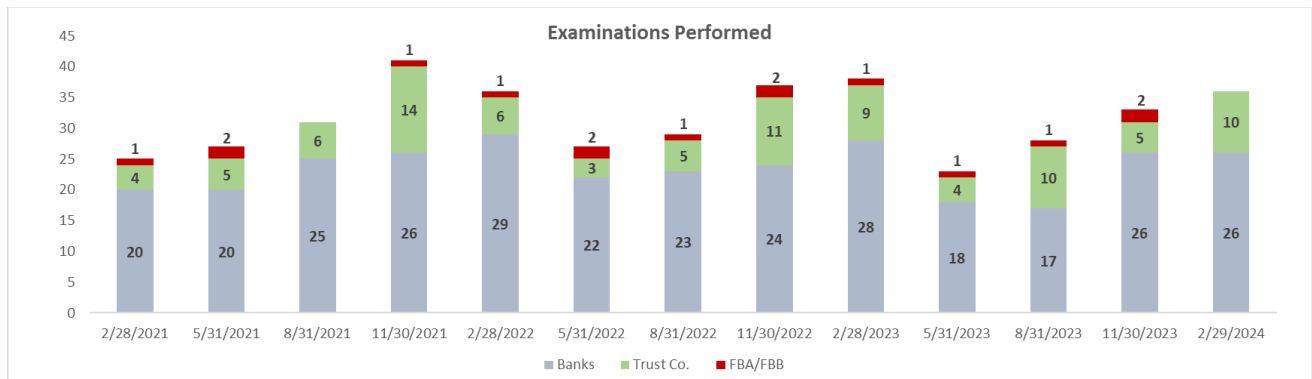
Date: June 5, 2024

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles

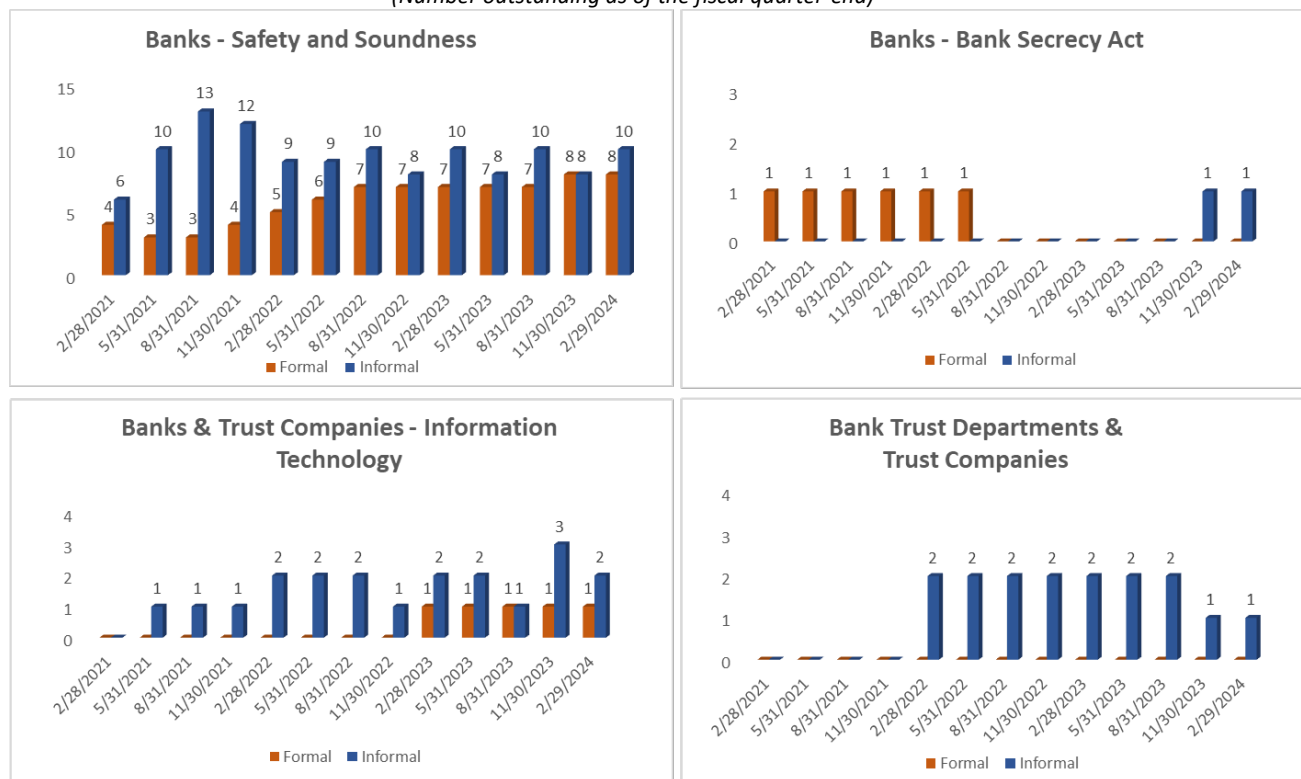
As of fiscal quarter-end (assets as of the preceding calendar quarter)





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 15 in February 2024 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 poor corporate governance and/or 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. Due to these pressure points, the Bank and Trust Supervision Division anticipates further increases in the number of problem banks.

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 – April 2024)
Commercial Banks	92%	88%
IT	91%	92%
Trust Departments	86%	95%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	81%	95%
IT	82%	86%

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

- Bank Examinations – 12 exams past due by an average of 24 days.
- IT Examinations of Banks – 8 exams past due by an average of 29 days.
- Trust Department Examinations of Banks – 1 exam past due by 21 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 an increase in problem bank and IT examinations being performed coupled with staffing constraints.

Division Highlights

- **Interest Rate and Liquidity Risks:** 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, competition for deposits is evident as consumers are much more rate sensitive. Furthermore, financial institutions with a sizable portion of their assets in long-term securities and/or loans are experiencing net interest margin compression as funding costs are increasing faster than asset yields. Finally, banks' fixed rate investments decline in value in a rising rate environment placing pressure on capital levels.
- **Special Operations and Conferences:**
 - On April 11, 2024, Commissioner Charles G. Cooper, Chairman of the Federal Financial Institutions Examination Council State Liaison Committee, attended (virtually) the first quarter meeting held in Washington, D.C.
 - On April 26, 2024, Director of Bank and Trust Supervision Jared Whitson represented the Department on a regulatory panel at The Risk Management Association meeting in Houston, Texas, discussing risk management and current banking trends.
 - On April 26, 2024, Regional Director (RD) Greg Wisian represented the Department on a regulatory panel at the 27th Annual James B. Bexley Executives' and Directors' Seminar in Huntsville, Texas, discussing bank regulatory issues with federal regulators.
 - Beginning on April 28, 2024, Chief Trust Examiner Sylvia Fry and select staff attended the Fiduciary and Risk Management Association conference in New Orleans, Louisiana.
 - On May 6, 2024, Commissioner Cooper and Deputy Commissioner Wendy Rodriguez represented the Department at Vista Bank's South Dallas Banking Center Grand Opening in Dallas, Texas. The Commissioner provided acknowledgements and remarks.
 - Beginning on May 8, 2024, Commissioner Cooper and select staff represented the Department at the Texas Bankers Association 139th Annual Convention in Arlington, Texas. In addition, Commissioner Cooper participated in a fireside discussion with the former Consumer Financial Protection Bureau Director Kathy Kraninger on regulatory issues, the economy, and cybersecurity.
 - Beginning May 13, 2024, Commissioner Cooper, General Counsel Robert Nichols, and RD Wisian represented the Department at the 2024 Conference of State Bank Supervision State Federal Supervisory Forum in Chicago, Illinois.
 - Beginning on May 21, 2024, Commissioner Cooper and Director Whitson attended the Federal Reserve Bank (FRB) of Dallas' Director and Executive Regional State Member Bank Conference in Dallas, Texas. Commissioner Cooper participated on a regulatory panel discussing supervisor posture and emerging risks.

- On May 29, 2024, the FRB kicked-off their national Ask the Fed series on Commercial Real Estate. The first webinar in this series was presented live from the Austin headquarters office. The session focused on the trends and emerging risks in the CRE market affecting financial institutions. Several community bankers participated in the live audience portion of the event.



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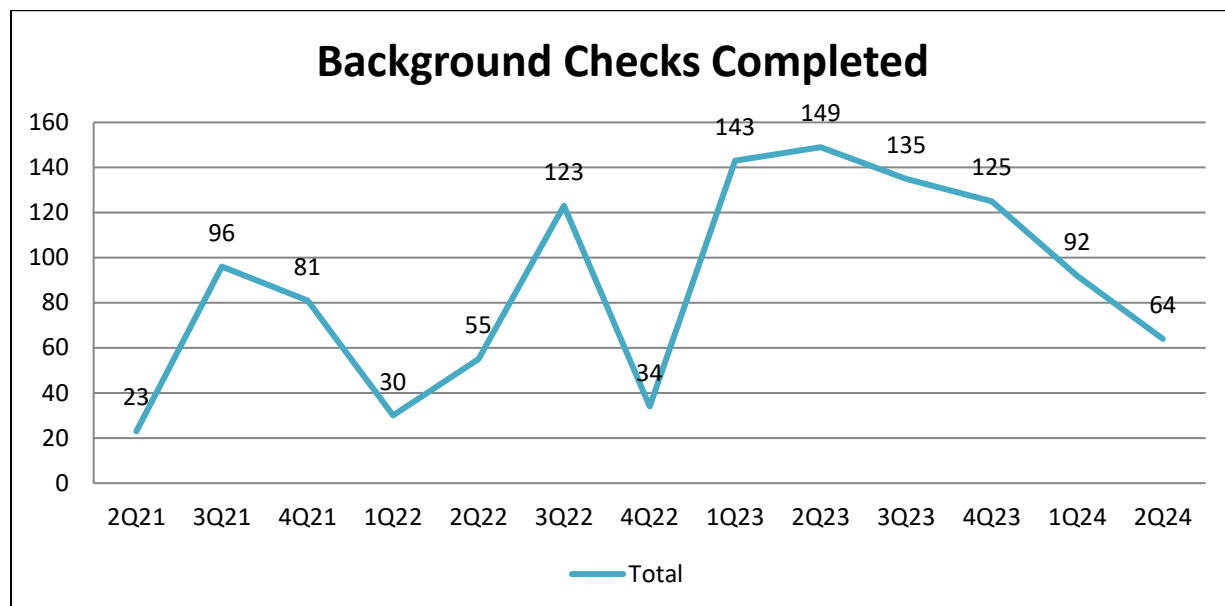
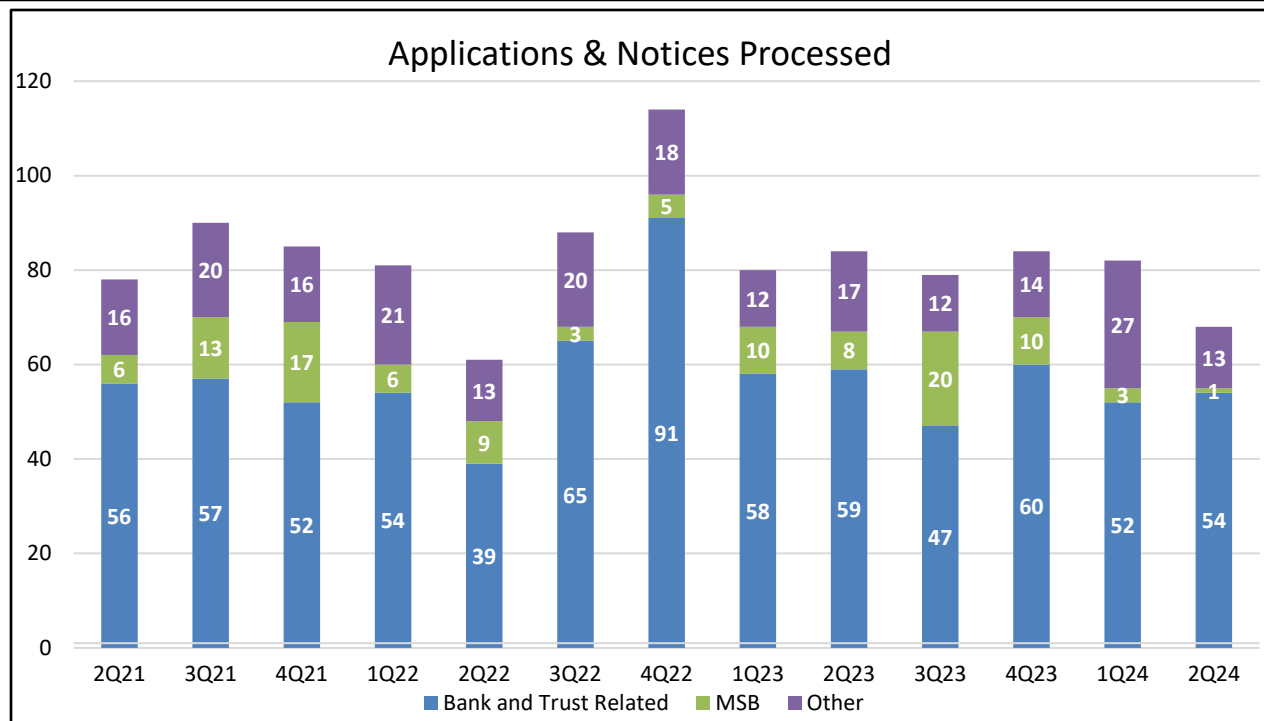
Charles G. Cooper
Commissioner

To: Finance Commission Members

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

Date: June 4, 2024

Subject: Summary of Corporate Division Activities



Entities	Applications and Notices Currently Under Review (as of May 31, 2024)	Change Since Last Finance Commission Report	
		Change in Open Filings	Percent Change
Bank Related	13	-8	-38%
Trust Companies	1	-1	-50%
Money Services Business (MSB)	30	-1	-3%
Others	5	3	150%
Totals	49	-7	-13%

The number of open filings decreased by 13% compared to the level reported at the last Finance Commission meeting. The decrease predominantly results from resolution of outstanding bank related applications coupled with the slight slowing of new applications. The increase in Others filings relates to applications to use the words “bank” or “trust” in an entity’s name.

Division Highlights

- **Significant Applications:** Since the last report, the following significant bank applications have been received:
 - Sunflower Bank, N.A., Dallas, has applied to convert to a Texas state bank [estimated gain in state banking assets of \$7.8 billion].
 - Sunflower Bank, N.A., Dallas, has applied to merge HomeStreet Bank, Seattle, Washington, with and into Sunflower Bank following its conversion to a Texas state bank [estimated gain in state banking assets of \$9.5 billion].
- **Charter, Conversion, and Merger Activity:** Since the last report, the following transactions have consummated:
 - *Banks*
 - First Financial Bank, N.A., Abilene, converted to a Texas state bank charter under the name of First Financial Bank [\$13.1 billion gain in state banking assets].
 - *Trust Companies*
 - First Financial Trust & Asset Management Company, N.A., Abilene, converted to a Texas state trust company under the name of First Financial Trust & Asset Management Company.
 - EHS PTC, L.T.A, Dallas, opened as a de novo family trust company.
 - HHW PTC, L.T.A, Dallas, opened as a de novo family trust company.



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To: Finance Commission Members
From: Jesus "Jesse" Saucillo, Director of Non-Depository Supervision
Date: June 3, 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	191	\$342.5	*	*		
Prepaid Funeral Contract (PFC)	337	\$4.9	337	\$4.9	333	\$4.9	*	*		
Perpetual Care Cemeteries (PCC)	244	\$460.7**	245	\$469.1**	245	\$468.7**	*	*		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	*	*		
Examinations Performed										
MSB	98		23		22		*			
MSB Limited Scope	2		0		0		*			
MSB Accepted other State	4		0		1		*			
PFC	220		50		53		*			
PFC Limited Scope	2		0		0		*			
PCC	138		41		34		*			
PCC Limited Scope	1		1		0		*			
Ratings (# / %) Assigned to All Regulated Entities										
1	277	36.84%	267	35.41%	257	34.50%	*	*		
2	414	55.05%	423	56.10%	419	56.24%	*	*		
3	55	7.31%	56	7.43%	58	7.79%	*	*		
4 & 5	6	0.80%	8	1.06%	11	1.47%	*	*		
Noncompliance with Examination Priorities (Past Due)										
MSB	6		10		8		*			
PFC	18		15		7		*			
PCC	12		22		9		*			

NOTES:

Limited scope examinations do not receive a rating.

*Third quarter of fiscal year 2024 data has not been finalized and will be provided in the next report.

**PCC \$ amounts reflected in the millions.

Examination Activities

As noted in the prior page, industry profile and examination statistics for the three industry types overseen by NDS for third quarter of fiscal year 2024 were not yet available as of the date of this report. This information will be available at the next Finance Commission meeting.

Due to the current MSB financial examiner vacancies and the ongoing training of examiners, the division does not anticipate meeting examination performance measures for the third quarter of fiscal year 2024. Currently, two MSB and one PFC/PCC examiners who started in April 2024 are in training, and three allocated MSB examiner positions remain vacant.

The complexity of the examinations of money transmitters continues increase, requiring additional time and resources to properly review and analyze the MSBs for overall compliance with state and federal regulations. The Department continues to be an active participant in the nationwide framework for cooperation and coordination among MSB state regulators to effectively regulate the money transmission industry. Division staff continues to monitor for, examine, and investigate activities conducted in non-compliance with applicable regulations. The number of examinations rated 3, 4, or 5 have been on the rise over the previous several quarters due to various factors including financial condition concerns, poor management oversight, and repeat violations of state and federal regulations. During this reporting period, NDS issued regulatory enforcement actions against a licensed money transmitter who violated the Texas Finance Code, and against an entity who sold prepaid funeral benefits without the required permit.

Due to staffing constraints, the division allocates available financial examiner resources by monitoring several factors, including consumer complaints, compliance history, and industry trends to ensure higher risk license holders are prioritized.

Division Activities

- Director Saucillo participated in the Money Transmitter Regulators Association (MTRA) and the Multi-State MSB Examination Taskforce (MMET) annual joint board meeting on April 30 – May 2, 2024, in Denver, Colorado. The MTRA membership consists of state MSB regulatory agencies dedicated to the efficient and effective regulation of the money transmission industry. The MMET members are MSB multi-state examination regulators appointed by MTRA and Conference of State Bank Supervisors boards that coordinate examination activities.

During the annual meeting, several MSB regulatory matters were discussed to address current concerns such as the need to promote consistent administrative enforcement protocols, improve the risk profiling of MSBs by leveraging available data analytics, enhancing examiner training programs and resources, among other topics. Director Saucillo continues to serve as a member of the MTRA Board of Directors and a member of the MMET.

Divisional staff continues to participate in various MMET, MSB Enforcement Taskforce, and MTRA committees and working groups to address areas of current events impacting MSBs. Specifically, staff participated in routine monthly MMET calls to coordinate regulatory actions against problem MSBs and discuss issues impacting the nationwide multi-state examination process, such as resolving scheduling conflicts and coordinate implementation efforts of the Money Transmission Modernization Act.

- On May 21st, the Prepaid Funeral Guaranty Fund Advisory Council (Council) [annual meeting](#) was held via teleconference. The funds' activities for both the insurance-funded and trust-funded accounts covering March 1, 2023, to February 29, 2024, and other routine agenda items were discussed and reviewed by the Council.
- The division continues to hold various meetings with examination staff to keep lines of communication open and to provide timely notifications of upcoming events/news, including developments in ongoing regulatory enforcement actions. The division is currently reviewing and enhancing examination references and procedures to address industry trends and developments. Feedback from staff is requested and considered when finalizing updates to divisional processes and procedures.



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Memorandum

To: Finance Commission Members
From: Pam Pennington, Human Resources Manager
Date: June 1, 2024
Subject: Summary of the Human Resources Division Activities

Active Postings				
<i>Number of Positions</i>	<i>Position</i>	<i>Division</i>	<i>Status</i>	<i>Activities</i>
1	Payroll/Travel Accountant V	Admin Services	Open Until Filled	Recruiting
1	Programmer I – II	MIS	Open Until Filled	Recruiting
1	Financial Examiner VII – Review Examiner	Bank and Trust	July 16, 2024	Recruiting
3	Financial Examiner IV -VII: Information Technology Specialist (Houston)	Bank and Trust – IT	Open Until Filled	Recruiting
1	Financial Examiner V – Credit Review Specialist	Bank and Trust	Open Until Filled	Recruiting
1	Financial Examiner VI – VII: Commercial Bank Examiner (Houston)	Bank and Trust	Open Until Filled	Recruiting
1	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

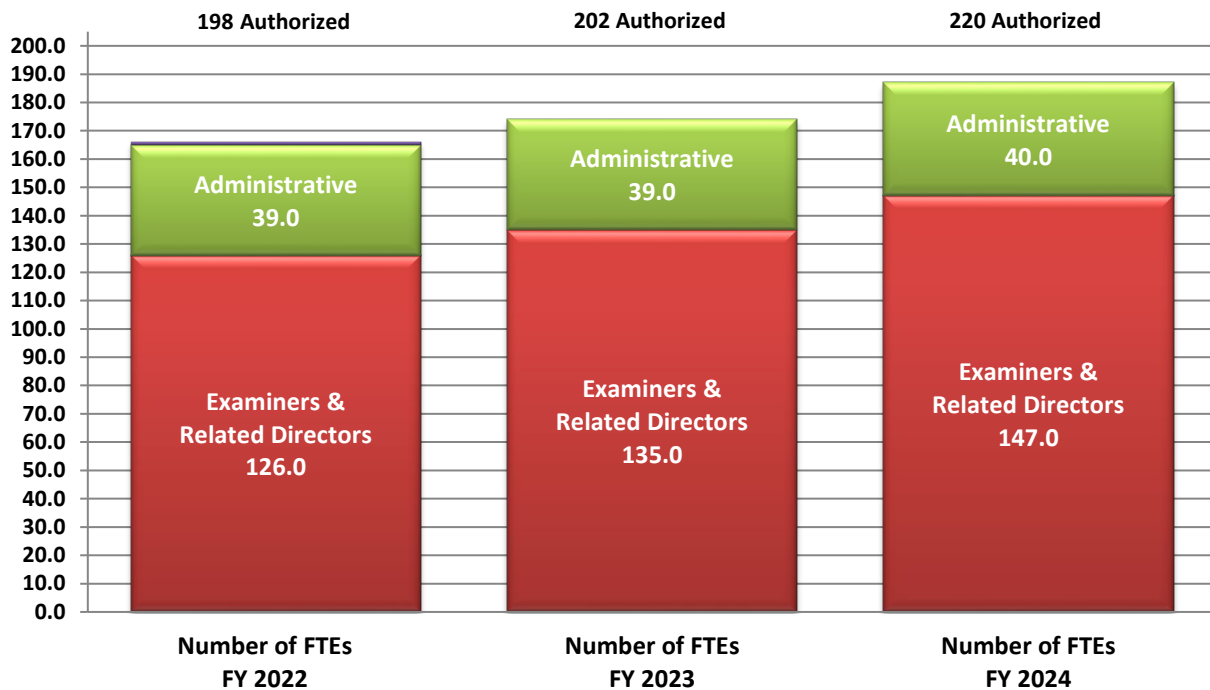
Status of Postings that Closed before June 1, 2024				
<i>Number of Positions</i>	<i>Position</i>	<i>Division</i>	<i>Status</i>	<i>Activities</i>
1	Accounting Project Manager III – IV	Admin Services	April 5, 2024	Revising
1	Compliance Analyst I-II: Consumer Assistance Specialist (HQ)	DSS	April 5, 2024	Filled
1	Director IV – Chief Information Officer	MIS	April 15, 2024	Revising
1	Accountant VII - Chief Accountant	Admin Services	April 22, 2024	Filled
1	Accountant V	Admin Services	May 7, 2024	Reposted
1	Inventory & Store Specialist IV-V	Admin Services	May 1, 2024	Filled
1	Chief IT Security Examiner (Internal)	Bank and Trust IT	May 8, 2024	Interviewing
1	Financial Examiner I (Repost) – Dallas)	Bank and Trust	May 13, 2024	Selection
1	HR Specialist II – III	HR	May 24, 2024	Screening

Division Activities:

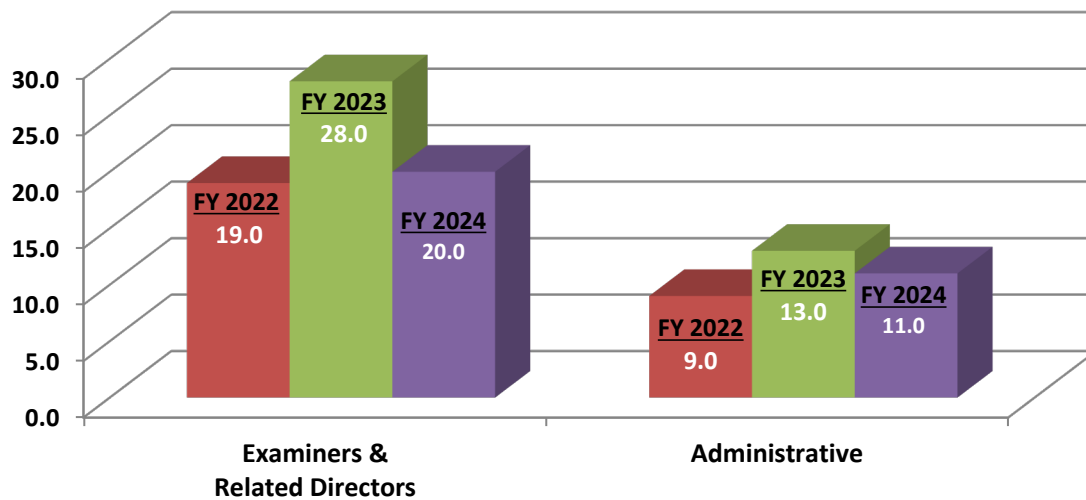
- *Audits:*
 - Texas Workforce Commission – Personnel Policies and Procedures Review
 - Final report received on April 11, 2024
 - Garza Audit – HR/Payroll Policies and Procedures
 - Final report received on May 22, 2024

- *Certification:*
 - Annual Conflicts of Interest Disclosure Statement and Vehicle Safety Certification began June 1, 2024.
- *June 2023 On-Boarding:*
 - 14 new employees:
 - 8 Commercial Financial Examiners (Bank and Trust)
 - 3 Assistant IT Examiners (Bank and Trust)
 - 1 Chief Accountant (Admin. Services)
 - 1 Inventory and Store Specialist (Admin. Services)
 - 1 BSA/AML Specialist (Bank and Trust)
- *Division Personnel:*
 - Senior HR Specialist, Corina Moreno, retired May 31, 2024.

Texas Department of Banking Employee Data for Fiscal Years 2022, 2023 and 2024 as of 05/31/2024

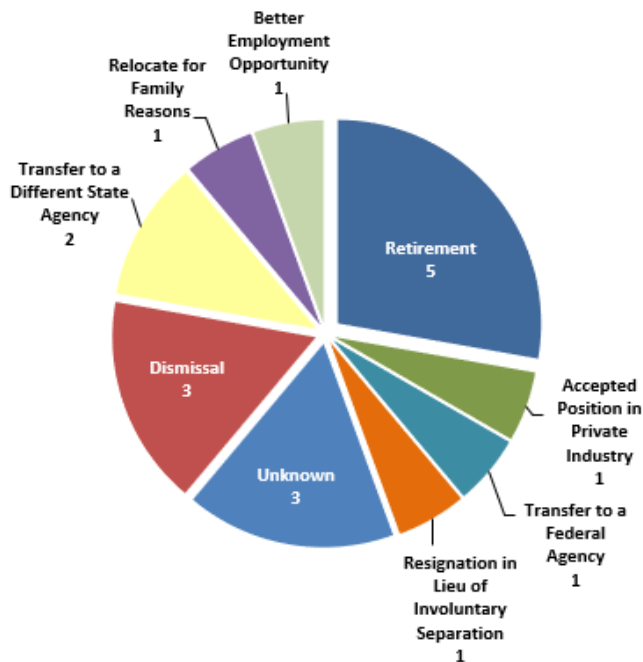


New Hire Data for Fiscal Years 2022, 2023, and 2024

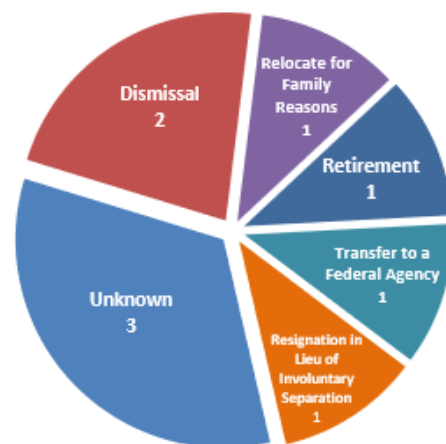


FY 2024 Employee Turnover Reasons

All Employees
18 Resignations



Financial Examiners Only
9 Resignations



As of 05/31/2024



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

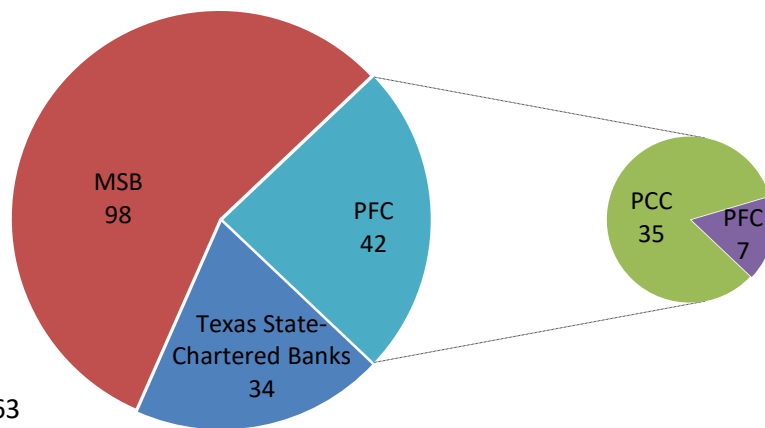
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To: Finance Commission Members
From: Amber Summers, Financial Examiner
Date: June 4, 2024
Subject: Summary of the Strategic Support Division Activities

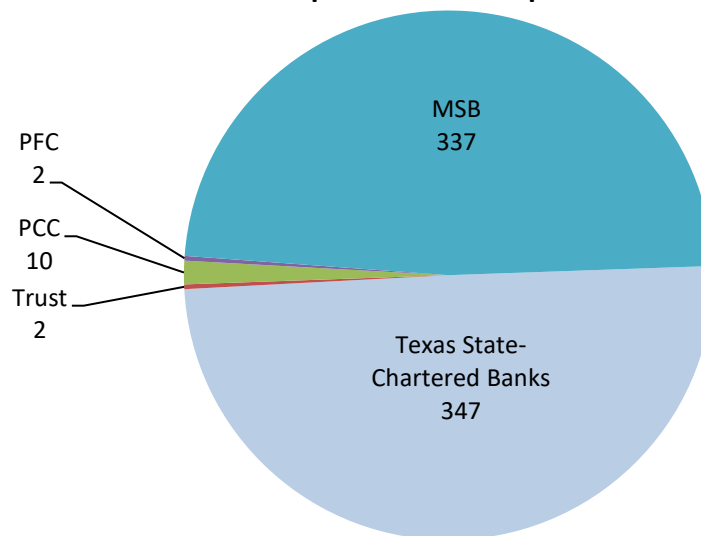
Jurisdictional Written Complaints September 2023-April 2024



Recoveries = \$249,701.63

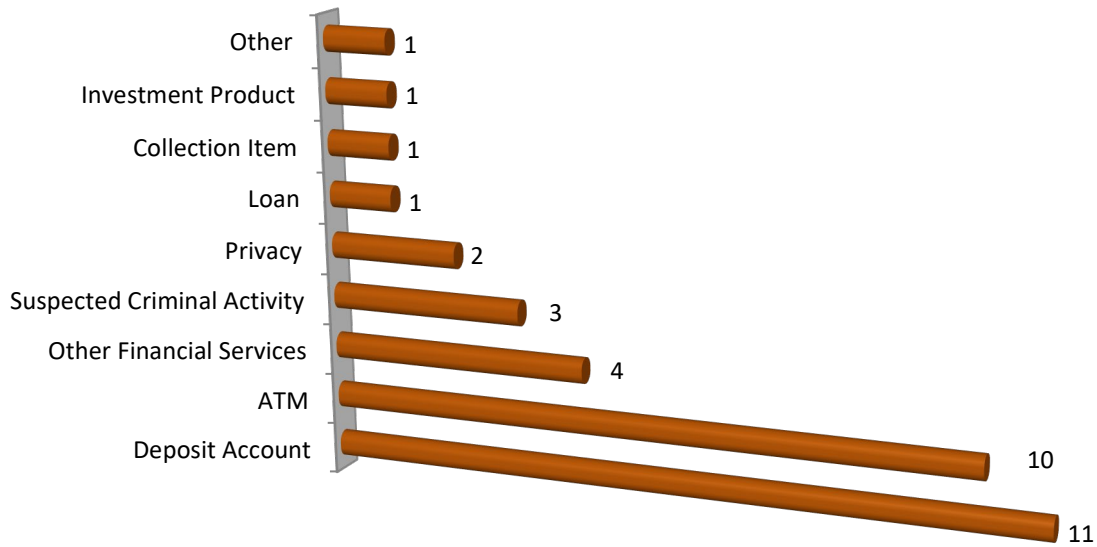
Total = 174

Inquiries on Jurisdictional Entities September 2023-April 2024



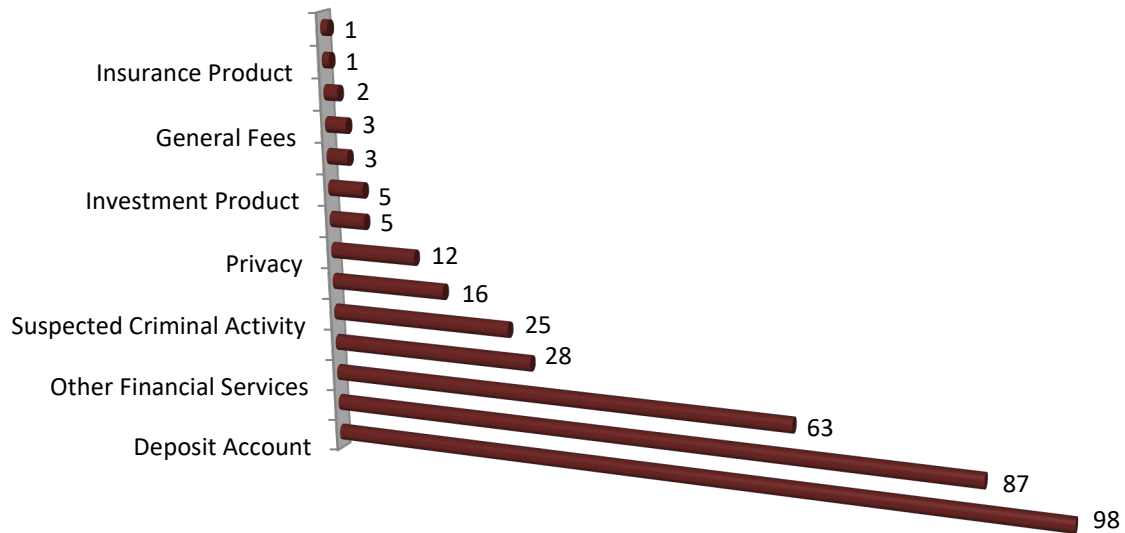
Total = 698

**State-Chartered Banks and Trust Companies
Written Complaints by Type
September 2023-April 2024**



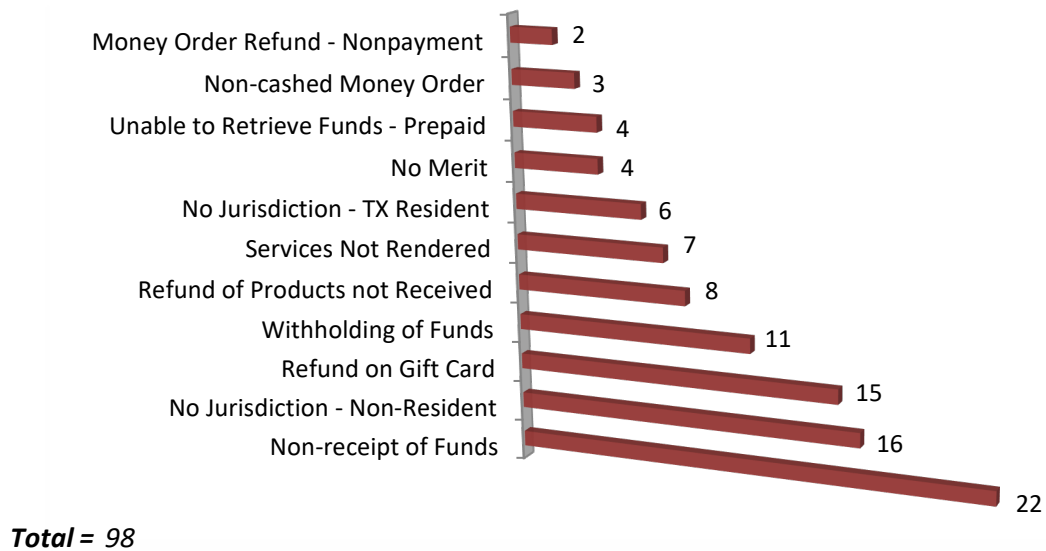
Total = 34

**State-Chartered Banks and Trust Companies
Inquiries by Type
September 2023-April 2024**

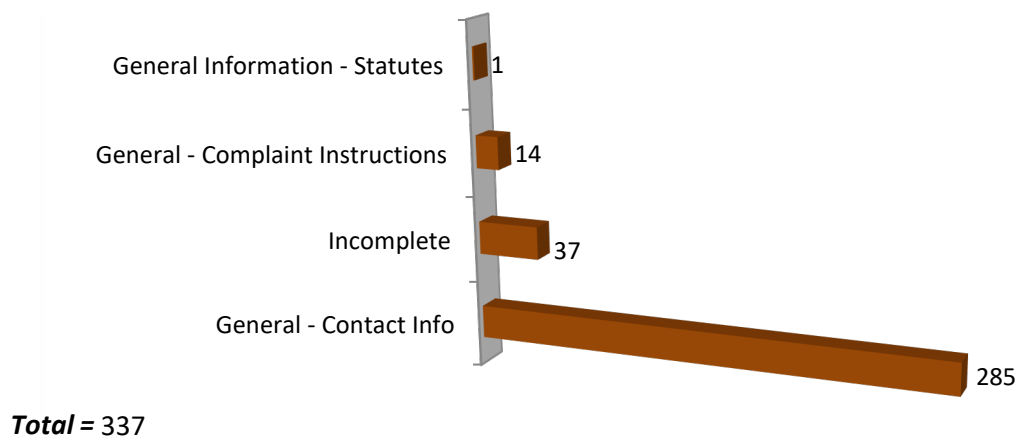


Total = 349

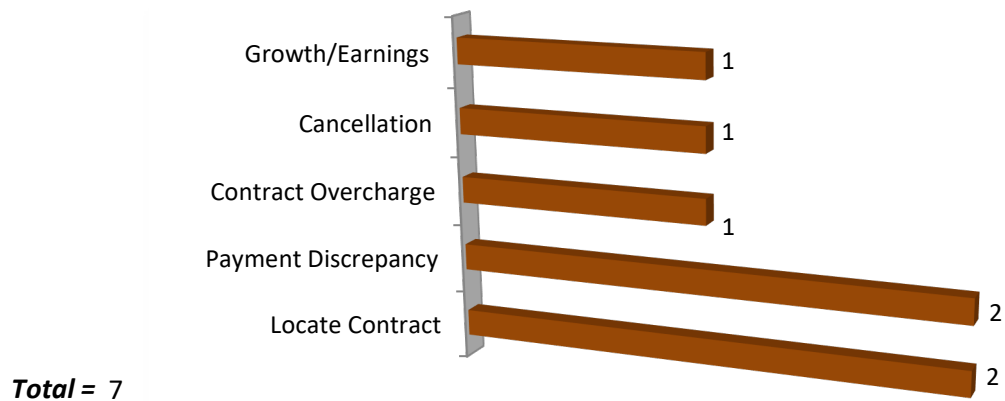
**Money Services Businesses
Written Complaints by Type
September 2023-April 2024**



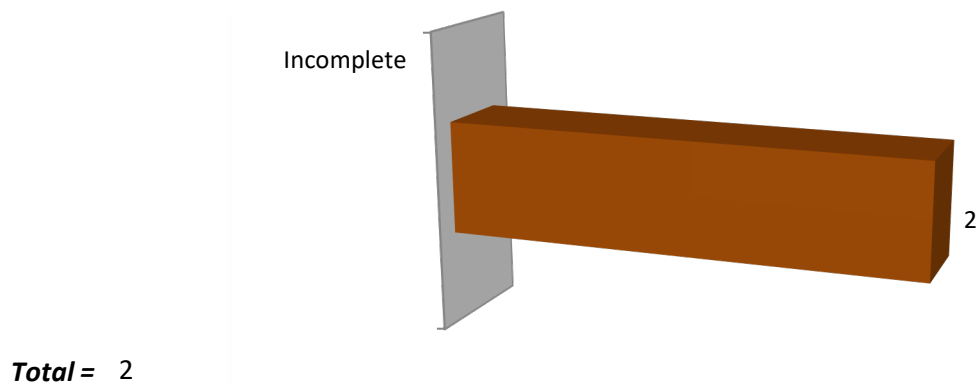
**Money Services Businesses
Inquiries by Type
September 2023-April 2024**



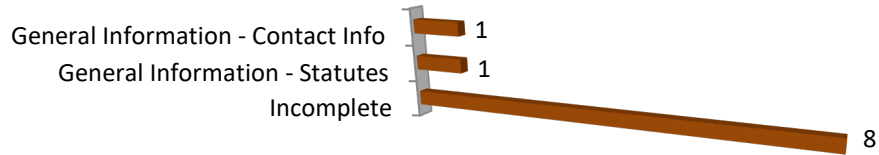
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2023-April 2024**



**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2023-April 2024**

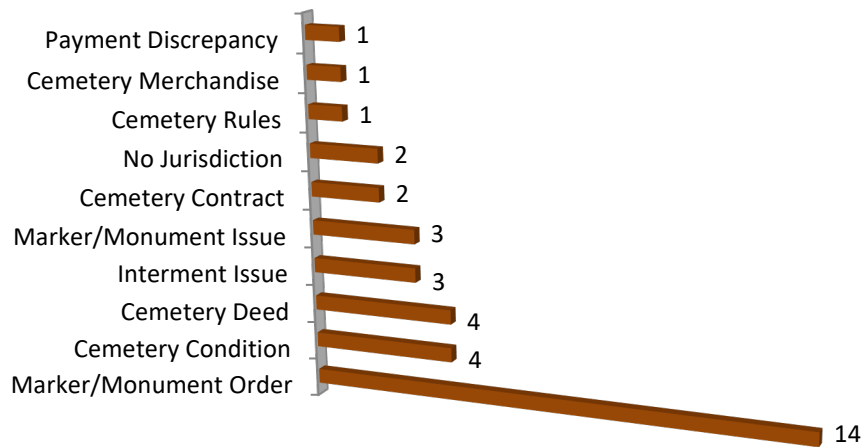


**Perpetual Care Cemeteries
Inquiries by Type
September 2023-April 2024**



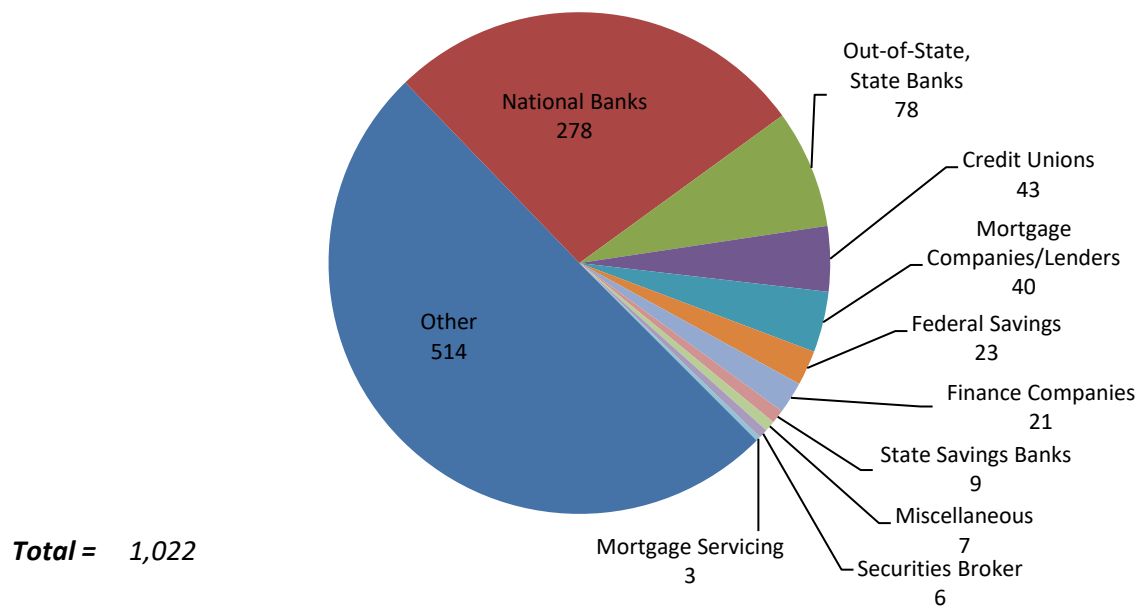
Total = 10

**Perpetual Care Cemeteries
Written Complaints by Type
September 2023-April 2024**



Total = 35

Complaints and Inquiries Against Non-Jurisdictional Entities September 2023-April 2024



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	16	-	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	-	-
Number of Written Complaints Resolved	14	14	-	-
Trust				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	-	-
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	-	-
Number of Written Complaints Resolved	N/A	N/A	-	-
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	39	35	-	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	-	-
Number of Written Complaints Resolved	24	7	-	-
MSB				
Avg. Number of Days to Close a Written Complaint	21	19	-	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	-	-
Number of Written Complaints Resolved	34	32	-	-

*Third quarter data is not available as of report date.

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

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	183	421
Texas State-Chartered Savings Banks	23	66
Federal Savings Banks	10	0
State Credit Unions	135	781
Federal Credit Unions	229	636
National Banks	171	104
Out-of-State State-Chartered Banks	12	73
Out-of-State National Banks	6	0
Total	769	2,081

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

	FY 2021	FY 2022	FY 2023	FY 2024 As of 5/31/2024
I. General Knowledge	6	5	4	6
II. Loan Analysis	1	3	3	3
III. Panel	3	3	4	4
IV. Test Bank	5	3	6	3
Total FE3	17	13	14	13

Promotions

Commissioned Examiners	5	3	5	4
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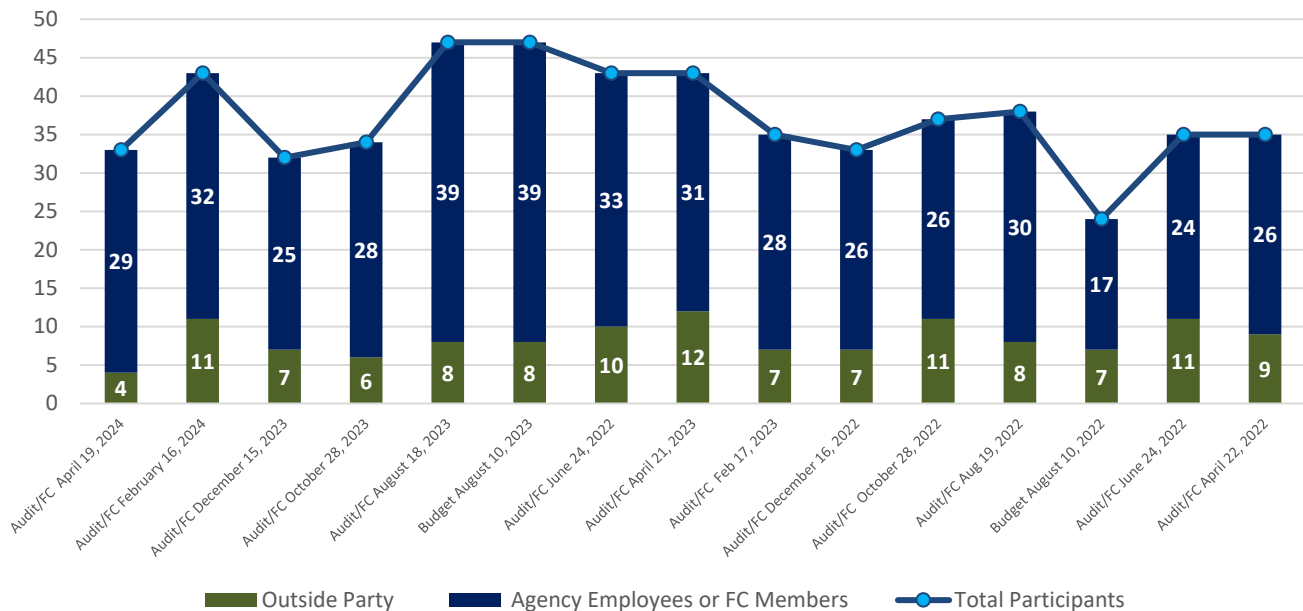
Other Divisional Items:

- *Training:*
 - The Department hosted a Financial Examiner II School in Dallas, Texas the week of April 29, 2024. Eight financial examiners attended this school.
 - The next Examiner Training Program will begin June 24, 2024, with 22 participants. The program will continue through December 5, 2024.
- *Financial Education:*
 - The Texas Department of Banking and the Office of Consumer Credit Commissioner will co-host a webinar on June 26, 2024. The webinar will focus on financially preparing for natural disasters.
- *Publications:*
 - The [Top 100 Banks](#), [Overall Texas Banking Activity](#) and the [Agency Profile](#) reports were updated with the March 31, 2024 data.

- *Policy Revisions/Updates:*
 - Personnel Manual
 - Section 1 – General Information
 - EEO/Sexual Harassment Procedures (April)
 - Section 2 – Conflicts of Interest and Employee Conduct
 - Ethical and Other Conduct and Responsibilities of Employees (May)
 - Financial Interest and Obligations, Ownership Interests, Previous Employments, and Outside Employment (May)
 - Conflicts of Interest Disclosure Statement and Vehicle Safety Certification (May)
 - Section 4 – Employee Actions
 - Reduction in Force (April)
 - Section 5 – Disciplinary Actions
 - New Employee Trial Period (April)
 - Grievances and Complaints (April)
 - Administrative Memorandums (AM)
 - AM 2015 – Work Paper Organization, Retention, and Review (April)
 - AM 2016 – Investment Policy for Funds Under the Oversight of the Guaranty Fund Advisory Council (May)
 - AM 2028 – Background Checks Conducted in Accordance with Statutory Authority (April)
 - AM 2031 – Delegation of Authority (April)
 - Supervisory Memorandums (SM)
 - SM 1003 Examination Frequency for State-Chartered Commercial Banks (April)
 - SM 1004 – Examination Frequency for Trust Companies (April)
 - SM 1020 – Information Technology (IT) Examination Frequency and Ratings (April)
 - SM 1033 - Level II Full Scope Examinations for Trust Companies (Rescinded) (April)
 - Examiner Bulletins (XB)
 - XB 2024-03 - Commercial Examination Overview
 - XB 2024-04 CML - Guidelines for Procedures and Work Paper Documentation for Commercial Examinations
 - XB 2024-05 TR - Guidelines for Procedures and Work Paper Documentation for Trust Examinations
 - XB 2024-06 IT - Guidelines for Procedures and Work Paper Documentation for Information Technology Examinations
 - XB 2019-01 Law, Policy, and Asset Quality Procedures (Rescinded) (May)

- **Examiners' Council**
 - Examiners' Council met in Austin the week of April 29, 2024, to review examination work papers for commercial, trust, and IT. The Examiners' Council also recommended changes to Examiner Bulletins on work paper guidelines, as well as changes to various planning documents and examination procedures.
- **Examination Procedure Revisions/Updates:**
 - Commercial Procedures
 - Planning - Request List (May)
 - Premises and Equipment (April)
 - Bank Owned Life Insurance (May)
 - Trust Procedures
 - Planning (May)
 - Examination Scope Form (May)
 - Small Trust Department (May)
 - Information Technology Procedures
 - Examination Scope Form (April)
 - Summary of Findings (May)

Finance Commission Webcast Historical Data





Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members
From: Robert Nichols, General Counsel
Date: June 4, 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. A hearing was held February 12, 2024, and the Administrative Law Judge issued a proposal for decision, on April 10, 2024, finding in favor of the Department. Commissioner Cooper issued a final order confirming his original Emergency Order on May 10, 2024.

Orders Issued April 1, 2024 – May 31, 2024

The Commissioner issued five enforcement orders during this period:

Bank and Trust Supervision

- Consent Order dated April 26, 2024; Quest Trust Company, Houston, Texas
- Prohibition Order dated April 23, 2024; Iesha Shanteal McGill, Lewisville, Texas

Non-Depository Supervision

- Consent Order dated May 31, 2024; Ansira Partners II, LLC, St. Louis, Missouri
- Consent Order dated April 22, 2024; Tiffany Peterson Felder and Our Bequest Enterprise, LLC, Richmond, Virginia
- Consent Order dated April 10, 2024; Texas G&S Investments, Inc. dba Texas Money Exchange, McAllen, Texas

Public Information Requests

From April 1, 2024, through May 31, 2024, staff received and responded to 16 requests for public information addressed to the Department of Banking and received 14 inquiries through the “Ask a Question” feature. During the same period, we received one public information request addressed to the Finance Commission. One request for an OAG opinion was submitted during this period.

Gifts

Commissioner Cooper attended the Texas Bankers Association 139th Annual Convention in Arlington, Texas, during May 8-10, 2024. The Commissioner participated in a discussion on regulatory issues, the economy, and cybersecurity with former Consumer Financial Protection Bureau Director Kathy Kraninger. A registration fee in the amount of \$447.50 was waived.

FY 2024 Quarterly Order Activity

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

TRUST COMPANY				
Consent Order	0	0	1	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	0	0	1	0

MONEY SERVICES BUSINESS				
Consent Order	5	0	2	0
Cease & Desist	0	0	0	0
Final Order after hearing	0	0	0	0
Total	5	0	2	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	1	0
Cease & Desist	0	2	1	0
Final Order	0	0	0	0
Total	0	2	2	0

2. 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.

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. Texas Department of Banking
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 assessment fee 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, 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 principally 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 license holders as projected from current 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 large future, 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, which is part of the 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 zero 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
- 158% or \$33,496 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) which provides 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 15 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 in annual assessments for currency exchange licensees is significantly lower than money transmitter licensees, 7 Tex. Admin. Code §33.27(j) provides an option for which a currency exchange licensee can obtain a temporary reduction in its assessment for one year if it is 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 the above referenced unbudgeted penalties collected by the department for unlicensed money services business activity and non-compliance by licensed money services businesses, as well as staff vacancies. Therefore, an increase in assessment rates

will not necessarily result in a proportionate increase in assessments collected.

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 August 5, 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 ~~[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 \$60,000.00.

If the calculation result is greater than \$60,000, your annual assessment is \$60,000.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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512-475-1300 / 877-276-5554

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

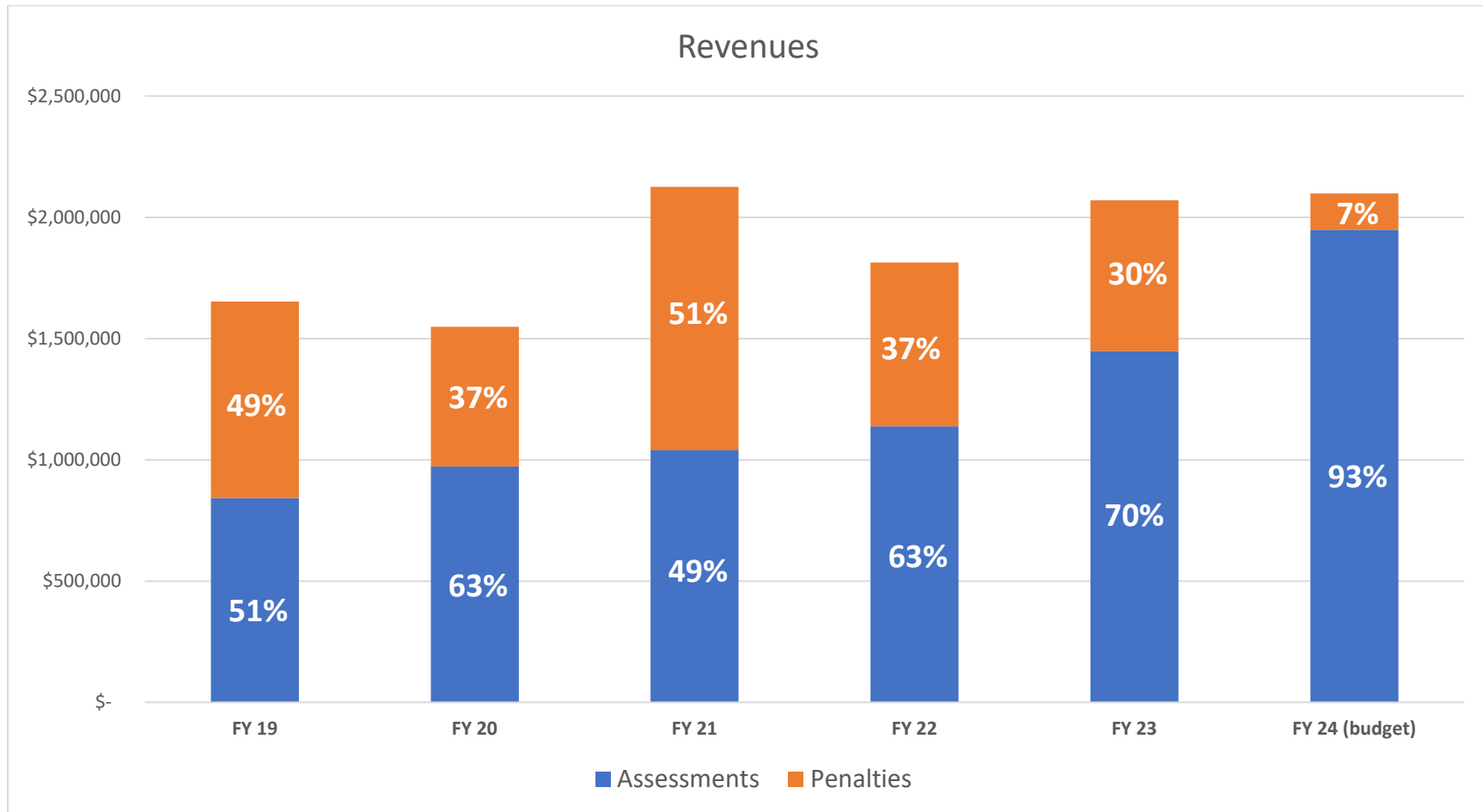


Exhibit B

	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.

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 2, §33.51, Concerning Providing Information to Customers on How to File a Complaint.

PURPOSE: Amendments to Title 7, Part 2, §33.51 of the Texas Administrative Code for the purpose of updating a citation referencing Chapter 151 to instead reference Chapter 152 of the Texas Finance Code.

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 33.51 in the *Texas Register* for comment.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
Rule §33.51***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend 7 TAC §33.51 (§33.51), concerning providing information to customers on how to file a complaint. The proposed amendment arises from the passage of Senate Bill 895, sponsored by Senator Nathan Johnson, during the 88th legislative session and is proposed to revise an outdated citation. Effective September 1, 2023, Senate Bill 895 repealed Chapter 151 of the Texas Finance Code (Finance Code) and added Chapter 152 relating to the regulation of money services businesses.

The proposed amendment to §33.51 updates a citation referencing Chapter 151 to instead reference Chapter 152 of the Finance Code.

Jesus Saucillo, Director of Non-Depository Supervision, Texas Department of Banking, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the proposed amended rules.

Director Saucillo also has determined that, for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is greater clarity of the rules to which money services businesses are subject.

For each year of the first five years that the amended rule will be in effect, the economic costs to persons required to comply with the rules as proposed will be unchanged from the costs required under these rules as they currently exist.

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

- 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;
- require an increase or decrease in fees paid 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.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities nor a difference in the cost of compliance for these entities.

To be considered, comments on the proposal must be submitted no later than 5:00 p.m. on August 5, 2024. Comments should 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.

The amendment is proposed under Finance Code, §152.052 which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 152.

No statutes are affected by the proposed amendment.

§33.51. How do I Provide Information to My Customers about How to File a Complaint?

(a) – (b) (No change.)

(c) Must I provide notice to customers about how to file complaints? Yes. You must tell each of your customers how to file a complaint concerning the money transmission or currency exchange business you conduct under Finance Code, Chapter 152~~[154]~~, in accordance with this section.

(d) – (h) (No change.)

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, §33.81, Concerning Report Requirements for Digital Asset Service Providers.

PURPOSE: New §33.81 will clarify how a digital asset service provider may comply with annual report requirements found in Texas Finance Code, §160.004(d)-(f).

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

RECOMMENDED MOTION: I move that we publish the proposed rulemaking actions to 7 TAC, Part 2, Section 33.81 in the *Texas Register* for comment.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §33.81

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §33.81, concerning report requirements for digital asset service providers. The new rule is proposed to clarify how a digital asset service provider may comply with annual report requirements found in Texas Finance Code, §160.004(d)-(f).

The proposed new rule arises from the passage of House Bill 1666 during the 88th legislative session. Effective September 1, 2023, House Bill 1666 adopted Chapter 160 of the Texas Finance Code relating to regulation of digital asset service providers. Chapter 160 adds certain restrictions and requirements for money transmission licensees which also qualify as digital asset service providers in an effort to increase the security of consumer funds deposited with the entity.

The department has identified certain provisions of Chapter 160 which without clarification represent an obstacle to fully implementing the chapter. The department reviewed feedback from industry in determining how these provisions may be clarified to ensure effective compliance by covered entities.

Pursuant to Texas Finance Code, §160.004(d), digital asset services providers are required to file an annual report with the department which must include:

- (1) an attestation by the digital asset service provider of outstanding liability to digital asset customers;
- (2) evidence of customer assets held by the provider;
- (3) a copy of the provider's plan under Subsection (c); and
- (4) an attestation by an auditor that the information in the report is true and accurate.

§160.004(e) requires an auditor fulfilling the requirements of §160.004 to be an independent certified public accountant licensed in the United States and to apply attestation standards adopted by the AICPA.

As noted above, §160.004(d)(4) requires the auditor to provide an attestation that the information submitted by the digital asset service provider is true and accurate. This conflicts with AICPA attestation standards as there is no standard resulting in a “true and accurate” statement by the auditor. The proposed rule resolves this issue by clarifying that the auditor meets this requirement by performing an examination and providing an unqualified opinion as to whether the items submitted by the digital asset service provider are fairly stated, in all material respects.

To ensure digital asset service providers may effectively comply with the annual report requirement, the proposed new rule thus provides clarity as to the requirements of §160.004(d)(4) by defining the applicable attestation standard the auditor must apply, consistent with §160.004(e).

Director Jesus (Jesse) Saucillo, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Director Saucillo also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is clarity as to what is required under Chapter 160 and thus enhanced consumer protection.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

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

- 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;
- require an increase or decrease in fees paid 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.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on August 5, 2024. Comments should 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.

The new rule is proposed under Texas Finance Code, §160.006, which provides that the commission may adopt rules to administer and enforce this chapter, including rules necessary and appropriate to implement and clarify this chapter.

Texas Finance Code, §160.004, is affected by the proposed new section.

§33.81. Digital Asset Service Provider Report

(a) A Digital Asset Service Provider satisfies the requirements of Section 160.004(d)(4) by submitting an unqualified opinion by an auditor performing an examination regarding whether the items required under Section 160.004(d)(1)-(3) are fairly stated, in all material respects.

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D.

**Office of Consumer Credit
Commissioner**

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Consumer Protection and Consumer Assistance Report

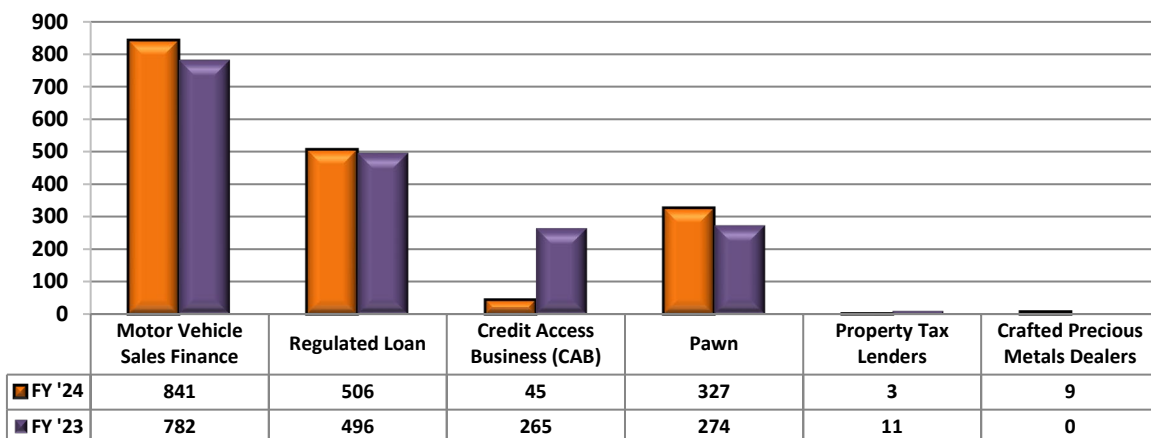
As of April 30, 2024, the OCCC has completed 1,731 exams, which is 57.7% of the FY 2024 target exam production goal of 3,000 exams. Average compliance ratings for all industry groups exceed the 85% satisfactory level benchmark.

The OCCC has completed its work in four multi-state mortgage examinations (covering exams of 48 licenses). These multi-state examination reports remain in review by the Multi-State Mortgage Committee. These exams are anticipated to be finalized by August 31, 2024. These multi-state mortgage exams were conducted using the State Exam System (SES) platform which is supported by the Conference of State Bank Supervisors.

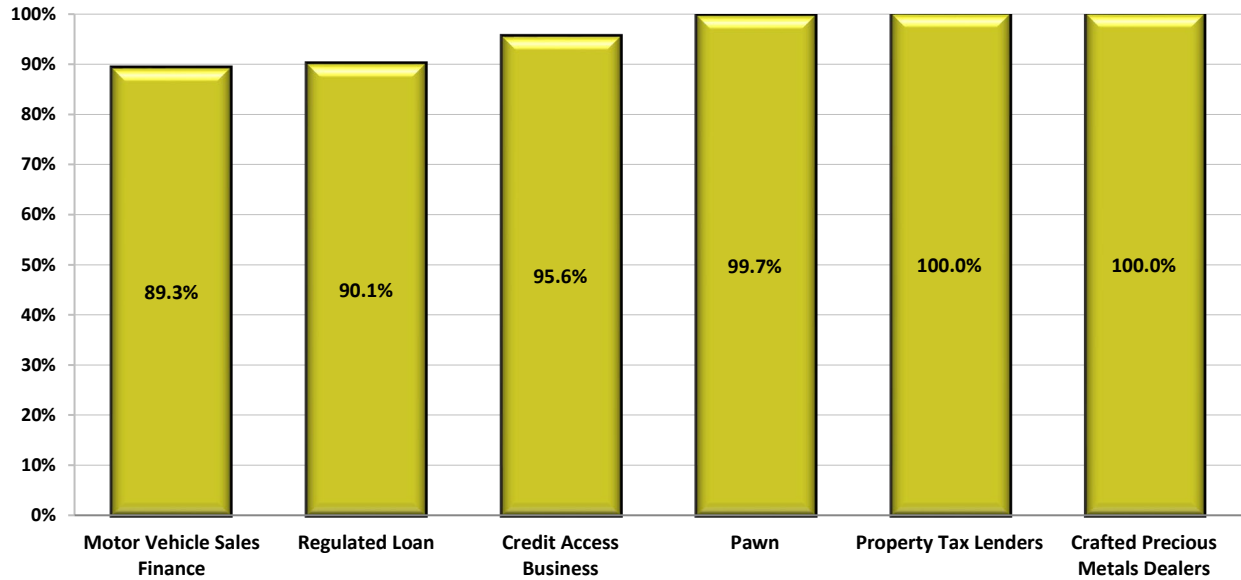
The OCCC will participate in a joint mortgage examination with the Department of Savings and Mortgage Lending beginning June 17, 2024. This joint examination will be conducted using SES.

The examination department continues to prioritize examiner training and development. A new examiner class of five financial examiners began on Monday June 3, 2024. Other training efforts during the remainder of the summer include work on 342-E exam certifications for certain examiners.

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

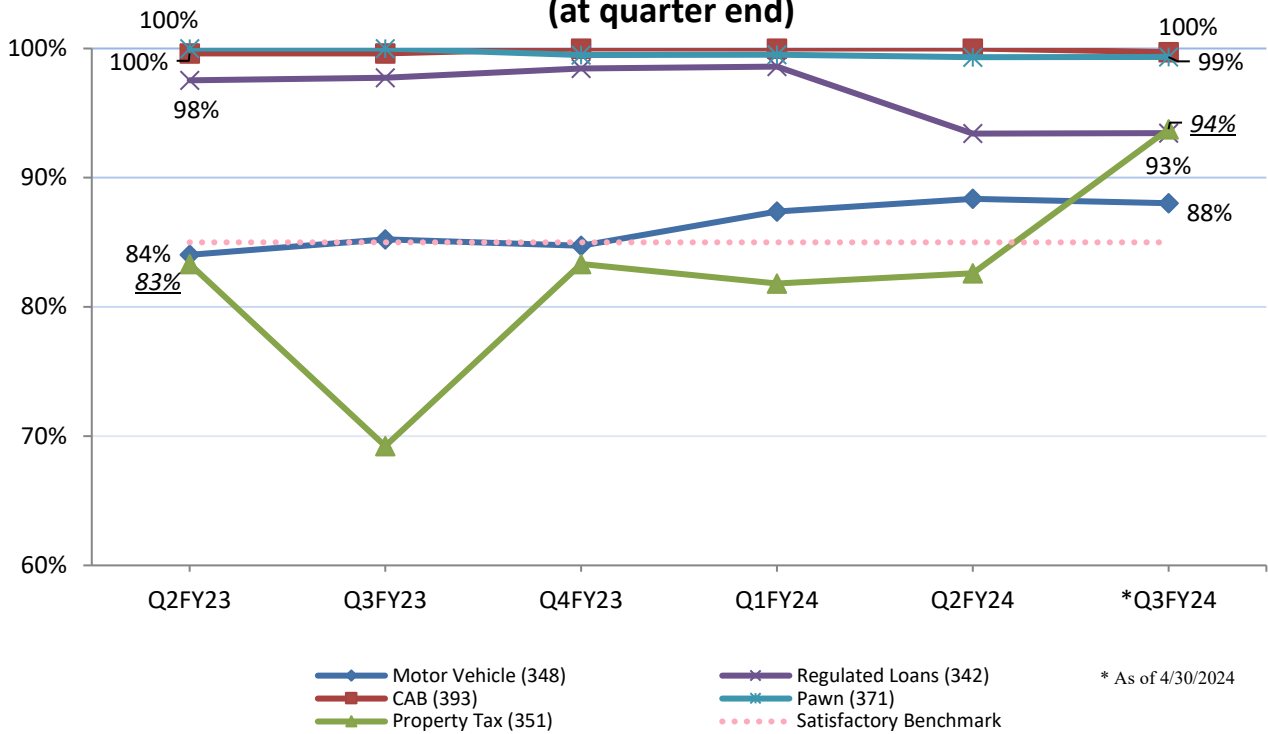


Acceptable Level of Compliance FY '24 (Sept 2023 - Apr 2024)



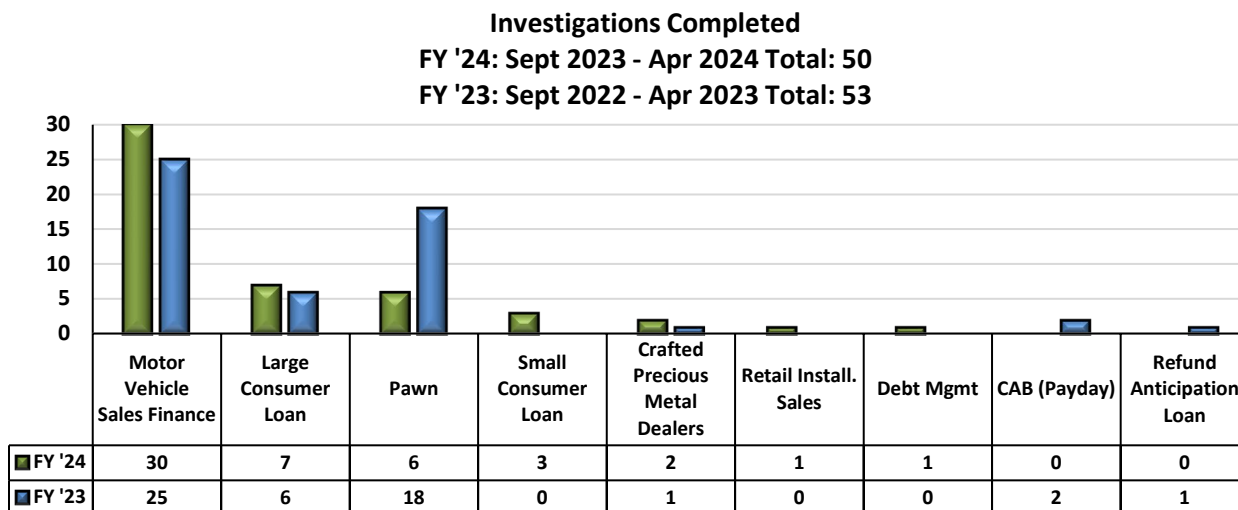
The following chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of April 2024.

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



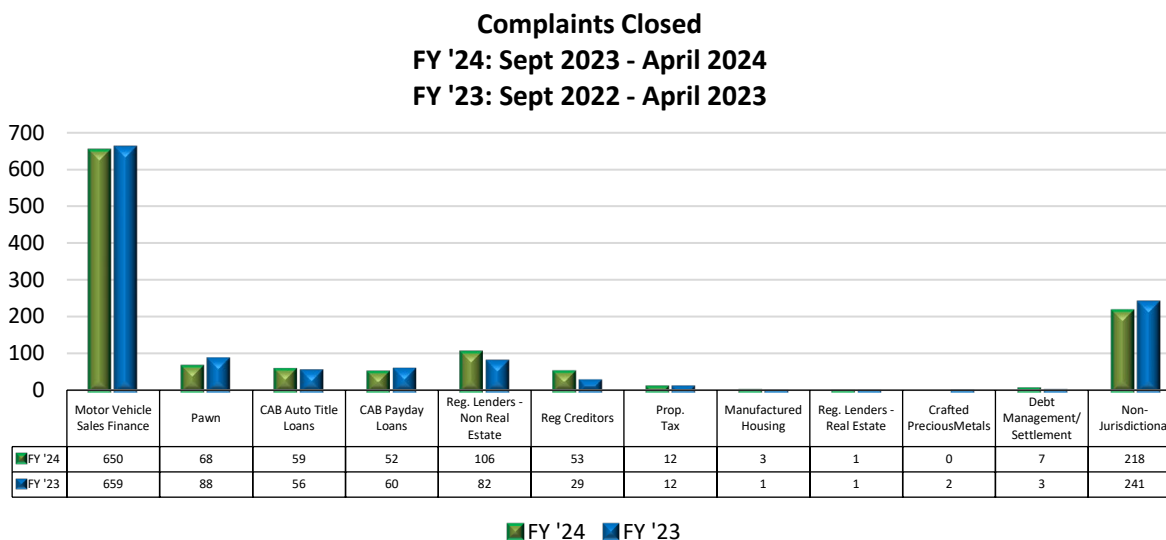
Investigations

For FY 2024 through April, the OCCC completed 50 investigations out of the annual goal of 75. Motor vehicle sales finance issues comprise 60% of the overall number of completed investigations. Referrals to investigation have increased in the second half of FY 2024.

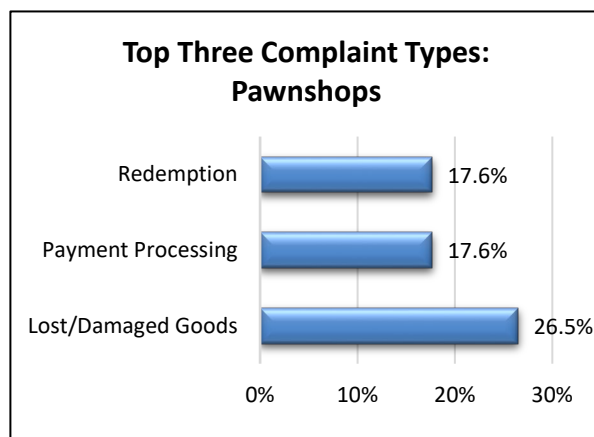
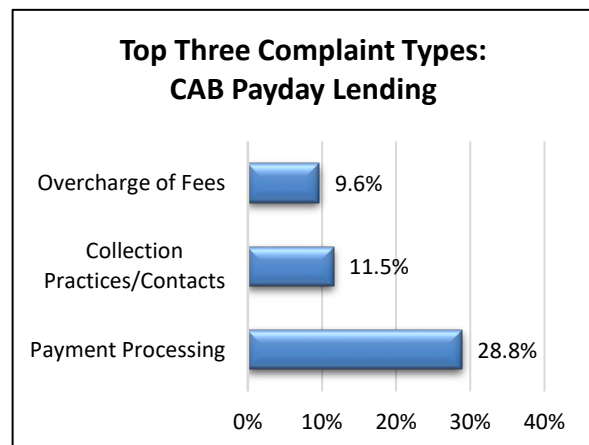
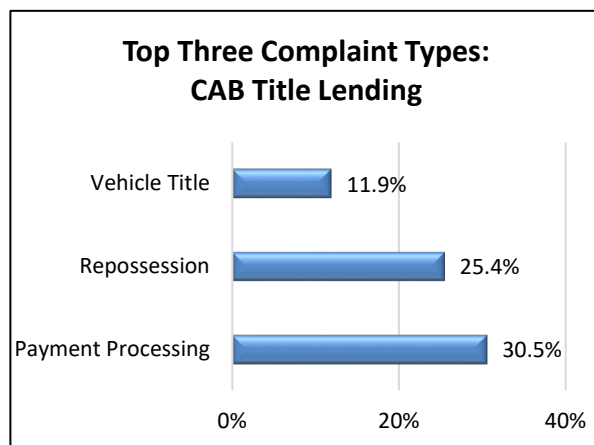
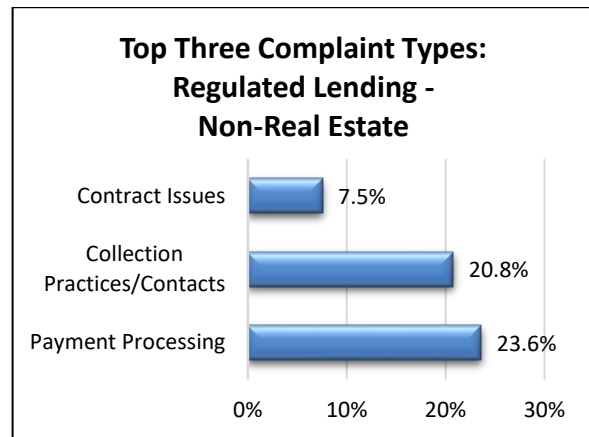
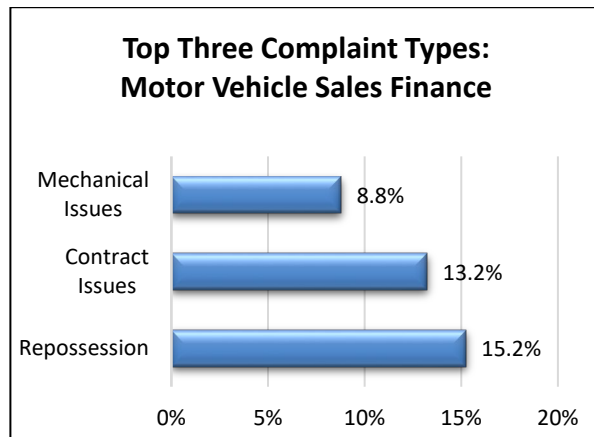


Consumer Assistance

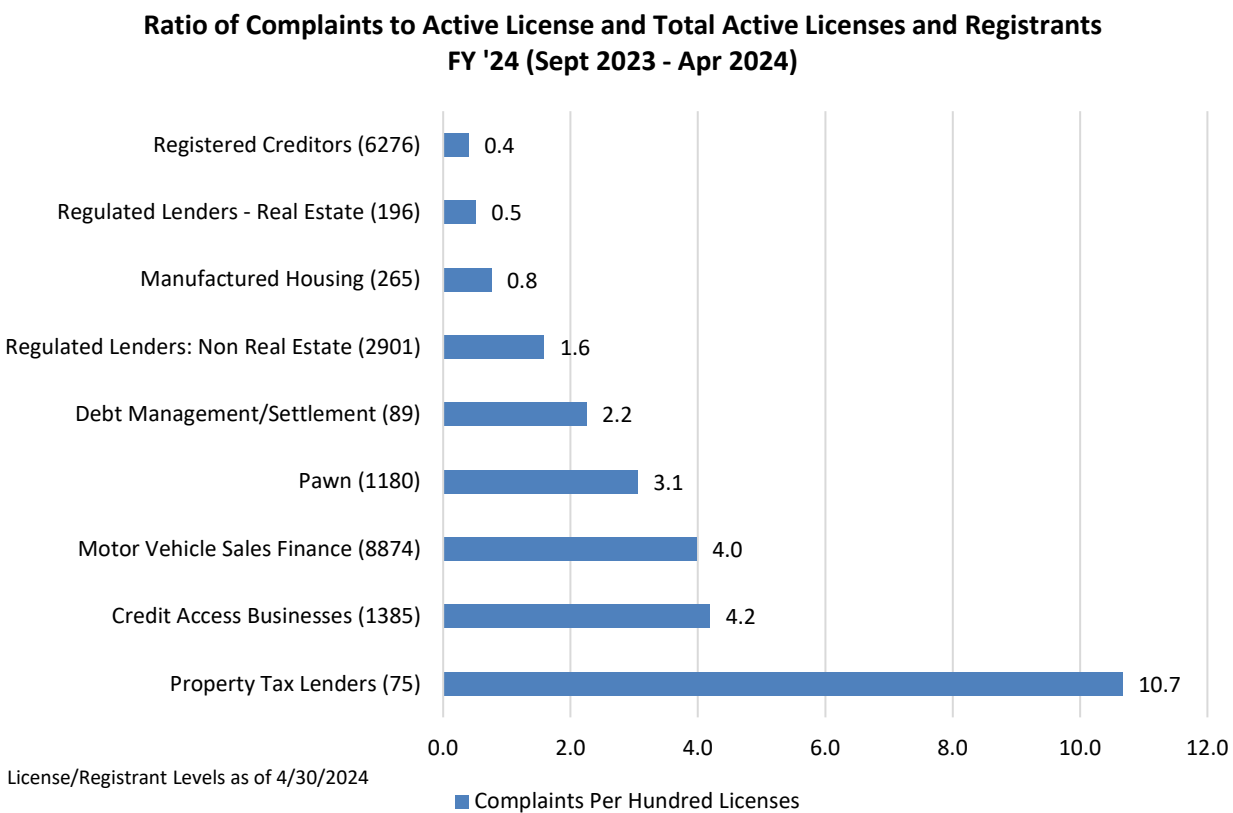
From September 1, 2023, through April 30, 2024, 1229 complaints were closed, of which 218 were classified as non-jurisdictional. The top four areas of jurisdictional complaints remain consistent and are (1) motor vehicle sales finance, (2) credit access businesses, (3) regulated lenders non-real estate, and (4) pawn. MVSF complaints were the largest complaint category at 52.9%. The second largest category was credit access business complaints at 9% collectively, separately these are 4.2% for payday loans and 4.8% for title loans. The third largest category came from regulated lenders non-real estate at 8.6%. The fourth largest category was pawnshops at 5.5%.



The following charts represent the top three complaint areas per license type. Allegations of violations related to payment processing remain in the top three complaints for all areas except motor vehicle sales finance.



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.



Licensing Department Report

Mirand Diamond, Director of Licensing, Finance & HR

June 2024

Renewals Report

Crafted Precious Metals Dealers

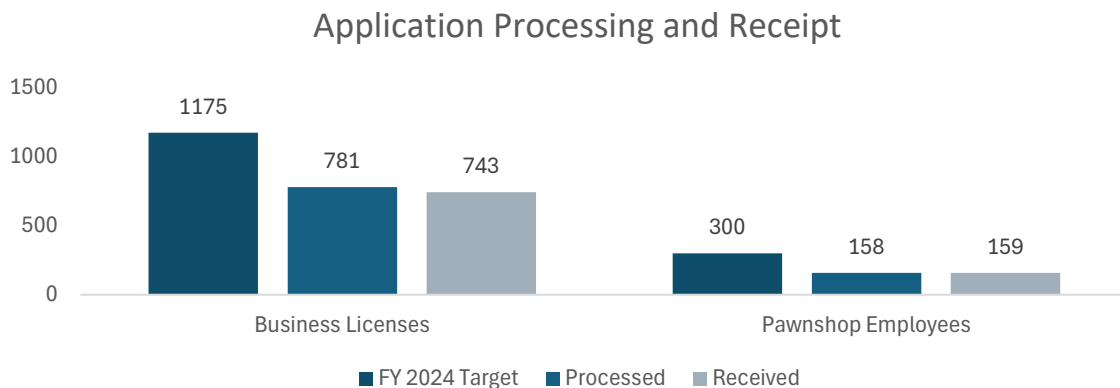
The reinstatement period for Crafted Precious Metal Dealers registration is currently open until July 31, 2024.

Pawnshop and Pawn Employee

Renewals for pawnshop and pawn employee licenses are currently ongoing. Active pawnshops received a 25% discount on the assessment amount. The department anticipates that 98% of pawnshops will renew by June 30, 2024.

Application Processing

The following chart includes application processing and receipt information for FY 2024 to date (September 1, 2023 through April 30, 2024; percent of FY elapsed = 67%).



Other Updates

Digitization of Historical Paper Files

Licensing is continuing work to digitize historical paper files in coordination with a third-party vendor. The Licensing department has completed the preliminary quality assurance check and is preparing for the next phase in this process.

Internal Application Process Review

A review of internal application processes has begun to promote consistency and quality of work while improving customer experience for applicants.



Administration

Financial Education and TFEE

Fiscal year to date, the OCCC has provided direct educational services to 909 individuals. Staff traveled to the Houston area in response to solicitations from two different senior centers and presented virtually to retirees with the Texas Public Employees Association (TPEA) on “Avoiding Financial Exploitation”. A last-minute request to serve as stand-in presenter at Sun City’s annual anti-fraud town hall accounted for an additional 300 unexpected participants for the quarter.

The OCCC is collaborating with the Department of Banking on a virtual webinar later this month on the topic of “Emergency and Financial Preparedness”. Additionally, staff will travel to Dallas in July to make a presentation at the 2024 Texas Bankers Association’s Financial Literacy Summit.

Next month, the 2022-2023 TFEE grantees will submit their final program impact reports, and the 2024-2025 grantees will submit their initial semi-annual reports and reimbursement requests. These reports will be shared during future FC meetings.

Communication

The OCCC’s Strategic Plan, including the agency’s Customer Service Report and Workforce Plan, was published on June 1, 2024. Agency leadership hosted a quarterly town hall on May 3 to provide employees with updates and address questions or concerns. The travel policy was revised in May 2024 with a small update regarding the use of state corporate credit cards for official state travel expenses. The Risk Management and Safety Manual was also recently published in response to the recent review by the State Office of Risk Management.

The OCCC continues to communicate with stakeholders, and staff have provided presentations to regulated entities and other groups as follows:

- On April 4, 2024, Financial Examiner Fancher and Financial Examiner Traweck provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On May 2, 2024, Financial Examiner Fancher and Financial Examiner Traweck provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).

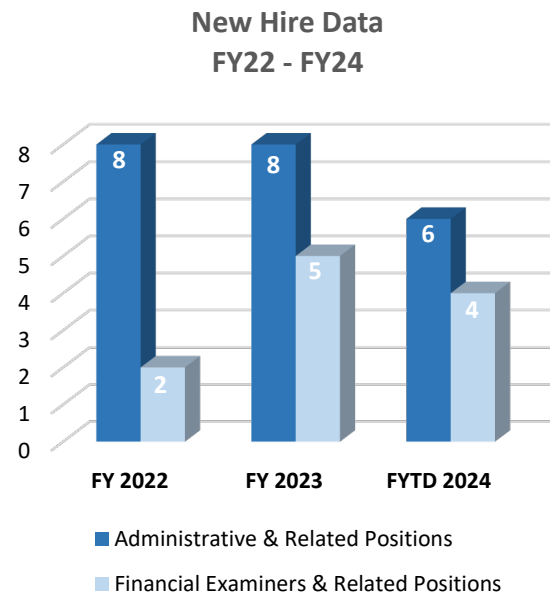
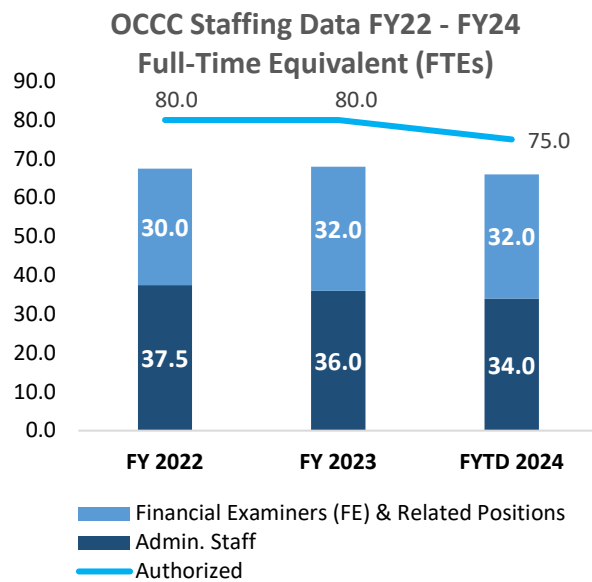
Human Resources

As of June 3, 2024, the OCCC was staffed with a total of 66 FTEs. The agency has worked to fill multiple vacancies so far in 2024 including exam support staff, financial examiners and other positions.

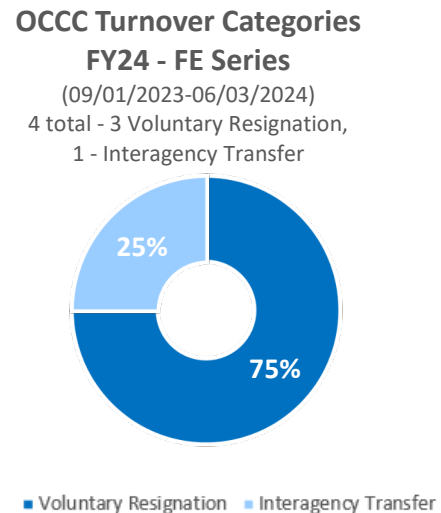
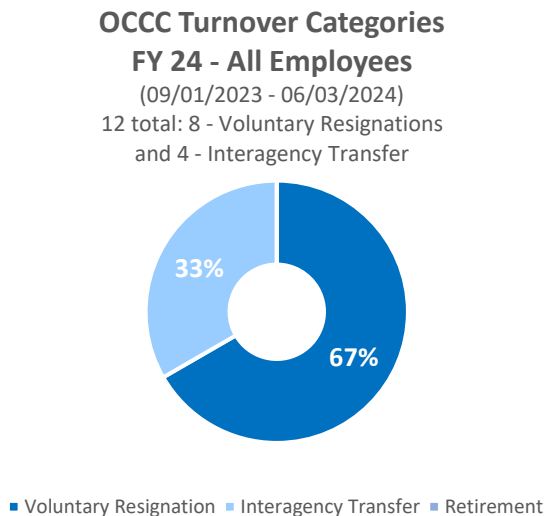
The OCCC has the following open positions:

Vacancy	Status
Financial Examiner I- Austin (1)	Open until filled
Systems Administrator	Open until filled
Accountant II-III	Open until filled

The following charts represent staffing data for Fiscal Years 2022 – 2024 as of June 3, 2024.



The turnover ratio as of June 3, 2024 was 16%, and the chart(s) below represents fiscal year data through June 3, 2024.



Information Technology (June 2024)

Technology modernization and deployment

IT deployed new hardware as scheduled to designated OCCC users.

Cybersecurity and Privacy

IT policies and procedures restructuring continues. Policies are over 90% completed. Procedures are over 35%.

The biannual Security Plan was completed and submitted to DIR by the May 31 deadline.

New training materials were drafted and uploaded to the learning management system, including such topics as incident response, the data use agreement, and encrypting email.



Accounting Report- June 2024

Mirand Diamond, Director of Licensing, Finance & HR

Financial Reporting

The third quarter of fiscal year 2024 ended on May 31, 2024, and the team is working on quarterly financial statements.

Budget

In June the accounting team will begin preparation of the FY 2025 budget. This process will include collaboration and input from directors and projections of planned revenues and expenses.

Staffing

The accounting team is working to fill a vacancy for one accountant who transferred to another state agency.

Other Items

In April, Mirand Diamond participated in a panel discussion at the Texas Fiscal Officers Academy on the perspectives of a CFO.

Quarterly reports due to other agencies are scheduled to be completed over the next 60 days. As required by Government Code, Section 657.008(c), the Veteran Workforce Summary Report is due in June. Additionally, the FTE quarterly report is due in June.



Legal Department Report

Matthew Nance, General Counsel

June 2024

Enforcement Report

Contested Cases

As of May 31, 2024, the OCCC does not have any contested cases pending before the State Office of Administrative Hearings (SOAH). The OCCC recently resolved one case that was previously pending.

Elias Karam d/b/a Elias Joseph Karam (SOAH Docket No. 466-24-14946)

This case was an appeal of the OCCC's denial of a regulated lender license application. On May 23, 2024, the applicant withdrew his hearing request. The OCCC's denial of the license application is now final. On May 29, SOAH granted the OCCC's motion to dismiss the case and canceled the hearing that was previously scheduled for June 26, 2024.

Enforcement Case Highlights

Orders on reporting violations

The Texas Finance Code and its implementing rules require credit access businesses and debt management providers to file periodic reports with the OCCC describing transaction activity. If licensees or registrants violate this requirement, the OCCC's typical practice is to send an injunction for the first violation, followed by administrative penalties for subsequent violations. In April 2024, the OCCC issued eight orders against credit access businesses for failing to file 2023 fourth quarter and annual reports by the deadline of January 31, 2024. In May 2024, the OCCC issued ten orders against debt management registrants for failing to file 2023 annual reports and required documents by the deadline of January 31, 2024.

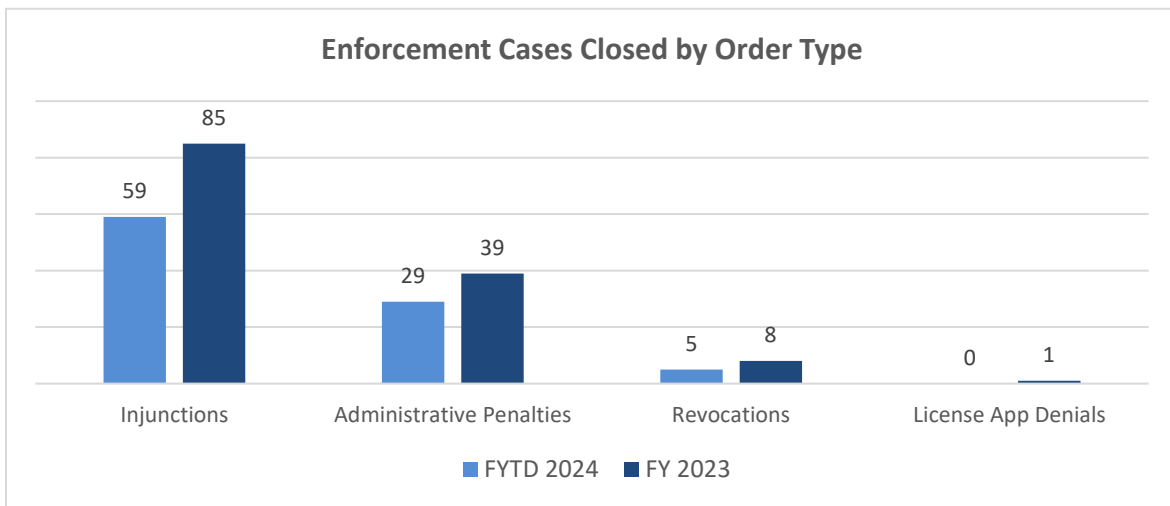
Order to furnish information and allow investigation

Under Chapter 348 of the Texas Finance Code, the OCCC is authorized to examine and investigate motor vehicle sales finance licensees. Licensees are required to allow the OCCC to access their records and to respond to the OCCC's requests for information. If a licensee fails to provide requested information in an investigation, the OCCC's typical practice is to send an order to the licensee to provide the requested information and to allow an investigation. Failure to comply with an order may result in administrative penalties and license revocation. In April 2024, the OCCC closed a case with a final order against a motor vehicle dealer that failed to furnish requested information in an investigation.

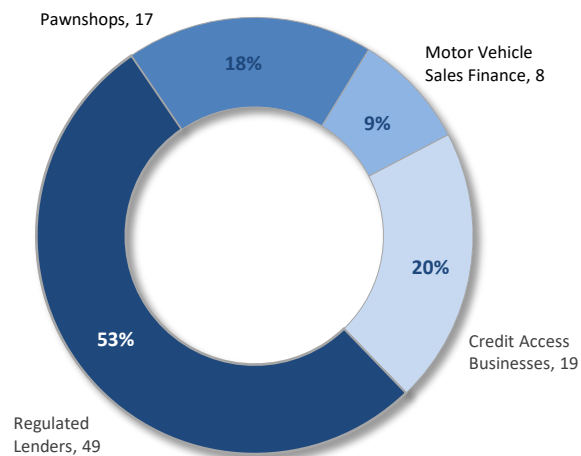
Enforcement Case Tracking

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

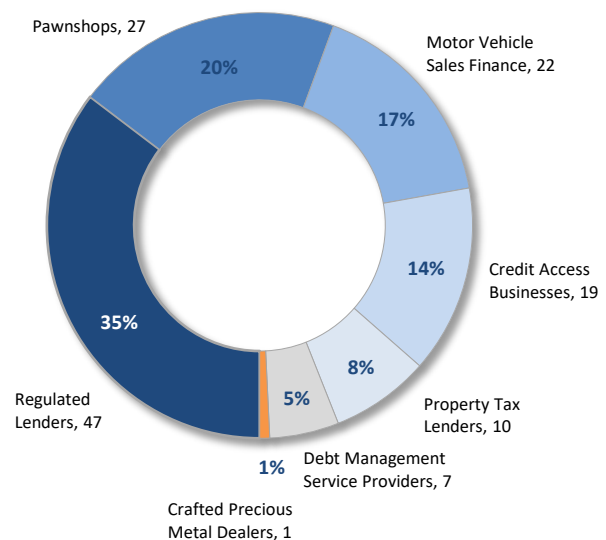
Enforcement Case Tracking Information	FYTD 2024	FY 2023
Enforcement Cases Opened	60	124
Enforcement Cases Closed	93	133
Enforcement Cases Closed by Final Order	89	126
Average Number of Days to Close an Enforcement Action	82	142
Contested Cases Docketed at SOAH	1	2



**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 May 31, 2024, the appeal is still pending.

Rulemaking

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

- Adoption of amendments to 7 TAC Chapter 83, Subchapter A (relating to regulated lenders) to adjust the maximum administrative fee and acquisition charge for regulated loans.
- Adoption of amendments to 7 TAC Chapter 84 (relating to motor vehicle sales finance) to adjust the documentary fee considered reasonable and to make technical corrections.
- Readoption of 7 TAC Chapter 87 (relating to refund anticipation loans), resulting from rule review.
- Readoption of 7 TAC Chapters 151, 152, and 153 (relating to home equity lending), as well as proposed amendments to Chapter 151, resulting from rule review.

At the August meeting, the OCCC intends to present the following rule actions:

- Adoption of amendments to 7 TAC Chapter 86 (relating to registered creditors) to adjust the maximum documentary fee for motorcycles, boats, and certain other vehicles.
- Readoption of 7 TAC Chapter 84 (relating to motor vehicle sales finance), as well any proposed amendments to the chapter, resulting from rule review.

Federal Rulemaking and Litigation

CFPB Payday Rule Litigation

In May 2024, the U.S. Supreme Court issued a decision *Consumer Financial Protection Bureau v. Community Financial Services Association*, a lawsuit challenging the CFPB's Payday Rule. The Payday Rule includes payment-withdrawal requirements for certain short-term and long-term consumer loans. In April 2018, the trade association plaintiffs filed a federal lawsuit against the CFPB to invalidate the Payday Rule, arguing that the rule exceeds the CFPB's statutory authority and violates the federal Administrative Procedure Act. In October 2022, the Fifth Circuit Court of Appeals issued a decision striking down the Payday Rule and holding that the CFPB's funding structure is unconstitutional. On May 16, 2024, the U.S. Supreme Court reversed the Fifth Circuit's decision and found that the CFPB's funding structure is constitutional under the Appropriations Clause of the U.S. Constitution. The case has been remanded to the Fifth Circuit for further proceedings.

CFPB Nonbank Order Registration Rule

On June 3, 2024, the CFPB issued a final rule requiring nonbank financial institutions to report certain enforcement orders and court orders to the CFPB. The rule requires financial institutions to register with the CFPB if they are subject to agency enforcement orders or court orders citing covered laws, which include federal consumer financial protection laws as well as certain state laws that prohibit false or misleading representations. The CFPB has stated that it intends to use this information to identify companies that repeatedly violate covered laws and to create a publicly available registry. The rule is scheduled to take effect on September 16, 2024.

CFPB Auto Finance Data Project

In February 2024, the CFPB issued a notice seeking approval from the federal Office of Management and Budget to begin annually collecting data from auto finance lenders. The CFPB is proposing that it would annually collect a set of data from lenders that originate more than 20,000 auto loans, including 23 categories of data regarding vehicle pricing and loan terms, as well as additional categories regarding the dealer, the lender, and the borrower. For lenders that originate between 500 and 20,000 auto loans, the CFPB would annually collect information consisting of the number of vehicles repossessed and the number of loan modifications.

Advisory Guidance

From April 1, 2024, to May 31, 2024, the OCCC did not issue any advisory bulletins.

From April 1, 2024, to May 31, 2024, the OCCC did not receive any requests for official interpretations of the Texas Finance Code. As of May 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	110	162
Public Information Requests Closed	101	155
Public Information Requests Withdrawn	5	7
Public Information Requests Referred to Office of Attorney General	0	0
Average Number of Days to Address a Public Information Request	2.6	2.3

Gifts Received by the OCCC

From April 1, 2024, to May 31, 2024, the OCCC received no gifts.

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

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

PURPOSE: The purpose of the 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 adoption of the amendments to 7 TAC Chapter 83, Subchapter A.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of 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) adopts 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 commission adopts the amendments to §83.503 and §83.605 without changes to the proposed text as published in the March 1, 2024, issue of the Texas Register (49 TexReg 1169).

The commission received 828 official comments on the proposed amendments. The official comments were submitted by the American Financial Services Association (AFSA), School Fuel, Wise Area Relief Mission (WARM), the Texas Catholic Conference of Bishops (TCCB), the Texas Consumer Credit Coalition (TCCC), the Texas Consumer Finance Association (TCFA), AARP, Texas Appleseed, and 820 individuals. The comments from AFSA, TCCC, and TCFA generally supported the proposed amendments. The comments from School Fuel, WARM, TCCB, AARP, Texas Appleseed, and the individuals opposed the proposed amendments. Of the official comments from individuals, 819 were from individual AARP members and contain substantially the same body text. The commission's responses to the comments are discussed later in this preamble.

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 adopted 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 informal written precomments on the rule text draft. The OCCC also received seven comments after the March 31 deadline for official comments and considers these comments to be informal comments. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Adopted amendments to §83.503 adjust the maximum administrative fee for a consumer loan under Texas Finance Code, Chapter 342, Subchapter E. The amendments 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 in 2013, 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).

Adopted amendments to §83.605 adjust the maximum acquisition charge for a consumer loan under Texas Finance Code,

Chapter 342, Subchapter F. The amendments 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 in 2013, 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 adopted amendments to §83.503, the maximum administrative fee will be set at \$125 through June 2025 and will then be adjusted annually based on the consumer price index (CPI). Under the adopted amendments to §83.605, the maximum acquisition charge will be set at the lesser of 12.5% of the cash advance or \$125 through June 2025, and the \$125 amount will 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 OCC and the commission

believe that the CPI-based methodology in the amendments provides an effective method for the administrative fee and acquisition charge to keep pace with increases in costs.

The adoption includes a change in §83.605(a)(1) to replace the current 10% maximum for the acquisition charge with 12.5%. 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. This change ensures that lenders can be compensated for cost changes since 2013 for loan amounts up to \$1,000.

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 adjustment to the maximum administrative fee and acquisition charge (from \$100 to \$125) approximates cost increases between September 2013 and November 2023. This adjustment will 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 adjustment will 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 will 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.

Similarly, the 2024 official comments from AFSA, TCCC, and TCFA support the proposed amendments and describe costs that have increased since 2013. AFSA's comment supports the adjustment and explains that using CPI "as a reference to adjust fees ensures that adjustments align with the genuine cost of doing business in Texas, promoting transparency and reliability in regulatory measures." TCCC's comment describes increased costs for labor, software, hardware, and office space. Similarly, TCFA's comment describes increased expenses for employee wages, rent, utilities,

information technology, privacy and security compliance, and general office expenses.

In general, consumer groups have 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.

Similarly, the 2024 official comments from School Fuel, WARM, TCCB, AARP, Texas Appleseed, and individuals argue that the fees should not be adjusted and express concerns about increased costs for consumers. The comments of School Fuel and WARM emphasize negative effects on poor and low-income consumers. The comments of TCCB, AARP, and Texas Appleseed express similar concerns and argue against an "automatic" or "perpetual" CPI-based adjustment without further

review. Regarding the adjustment to the Subchapter F acquisition charge for loans under \$1,000, Texas Appleseed's comment expresses concerns about repeated refinances for Subchapter F loans. One comment from an individual requests reconsidering the rule because it "hurts the people on [the] lower part of the economy" the most. The other 819 individual comments are from AARP members and contain substantially the same body text, opposing the proposed changes because of increased borrowing costs and harm to consumers.

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. The OCCC and the commission believe that an adjustment is necessary to ensure that the rules meet their intended purpose of enabling lenders to be compensated for costs of a loan, and therefore disagree with the comments suggesting that the amounts should not be adjusted at this time. Regarding commenters' concerns about the CPI-based adjustments, it is important to note that the amount of any adjustment will not be predetermined. Rather, the adjustments will be based on a particular year's CPI, which is an objective measure of overall costs. For this reason, the OCCC and the commission believe that the CPI adjustment is an appropriate component of the rule changes. Regarding the concern about refinances of Subchapter F loans, the OCCC and the commission believe that the 12.5% limitation on the acquisition charge, together with the rule's existing limitation of one acquisition charge per month, provides an effective way to limit the acquisition

charge for smaller loans. The adopted changes achieve an appropriate balance by maintaining loan affordability for consumers while compensating lenders.

The rule changes to §83.503 are adopted 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 adopted 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 adoption 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 adoption and found it to be
a valid exercise of the agency's legal
authority.

Issued in Austin, Texas on June 21, 2024.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner

March 18, 2024

Matthew Nance, General Counsel
Texas Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

Re: Regulated Lender Fee Proposed Rules

Dear Mr. Nance:

On behalf of the American Financial Services Association (AFSA),¹ thank you for the opportunity to comment on the OCC's proposed rules regarding regulated lender fees in Title 7, Chapter 83 of the Texas Administrative Code.

We applaud your office's goal of modernizing and clarifying current rules so that lenders can serve Texas consumers more effectively. We would like to take this time to specifically address our support for the review of costs and increases in the administrative fees.

1) §83.503 and §83.605

Texas Finance Code Sections 83.503 and 83.605 outline the highest maximum administrative fees and limitations on acquisition charges, respectively. As it currently stands, an adjustment to the administrative fee is crucial for Chapter 342, Subchapter E lenders to mitigate a substantial portion of the actual costs incurred in providing regulated credit within local communities across Texas. In 2013, the Texas Finance Code underwent changes with the enactment of Senate Bill 1251. This legislation granted the Finance Commission explicit jurisdiction to examine the administrative expenses associated with loan origination within the domain of Chapter 342, Subchapter E, and to establish a definitive ceiling for administrative fees. Within Chapter 342, Subchapter E, lenders were faced with a variety of origination costs, spanning over labor, software, hardware, and workspaces. In the same year, the Finance Commission introduced regulations fixing the upper limit of the administrative fee at \$100, a benchmark that has remained unaltered ever since.

Modifying the administrative fee will assist lenders under Chapter 342, Subchapter E in mitigating a substantial portion of the real expenses involved in providing regulated credit within Texas communities. Prioritizing responsible loan underwriting is in the consumers' best interest, ensuring a higher likelihood of success for borrowers. Endorsing this adjustment to the current administrative fee will enhance consumer credit availability for a diverse range of qualified borrowers, thereby reinforcing the Commission's commitment to facilitating access to credit.

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice.

2) Consumer Price Index

Every one of the above-mentioned expenses has experienced substantial growth over the past ten years following the Finance Commission's initial modification of the administrative fee. Since that initial adjustment, the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI") has surged by 31% from September 2013 to November 2023. Should the proposed amendment to 7 TAC §83.503 align with the CPI, the permissible administrative fee would reach \$133.00, far exceeding the contemplated \$25.00 increment currently under discussion.

Additionally, it is essential to highlight CPI as a practical tool for assessing the cost of doing business in the state. CPI covers important factors such as labor, rent, and utilities, offering a straightforward overview of economic variables. Recognizing the practical value of CPI in evaluating the changing expenses associated with lending operations is crucial for maintaining a fair and clear administrative fee structure. Using CPI as a reference to adjust fees ensures that adjustments align with the genuine cost of doing business in Texas, promoting transparency and reliability in regulatory measures.

Thank you for your attention to these comments. If you have any questions about how AFSA can be of any further assistance to you as you move forward, please do not hesitate to contact me at 805-501-8873 or erayhan@afsamail.org.

Sincerely,



Elora Rayhan
State Government Affairs Analyst
American Financial Services Association
1750 H Street, NW, Suite 650
Washington, DC 20006-5517
(805) 501-8873
erayhan@afsamail.org

From: [REDACTED]
Sent: Thursday, March 21, 2024 7:46 AM
To: rule_comments
Subject: Opposed to Higher Consumer Loan Fees

You don't often get email from [REDACTED]. [Learn why this is important](#)

Dear Commissioners,

As an AARP member and Texas resident, I am opposed to proposed changes to the Texas Administrative Code Chapter 83 that would raise the cost of already expensive loans.

A potential fee increase would be harmful to consumers. It would further strain already tight family budgets of Texans.

Increasing borrowing costs is not acceptable nor tolerable at this time.

I'm urging you to oppose proposed changes to 7 TAC 83.503 and 7 TAC 83.605 and resist actions that would be expensive or harmful to Texas consumers.

Thank you.

Jeff Bridgewater
[REDACTED]

From: [REDACTED]
Sent: Thursday, March 21, 2024 12:20 PM
To: rule_comments
Cc: Michael Pigg; Irene Gallegos, PhD
Subject: Proposed Change to Loan Fees

[You don't often get email from [REDACTED]. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

School Fuel, a non profit serving hungry children in San Marcos, Tx strongly opposes any increase in loan fees. The proposed change would negatively affect thousands of the poorest residents of Texas. I urge you not to bend to pressure from those who already prey on poor and poorly educated individuals who are already struggling to provide for their families.

Diane Breedlove, Treasurer
School Fuel Board of Directors
schoolfuel2013@yahoo.com

Sent from my iPhone

From: Angie Gardiner <angie@warmtx.org>
Sent: Thursday, March 21, 2024 12:56 PM
To: rule_comments
Subject: Comment to the OCCC on TRD-202400678 and TRD-202400679

You don't often get email from angie@warmtx.org. [Learn why this is important](#)

Our food pantry serves almost 900 unique families a month. We see the struggle on a daily basis of trying to survive and put food on the table. We work with low-income families that are living paycheck to paycheck. Any and all increase in costs have a tremendous impact on their budgets. Average annual percentage rates on these loans already range between 35% and over 100%. Making these loans even more expensive will hurt the families we serve. At a minimum the loan fees should not be set up to increase every year with the Consumer Price Index, and we worry about the proposal to increase fees on the smallest and most expensive loans (loans under \$1,000 at current APRs of over 100%). The individuals and families we serve are struggling to pay rent, buy gas to get to work and buy groceries, the basic necessities of life. Adding extra costs to loans will only make their situation more difficult.

Thank you for taking the time to read my comments.

Thank you and God bless,

Angie Gardiner

Executive Director

WARM

940-626-4676 o
940-626-4677 f
300 N Trinity
Decatur, TX 76234





Texas Catholic Conference of Bishops

THE PUBLIC POLICY VOICE OF THE CHURCH

March 23, 2024

RE: Comments on The Office of Consumer Credit Commissioner (OCCC) proposed rules for regulated lenders 7 TAC §83.503 and 7 TAC §83.605

Sent via email to: rule.comments@occc.texas.gov.

Dear Deputy General Counsel Nance,

The TCCB submitted comments to the OCCC in January of 2022 regarding the proposal to increase the 342E administrative fee and testified before the Finance Commission on February 16 regarding the proposed increases for 342E and 342F loans.

Through Catholic Charities and St. Vincent de Paul ministries, the Church serves clients who turn to these loans, and we are committed to advocating for them. We are concerned that the increase in the administrative fee and acquisition charge is excessive and that the reason for the increase is a general rise in inflation as opposed to data on the actual costs of administering these loans. We are also adamantly opposed to allowing an automatic yearly increase in the administrative fee and acquisition charge based on the Consumer Price Index without comment and review. Texans experiencing financial hardship need accessible and affordable loan options; these proposed increases will be a burden to borrowers who are also suffering from the dramatic increase in the cost of living.

Every penny counts, especially to these borrowers, and any increases should correlate to specific costs incurred by lenders and not be based on general economic factors. Any future increases must be subject to review and comment and not automatic.

Please consider the hard data and position of vulnerable Texans in determining whether an increase is appropriate and just.

Sincerely,

Executive Director, Texas Catholic Conference of Bishops



March 26, 2024

Mr. Matthew Nance
General Counsel
Texas Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

Via Electronic Delivery

Re: Support for Proposed Amendment to 7 TAC §83.503

Mr. Nance:

On behalf of the Texas Consumer Credit Coalition ("TCCC" or "Coalition"), please accept our support for the Texas Finance Commission's proposed amendments to §83.503 in 7 TAC Chapter 83, Subchapter A, concerning Rules for Regulated Lenders published in the *Texas Register* on March 1, 2024.

The Coalition is a member-driven organization comprised of community-based, responsible installment lenders regulated, licensed, and examined by the Texas Office of Consumer Credit Commissioner ("OCCC") in accordance with Chapter 342, Subchapter E of the Texas Finance Code. TCCC members have a demonstrated history of safely serving Texas borrowers from our 490+ brick-and-mortar locations across the state for over fifty years.

In 2013, Senate Bill 1251 amended the Texas Finance Code to give the Finance Commission the express authority to review the administrative costs associated with the origination of a loan under Chapter 342, Subchapter E and set a maximum administrative fee. Origination costs for lenders operating under Chapter 342, Subchapter E include, but are not limited to, labor, software, hardware, and office space. The same year, the Finance Commission adopted rules setting the maximum administrative fee at \$100.00. The fee has not been adjusted by the Finance Commission since 2013.

Without exception, all of these costs have increased significantly over the last decade from the Finance Commission's initial administrative fee adjustment. Since the initial administrative fee adjustment, the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI") has increased by 31% between September 2013 and November

2023. If the proposed amendment to 7 TAC §83.503 tracked with CPI, the allowable administrative fee would be \$133.00, well above the suggested \$25.00 increase under consideration.

By using CPI as a metric to allow for future fee adjustments, the proposed rule provides the OCCC with a means to keep pace with the changing economic environment. CPI is a recognized gauge for inflationary impact that is used by consumers, businesses, and state and federal governments to determine policy related to costs borne by consumers goods and services. Lending services are undeniably services rendered to consumers, making CPI an appropriate barometer for whether those costs are keeping pace with inflation.

It is in the best interests of consumers to have lenders that are responsibly underwriting loans to ensure the greatest probability of success for borrowers. By supporting this reasonable adjustment to the existing administrative fee, the Commission will strengthen the availability of consumer credit to the widest range of qualified borrowers.

Thank you for the opportunity to submit formal comments and your consideration on this important rule proposal.

Sincerely,



Austin Clancy

President

Texas Consumer Credit Coalition



March 27, 2024

Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Blvd.
Austin, Texas 78705
Via email to: rule.comments@occc.texas.gov

Re: Proposed Amendment to 7 TAC § 83.605 (Limitation on Acquisition Charge)
Comments of the Texas Consumer Finance Association

Dear Mr. Nance,

The Texas Consumer Finance Association ("TCFA") provides these comments in response to the Texas Finance Commission's notice of proposed amendments to 7 Tex. Admin. Code (TAC) § 83.605 published on March 1, 2024 in the Texas Register at 49 Tex. Reg. 1169 (the "Proposed Rule"). 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.

I. TCFA Supports the Proposed Rule

TCFA represents the interests of traditional installment lenders in Texas making loans under Subchapter F, Chapter 342, Texas Finance Code. TCFA has 144 members representing over 1,650 store fronts—from small single-location family businesses to large multi-office companies. TCFA appreciates the opportunity to submit comments on this important rule amendment.

The Proposed Rule proposes to amend 7 TAC § 83.605 to adjust the maximum acquisition charge to the lesser of 12.5% of the cash advance or \$125 through June 2025. The \$125 amount would thereafter be adjusted annually based on the Consumer Price Index ("CPI"). Currently, an authorized lender may collect an acquisition charge that does not exceed the lesser of 10% of the cash advance or \$100, and there is no CPI adjustment to keep up with rising costs. 7 TAC § 83.605(a). Thus, under the Proposed Rule, the maximum acquisition charge for a \$400 loan would increase from \$40 to \$50. For a loan of \$1,000 or more, the maximum acquisition charge would increase from \$100 to \$125.

TCFA supports the Proposed Rule. TCFA appreciates the Finance Commission's and OCCC's awareness of rising costs facing regulated lenders. The adjustment will provide needed relief across the full spectrum of loan amounts, and the annual CPI adjustment will ensure that the acquisition charge does not fall too far out of line with rising costs.

II. The Acquisition Charge is Designed to Compensate Lenders for Administrative Costs

As the Finance Commission has explained in its original adoption of this rule, “[t]he Subchapter F acquisition charge compensates the lender for performing the administrative activities related to making the loan and the risk involved in engaging in the transaction.” 38 Tex. Reg. 5704, 5705 (Aug. 30, 2013). Among other things, the costs include “labor, software, hardware, office space,” and the use of resources and efforts unique to qualifying a Subchapter F borrower considering the greater exposure to default. 38 Tex. Reg. 5704, 5705.

III. Administrative Costs Have Risen Drastically in the Last 10 Years

In 2013, the Legislature authorized the Finance Commission to increase the statutory minimum charge by rule, which the Commission did that year. The acquisition charge has not changed since. It has been 10 years since Subchapter F lenders have received any economic relief for administrative costs. Meanwhile, administrative expenses for lending operations have drastically increased, including expenses for employee wages and benefits, rent, utilities, information technology hardware and software, privacy and security compliance, and general office expenses. While some stakeholders have argued that improvements in technology should have helped to reduce costs, the contrary is true. Compliance with federal regulations, including the FTC’s Safeguard Rule, and efforts to ensure cybersecurity and financial privacy have required more technology that contributes to the increased administrative costs to make a loan. Moreover, Subchapter F lenders are largely brick and mortar operations with fixed costs, such as rent and labor. From September 2013 through November 2023, costs have increased by 31% based upon the CPI. As explained by the OCCC in the preamble to the Proposed Rule, all major indexes that measure relevant prices have increased drastically since 2013, including those for wages, office space, and technology.

With respect to Subchapter F lenders, from 2016 – 2022, industry expenses have increased by 45% according to filings from their yearly reporting to the OCCC. During that same time frame, the industry has seen a 35% decline in the number of loans made. See OCCC, Regulated Lender Consolidated Volume Report, Calendar Years 2016, 2022. Compared to 2013, there has been a 48% decline in number of loans made. The result is a much higher cost increase on a per loan basis than may be reflected in CPI or other indices. Moreover, the Federal Reserve has continued to increase interest rates, which in turn has increased the cost of capital that some in the industry utilize for operations.

The bottom line is it costs significantly more to make a loan today than it did in 2013. Inflation and the increased cost of doing business has far outpaced lenders’ abilities to manage the costs. The rate that regulated lenders are authorized to charge is set in statute and cannot be adjusted to address increased costs. And while the maximum cash advance increases with the CPI, the acquisition charge does not similarly adjust. The acquisition charge is the mechanism by which regulated lenders manage administrative costs, but it has not changed in 10 years.

IV. The Proposed Rule Equitably Adjusts the Acquisition Charge to Address Increased Costs

The Proposed Rule appropriately adjusts the acquisition charge to ensure lenders can recover at least a portion of the increased costs experienced since 2013. Adjusting the dollar limitation of the maximum acquisition charge from \$100 to \$125 provides relief to lenders for loans above \$1,000. However, most lenders also make loans below \$1,000, and many smaller lenders frequently lend in amounts below this threshold. While administrative costs may vary by location or company, the cost to make a loan for any one company is similar regardless of the amount of the loan. The lender incurs the same cost for labor, rent, hardware, software, and general office expenses for a \$400 loan as it does for a \$1,200 loan. Costs have increased with respect to the full range of loan amounts under Subchapter F, not just loans above \$1,000. Thus, as in the Proposed Rule, it is appropriate to also adjust the percentage limitation from 10% to 12.5% of the cash advance, to provide relief for loans below \$1,000. These adjustments to 7 TAC § 83.605(a) strike the appropriate balance between loan affordability for consumers and compensation for lenders across the full spectrum of loan amounts offered by Subchapter F lenders.

V. Annual CPI Adjustment is a Trusted Method to Ensure the Acquisition Charge Keeps Pace with Costs

TCFA also supports the Proposed Rule's annual CPI adjustment to the maximum acquisition charge dollar amount of \$125. An annual CPI adjustment is important to ensure that acquisition charges keep pace with changing costs. The lack of an adjustment over the last 10 years has resulted in a large disparity between the charge and costs, which can be avoided by an annual CPI adjustment. As the preamble to the Proposed Rule explains, CPI is the most widely used measure of inflation and is already used by the Texas Legislature to adjust rate brackets and debt management fee amounts in the Texas Finance Code. CPI objectively reflects the administrative costs that licensees must incur to make a loan, which costs the acquisition charge is designed to compensate for.

VI. The Rule Amendments Should be Adopted as Proposed

TCFA respectfully requests the Finance Commission adopt the Proposed Rule, adjusting the acquisition charge in 7 TAC § 83.605 to the lesser of 12.5% of the cash advance of the loan or \$125, with an annual CPI adjustment for the dollar cap. This adjustment will provide needed relief to lenders and strike the proper balance between consumer protection and continued availability of regulated, beneficial, and sustainable consumer installment credit.

Thank you for the opportunity to provide these comments.

Sincerely,

/s/ Jason Buddin

Jason Buddin
President
Texas Consumer Finance Association

From: [REDACTED]
Sent: Wednesday, March 27, 2024 12:36 PM
To: rule_comments
Subject: Loan fees

You don't often get email from [REDACTED]. [Learn why this is important](#)

Please reconsider this action as it hurts the people on lower part of the economy latter the most. Not to mention in the current inflationary climate for all. Sincerely Paul Dunn

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March 29, 2024

Matthew Nance, Deputy General Counsel
Office of the Consumer Credit Commissioner
Texas Finance Commission
2601 N. Lamar Blvd.
Austin, Texas 78705

Sent via email to: rule.comments@occc.texas.gov

RE: Comment to the OCCC on TRD-202400678 and TRD-202400679

Dear Mr. Nance,

AARP – on behalf of its 2.4 million members - is submitting comments about the proposed changes to **7 TAC §83.503** and **7 TAC §83.605**, which would raise the cost of already expensive loans.

AARP appreciates the efforts by the Office of the Consumer Credit Commissioner (OCCC) to determine an appropriate administrative fee for Chapter 342, Subchapter E loans, and acquisition charge for Chapter 342, Subchapter F loans. However, the proposed rule would increase the cost of credit for older Texans at a time when many are facing extraordinary financial challenges. Thus, AARP respectfully asks the Finance Commission to reject the proposal.

AARP is constantly hearing from older Texans that they are experiencing a variety of financial concerns, from paying more for groceries, medicine, housing, and utilities, to managing health care costs and saving for retirement. There is no latitude in the finances of Texans 65-plus and when they need access to credit, they need to have it available at fair rates and fees. Raising the maximum fee charges for high-cost loans would negatively impact older adults' budgets and their ability to live with dignity and to decide how (and where) they live as they age. Additionally, AARP is deeply concerned about the fee increase for loans under \$1,000. This increase would allow an APR as high as 198% for these loans, which is a shocking loan cost.

Furthermore, AARP opposes using the Consumer Price Index (CPI) to make automatic annual fee adjustments because it locks in the principle of no review of actual costs and efficiencies. In 2013, the Texas Legislature authorized the Finance Commission to set, by rule, maximum amounts for the administrative fee. For the Commission to determine an appropriate and fair fee level, it must look at underlying cost components and reflect relevant efficiencies. As a proxy for actual costs and efficiencies, the CPI will likely lead to more expensive loans for Texans as it will not track reduced costs due to improved technology.

Thank you for the opportunity to submit our comments, and we appreciate the Finance Commission's hard work to protect consumers' interests.

Sincerely,

Stephanie Mace

Associate State Director, Advocacy & Outreach with AARP Texas

smace@aarp.org

Texas Appleseed

March 30, 2024

Matthew Nance, Deputy General Counsel
Office of the Consumer Credit Commissioner
Texas Finance Commission
2601 N Lamar Blvd.
Austin, TX 78705

Sent via email to: rule.comments@occc.texas.gov

RE: Comment to the OCCC TRD-202400678 and TRD-202400679

Texas Appleseed is a data-driven nonprofit committed to supporting children, families, and communities through policy change. We are submitting comments regarding two rulemaking proposals posted in the Texas Register, proposing amendments to **7 TAC §83.503** and **7 TAC §83.605**. Our topline concern is that the proposal to increase fees for consumer loans in Texas would create hardship for working Texans and those living on fixed incomes, as well as Texans living in rural communities.

Overview

Attached are the comments that we submitted, in partnership with other members of the Texas Fair Lending Alliance for the rule pre-comment. The primary concerns in the attached comment letter were that:

1. Based on an analysis of lending laws in all 50 states, Texas already permits total loan costs that are above average compared to other states. We are concerned that a 25% increase in the fee amount will have the effect of making Texas one of the more expensive consumer credit markets in the country.
2. We are concerned about creating a system that defaults to perpetual fee increases through enabling annual increases tied to the consumer price index.

To supplement those comments we would like to highlight two additional points:

1. Using the urban consumer price index as the basis of determining perpetual fee increases would particularly harm areas that have specific local trends that differ from general national trends and would cause consumers to experience higher prices despite improved efficiency or cost reductions on the part of the lenders.
2. The proposed fee increase for loans under \$1,000, from 10% of the loan amount to 12.5% would be particularly harmful to lower-income Texans, as these loans tend to refinance—often multiple times in a one-year period—making the increase that much more impactful on financially vulnerable Texans.

Detailed Comments

The proposed 25% increase in fees is meaningful, and particularly for low-income Texans. Based on loan volumes and average loan size from the 2022 financial activity reports posted on the website of the Texas Office of Consumer Credit Commission, the proposed increase in fees would result in \$72.45 million in additional fee charges to Texas consumers. For families living paycheck to paycheck, and utilizing the loans to address financial needs, these additional costs could hinder the ability of a family save money or otherwise address a specific financial need.

The current struggle of Texans to make ends meet is reflected in increasing consumer debt burdens. According to the Federal Reserve Bank of New York, average debt balances in Texas increased by nearly 12% from the 4th quarter of 2019 to the 4th quarter of 2023, growing from \$45,320 to \$56,890.¹ In addition, evictions are soaring above 2019 rate and 2.1 million renters—over half of the state’s renters—are experiencing unaffordable housing costs.²

In this environment of financial strains for many Texans, it is important to be measured in decisions to increase the cost of consumer credit.

1. Permitting perpetual cost increases using the urban consumer price index could lead to higher costs than could be justified by actual expenses and therefore be harmful to consumers.

Adopting a policy of perpetual fee increases for licensed consumer loans in Texas ignores local economic trends and the overall efficiency of new and evolving technologies. For example, based on licensing data from the Texas Office of Consumer Credit Commissioner as of December of 2023, 16.51% of 342E licensed locations and 26.76% of 342F licensed locations operated in communities with a population below 20,000.³ These smaller communities may have lower office costs and wage levels compared to larger and denser urban areas leading to lower “administrative cost of closing a loan and providing money to the borrower.”

In addition, in many large Texas urban areas there is currently a surplus of office space. A report of office vacancies across the country, showed Austin, Dallas, and Houston among the top six cities in the country for office vacancy rates, at 25.2, 25.3, and 26.3 percent respectively.⁴

¹ Federal Reserve Bank of New York Q4 2023 Household Credit and Debt Report, available at : <https://www.newyorkfed.org/microeconomics/hhdc.html>.

² See: <https://www.texastribune.org/2024/02/16/texas-evictions-renters-housing-affordability/>

³ Texas Appleseed analysis of the location city of 342E and 342F licensees as of December, 2023. Population numbers are from the 2022 5-year estimates of the American Community Survey. According to the analysis, out of a total of 3,830 licensed locations, 87% or 3,325 were located in the state of Texas, 12% were located in the US, but out of state, and 1% were located in other countries, including India, Mexico, the Philippines, and various Caribbean nations. Among the Texas-based locations, 198 342E licensed locations and 569 342F licensed locations were in cities with a population of less than 20,000.

⁴ See: <https://www.axios.com/local/austin/2024/01/22/austin-office-vacancies>.

Despite general inflationary trends based on household costs, these local trends could result in lower costs for businesses operating in those communities.

Finally, according to the lenders themselves, technology and internal policies can both lead to lower costs and increased efficiency. For example, in the 2022 OneMain annual report, the company noted:

The effective use of technology increases efficiency and enables financial and lending institutions to better serve customers and reduce costs. Our future success will depend, in part, upon our ability to address the needs of our customers by using technology to provide products and services that will satisfy customer demands for convenience, as well as to create additional efficiencies in our operations.⁵

Another lender, Oportun, in their 2023 3rd quarter financial statement, noted a 53% decrease in operating and adjusted operating expenses compared to the prior year. It reflected their lowest operating expenses in two years, due to specific initiatives at the company.⁶

2. The proposed fee increase for loans under \$1,000 from 10% to 12.5% of the principal amount could cause particular harm to financially vulnerable Texans.

This fee increase was not part of the original proposal that was provided to stakeholders in the pre-comment period. It is a substantial increase given the frequency with which these loans typically refinance. Whereas loans made under Ch. 342E of the Texas Finance Code are limited to charging the refinance fee once per year, these lenders, operating under Ch. 342F can charge the fee for refinances as often as **once per month**.⁷ The proposed fees for a one-month loan would result in an APR of around 198%.

The consideration of refinances is not a hypothetical one. These loans are often refinanced multiple times over a one-year period. One publicly traded 342F lender reported that for fiscal year 2023, 71.4% of their loan originations were refinances.⁸ They also noted that they do not engage in additional underwriting for loans refinanced within the same year of the first transaction, which calls to question the need for such high fees in conjunction with refinanced transactions.⁹

⁵ 2022 Annual Report OneMain Holdings, Inc., at p.23. Available at:

https://s23.q4cdn.com/416720971/files/doc_financials/2022/ar/23-5134-2_D1-2_OneMain-Holdings-Inc-ARS.pdf.

⁶ “Oportun Reports Third Quarter 2023 Financial Results,” Oportun Press Releases (November, 6, 2023)

⁷ TAC §83.605, available at:

https://texreg.sos.state.tx.us/public/readtacSext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=7&pt=5&ch=83&rl=605.

⁸ World Acceptance Corp. 2023 Annual Report, at p.10. Available at: https://assets.website-files.com/650d9ff90428b7ea045467f4/65329a25adfc307a5b9717a1_2023-World-Acceptance-Annual-Report.pdf.

⁹ *Id.* The report says that, “repeat customers are generally required to complete a new credit application if they have

A recent lawsuit filed against a lender holding a 342F license in Texas found that nearly 10% of the lender's customers refinanced twelve times or more and that these customers made up 40% of the company's profits.¹⁰ The same legal action found that many of the company's customers were older Americans living with fixed incomes and working single parents.¹¹

This data indicates that refinances are a major component of the market and enabling higher fees will have a compounding cost impact on Texas customers.

In conclusion, while we understand that inflation has impacted businesses and working Texans alike, we ask that:

- Any fee increase that is allowed be small;
- The rule should not establish a default of perpetual increases; and
- That the rule should not include the substantial fee increase for the smallest loans, loans that refinance frequently and are often used by Texans who particularly feel the squeeze of inflation and other cost increases due to low incomes and fixed incomes.

Thank you for considering our comments. We appreciate the opportunity to share our concerns about the impacts of the rule on Texans.

Sincerely,

Ann Baddour

Director, Fair Financial Services Project

abaddour@texasappleseed.org

not completed one within the prior year.”

¹⁰ “CFPB Sues Installment Lending Conglomerate for Illegally Churning Loans to Harvest Hundreds of Millions in Loan Costs and Fees,” (August 22, 2023). Available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-installment-lending-conglomerate-for-illegally-churning-loans-to-harvest-hundreds-of-millions-in-loan-costs-and-fees/>.

¹¹ *Id.*

January 31, 2024

Matthew Nance, Deputy General Counsel
Office of the Consumer Credit Commissioner
Texas Finance Commission
2601 N Lamar Blvd.
Austin, TX 78705

Sent via email to: rule.comments@occc.texas.gov
RE: Regulated Lender Rule Review

Dear Mr. Nance,

Thank you for the opportunity to submit informal comments as a follow up to the OCCC stakeholder meeting regarding the Regulated Lender Fee Rule Amendments.

The Texas Fair Lending Alliance and Texas Faith Leaders for Fair Lending are coalitions of community and faith leaders who support regulatory and legislative reforms to protect vulnerable Texans from high-cost loans and promote financial well-being. Our members engage with millions of low-income Texans. We believe that consumer lending policies should encourage affordable credit that builds financial security and well-being for hard-working families.

A substantially similar proposal to the current Regulated Lender Fee Rule Amendments was put forward and then withdrawn in early 2022. We expressed concerns in 2022 including concerns about:

- the harmful impacts such an increase would have on Texas borrowers;
- the lack of specific data supporting the increase; and
- allowing on-going increases in perpetuity without any assessment of the actual costs incurred by the lenders for the narrow scope of work the fee is designated to cover.

We continue to have the same concerns.

We appreciate your statement in the stakeholder meeting, noting the importance of consumer protection in the consideration of any fee increases. We urge you to take a closer look at the current proposal. We are particularly concerned that the amount of the fee increase is too high and that the proposed increase includes future fee increases in perpetuity, with no consideration of future efficiencies or changes that could reduce costs.

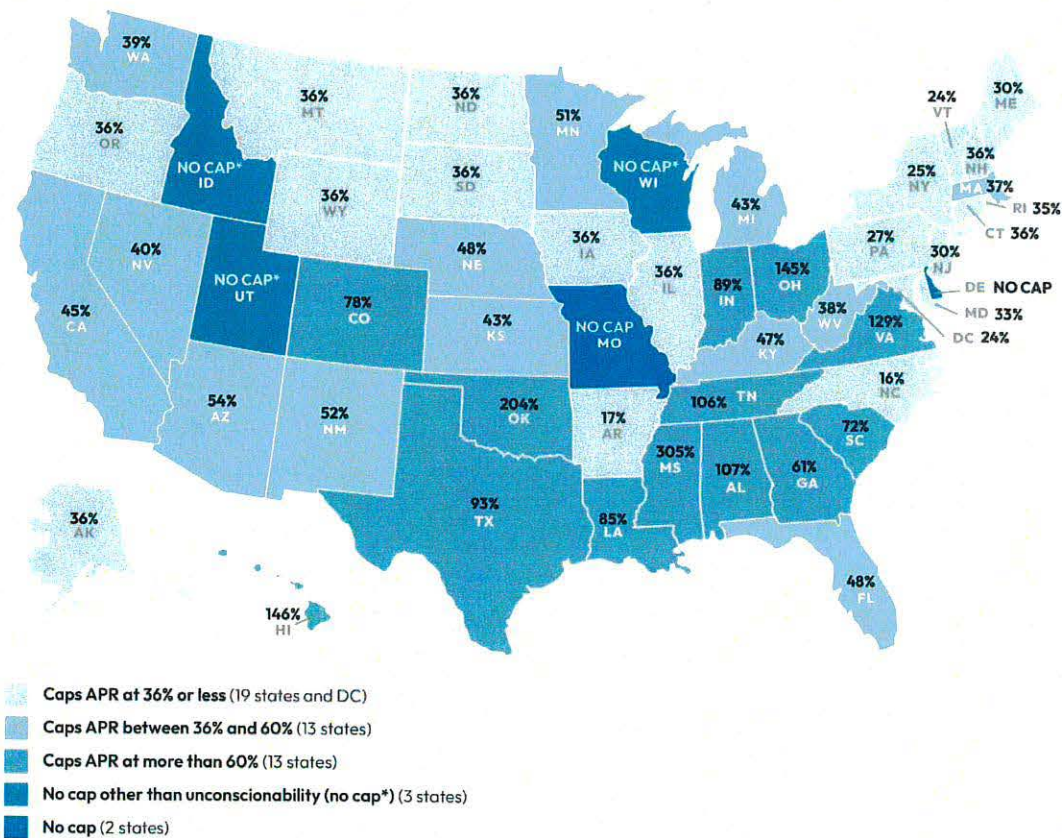
1. Potential harmful impacts for Texas borrowers.

Raising the cost of credit in the high-cost lending space is always an area of concern. With many

families struggling to make ends meet, the cost of credit in our state is top of mind. Texas licensed lenders currently are permitted to charge rates that are substantially similar or higher than those permitted in other states, indicating the current charges provide a balance between lender and borrower benefits.

The two maps below illustrate permitted charges. The first map illustrates the cost of a \$500 loan, which captures rate structures comparable to 342F loans in Texas. For loans comparable to 342F loans, Texas currently permits a higher total cost—93% APR, including fees and interest—than 38 states. The median rate among states with a cap is 39.5 percent.¹

APRs Allowed by State for a Six-Month \$500 Installment Loan



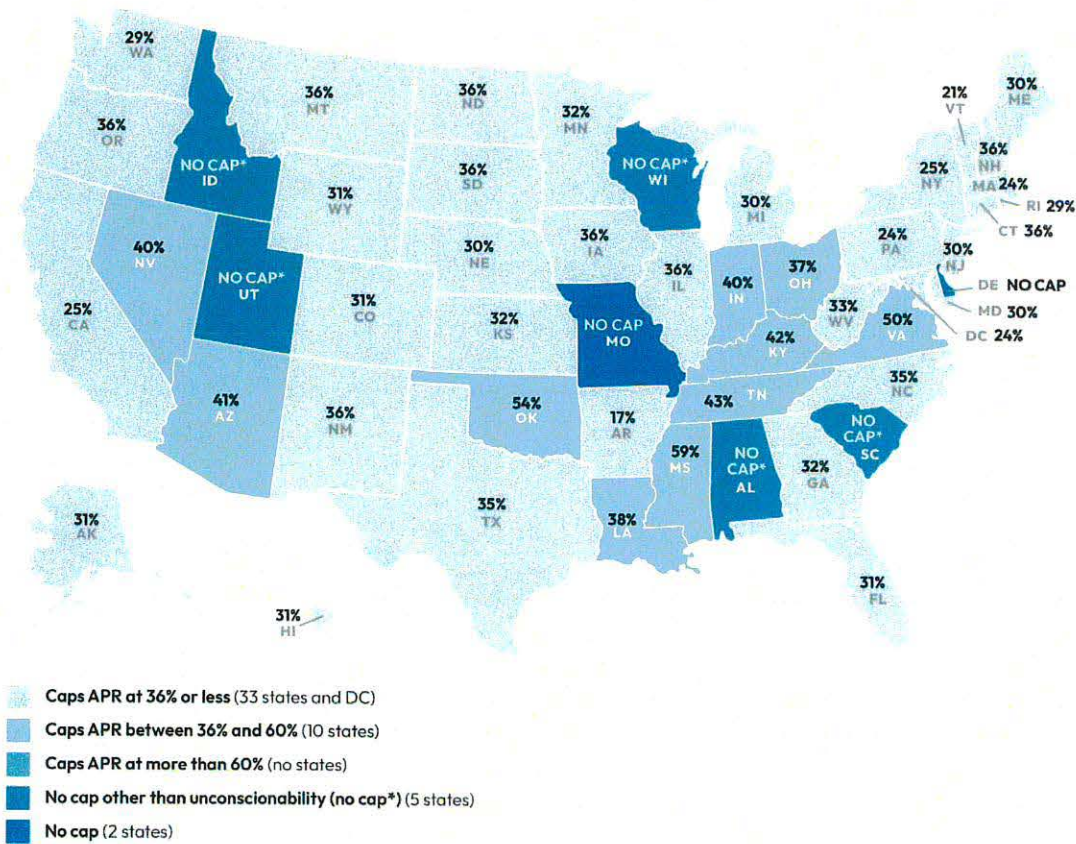
Source: National Consumer Law Center, [Predatory Installment in the States](#) (November, 2023).

¹ Carolyn Carter, Lauren Saunders, and Margot Saunders, [Predatory Installment Lending](#), National Consumer Law Center (November, 2023), at 3.

The second map illustrates the cost of a \$2,000 loan, illustrating rate structures comparable to 342E loans. Current total charges in Texas, including fees and interest, average 35% APR, which is slightly above the median of 32.5% APR for states with rate and fee caps.²

Based on this data, current Texas rate and fee caps for 342E and 342F loans are in line with or higher than other states.

APRs Allowed by State for a 2-Year \$2,000 Installment Loan



Source: National Consumer Law Center, [Predatory Installment in the States](#) (November, 2023).

2. Lack of specific data supporting the increase in fees.

The standard for assessing the appropriate fee level is very specific. It is not associated with the general cost of doing business, including marketing, cybersecurity, general office expenses, or loan volume. It is specific to the “administrative cost of closing a loan and providing money to

² *Id.*, at 4.

the borrower.” It is unclear, based on data shared, how these very specific expenses have changed. In the stakeholder meeting, participants raised general cost increase challenges. Based on the data, it is not clear that the general increases mentioned are attributable to the specific costs contemplated by the loan fee. It is also not clear that any increases are industry wide. For example, one regulated lender, in their most recent 3rd quarter financial statement, noted a 53% decrease in operating and adjusted operating expenses compared to the prior year. It reflected their lowest operating expenses in two years, due to specific initiatives at the company.³

In the previous rule consideration process, in 2021 and 2022, the OCCC requested very specific data, which was not provided in publicly available comments submitted and has not been provided in a publicly available form for this current process.

The fee proposal also does not take into consideration the high rates of refinances for 342E and 342F loans and potentially reduced costs associated with closing a loan and providing funds to a borrower in those circumstances. The administrative charge for a 342E loan can be charged once per year for refinances. For a 342F loan, it can be charged as often as once per month for refinances. These repeat transactions should be examined separately, as refinances may be actively marketed by the business rather than affirmatively solicited by the customer and do not carry the same cost levels related to the specific administrative activities.

3. Fees should not be set to increase in perpetuity. The Consumer Price Index should not be the basis to determine fee amounts without supporting data.

We are deeply concerned that the proposed rule would increase fees in perpetuity with no assessment of whether or not the increases are actually merited.

The proposed rule explanation cites three instances where the legislature used the CPI as an annual measure to adjust amounts related to loans and debt management. In two instances in statute, it is used to adjust loan amounts associated with rate caps for 342 E and 342F lenders, and in one instance it is used to adjust permitted fees for certain debt management services. It is important to note that those instances do not include 342E and 342F loan fees and they do not reflect any intent to apply the same standard to these fees.

The Consumer Price Index (CPI), while informative regarding food, fuel, and housing costs for urban consumers across the country, is not representative of administrative costs of closing a loan and providing money to the borrower. Wages have historically lagged the CPI in various periods, depending on economic circumstance, and the CPI does not take into account technology and efficiencies that lower costs for the specified loan services.

³ [“Oportun Reports Third Quarter 2023 Financial Results.”](#) Oportun Press Releases (November, 6, 2023)

Thank you for the opportunity to participate in the pre-comment process. We look forward to working with you in support of a fair consumer credit market that enhances the financial well-being of Texans.

Sincerely,

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John Litzler
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D. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. 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

PURPOSE: The purposes of the 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 adoption of the amendments to 7 TAC Chapter 84.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 84.

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) adopts amendments to §84.205 (relating to Documentary Fee) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments to §84.205 without changes to the proposed text as published in the March 1, 2024, issue of the Texas Register (49 TexReg 1172).

The commission received four official comments on the proposed amendments. The official comments were submitted by the Texas Recreational Vehicle Association (TRVA), the Texas Automobile Dealers Association (TADA), the Texas Independent Automobile Dealers Association (TIADA), and the Clay Cooley dealership group. The official comments of TRVA, TADA, and TIADA generally supported the proposed amendments (although the comments of TADA and TIADA recommended additional changes discussed later in this preamble). The official comment of the Clay Cooley group opposed certain portions of the proposed amendments relating to credit reports, sales contracts, and generally accepted accounting principles (GAAP), as discussed later in this preamble.

The rule at §84.205 relates to documentary fees for motor vehicle retail installment transactions. In general, the purposes of the 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 informal 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.

Amendments throughout §84.205 adjust the documentary fee amount that is presumed reasonable under the rule from \$150 to \$225. The amendments 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 official comments of TRVA, TADA, and TIADA generally support the proposed amendments to increase the reasonable documentary fee amount from \$150 to \$225. However, TIADA's comment requests that the OCCC and the commission consider an additional annual adjustment to the reasonable documentary fee amount based on the Consumer Price Index (CPI). 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.

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

An 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").

Amendments to §84.205(d)(2)(E)(ii) clarify requirements for including the cost of a credit report in the documentary fee. The amendments 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 rule 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.

The Clay Cooley group's official comment states that the amendment regarding credit reports in §84.205(d)(2)(E)(ii) should not be adopted as proposed. The comment argues that because credit reports are required for all prospective buyers, the cost of a credit report "should be recoverable by the seller whether or not the sale is ultimately consummated." The

commission disagrees with this comment. Without the proposed change to §84.205(d)(2)(E)(ii), the rule leaves open the possibility that buyers in consummated transactions will subsidize costs for transactions that are unconsummated. Credit report costs for unconsummated transactions should appropriately be considered an indirect cost, not a cost that directly relates to processing documents for a particular sale.

TADA's official comment explains that a credit report might be obtained for a co-buyer, and that a second or third credit report might be requested because of a block or freeze. TADA "encourages the agency not to foreclose this necessity for a co-buyer as well as when a block or freeze is indicated, by only allowing one credit report to be included in a dealer's reasonableness criteria." The commission disagrees with the suggestion to change the current language in §84.205(d)(2)(E)(ii) that refers to "a credit report" in the singular. Part of the intent of the rule is to ensure that the documentary fee is limited to costs required to comply with the law and that costs arise equally in cash and credit transactions. The commission does not believe that revising the rule to refer to multiple credit reports is consistent with this intent.

An additional 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.

Amendments to §84.205(d)(3)(B)(ii)(I) clarify requirements for including the cost of a sales contract in the documentary fee. The amendments explain 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. This rule text clarifies 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).

The Clay Cooley group's official comment states that the amendment regarding sales contracts in §84.205(d)(3)(B)(ii)(I) should not be adopted as proposed. The comment states that a final contract may be "based on different combinations of more than one document," and suggests that the provision "should either be left as it is currently written or amended to allow for recovery of costs related to more than one of the relevant forms, as components of a single, finalized contract for sale." The commission disagrees with this comment. As mentioned in the previous paragraph, the amended text helps ensure that costs are legally required (because only one

sales contract is legally required). The amended text also helps ensure that costs arise equally in cash and credit transactions (because a buyer's order would typically be sufficient in a cash transaction).

Other amendments to §84.205(d)(3)(B)(ii) make technical corrections to the list of required forms that may be included in the documentary fee. An amendment removes 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. An amendment at §84.205(d)(3)(B)(ii)(IV) replaces a reference to the USA PATRIOT Act with a reference to regulations of OFAC, as discussed earlier in this preamble. Amendments at §84.205(d)(3)(B)(ii)(VII) and (VIII) make technical corrections to rule references regarding buyer's temporary tags. Other amendments throughout §84.205(d)(3)(B)(ii) would other subclauses accordingly.

An amendment to §84.205(d)(3)(B)(v) explains 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 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 amendment will help ensure that any facilities costs included in the documentary fee directly relate to processing documents.

The Clay Cooley group's official comment states that the amendment regarding GAAP in §84.205(d)(2)(B) should not be adopted as proposed, and that the proposed amendments regarding costs while the dealership is closed in §84.205(d)(3)(B)(v) should not be adopted as proposed. The comment argues that under GAAP's "full absorption costing" scheme, "[o]vernight storage of legally required documents is a real, legally required cost that accrues to all businesses that process such documents." The commission disagrees with this comment. The rule at §84.205 is intended to ensure that documentary fee costs are limited to the required costs to process documents relating to a sale, and that costs directly relate to processing documents. In order to carry out this intent, it is important that the rule articulate specific standards of reasonableness and that cost analyses comply with the standards described in the rule. Allowing GAAP to override the rule would be inconsistent with this intent. In addition, if the rule allowed costs incurred while a dealership is closed, this would fail to ensure that all included costs directly relate to processing documents.

The rule amendments are adopted 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 adoption 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(l)(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.

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 June 21, 2024.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner

Certification



March 1, 2024

Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Blvd.
Austin, TX 78705

Via: rule.comments@occc.texas.gov

Re: Proposed Amendments to TAC §84.205 Documentary Fee

Dear Mr. Nance,

The Texas Recreational Vehicle Association (TRVA) and its dealer members fully support the proposed increase in the Documentary Fees for 348 or Motor Vehicle Sales Finance licensees from \$150.00 to \$225.00 as per the Texas Register, which was published today, March 1, 2024.

Thank you and the OCCC for the consideration.

A handwritten signature in black ink that reads "Phil Elam". The signature is written in a cursive, flowing style.

Phil Elam
Executive Director





1108 Lavaca, Suite 800
Austin, Texas 78701
Phone: 512-476-2686
www.tada.org

March 13, 2024

Mr. Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, TX 78705

Sent via email: rule.comments@occc.texas.gov

Re: Proposed amendments to 7 TAC §84.205

Dear Mr. Nance:

On behalf of the Texas franchised motor vehicle dealers, the Texas Automobile Dealers Association (TADA) appreciates the Finance Commission and the Office of Consumer Credit Commissioner (OCCC) reviewing 7 TAC §84.205 and making recommendations as published in the *Texas Register*, 49 *TexReg* 1172 - 1178 (March 1, 2024).

TADA supports the proposed amendment to 7 TAC §84.205 adjusting the documentary fee amount that is presumed reasonable under the rule from \$150 to \$225 and commends the agency for its recognition that the \$225 amount is well below typical documentary fee amounts in other states.

The determination that costs be determined in accordance with generally accepted accounting principles (GAAP) as well as 7 TAC §84.205 is also understood and supported by TADA.

Allowing the cost of a credit report¹ for a buyer who ultimately purchases a motor vehicle that a seller incurs for both cash and credit transactions alike, to ensure

¹Based upon information obtained from TADA members, the cost of a credit report from Experian, TransUnion, or Equifax, may range from \$4.00 to \$8.00.

Mr. Matthew Nance
March 13, 2024
page 2

compliance with the Office of Foreign Assets Control (OFAC), 31 C.F.R. Parts 501 - 599, as well as identifying a buyer, is supported by TADA.

In addition, obtaining a credit report for compliance with OFAC and identification is also obtained for a co-buyer. There are also times when a credit report is requested and because of a block or freeze on one or more of the credit bureaus, a second or third credit report is necessary to obtain. Although a second or third bureau is not always necessary to request, TADA encourages the agency not to foreclose this necessity for a co-buyer as well as when a block or freeze is indicated, by only allowing one credit report to be included in a dealer's reasonableness criteria.

I appreciate the process that the OCCC has instituted regarding allowing for pre-comment by stakeholders as well as adequate time for comments before the Finance Commission and the opportunity to provide written comments to the proposed rule amendment.

TADA supports the proposed amendments. If you have any question regarding these comments, please do not hesitate to contact me.

Sincerely,



Karen Phillips
General Counsel/EVP



March 25, 2024

Mr. Mathew Vance
General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, TX 78705

Re: Proposed Amendments to 7 TAC §84.205

Dear Mr. Vance:

The Texas Independent Automobile Dealers Association (TIADA) respectfully submits the following comments in response to the Office of Consumer Credit Commissioner (OCCC) proposed changes to 7 TAC §84.205. TIADA represents over 1,000 independent automobile dealers throughout the state of Texas which range in size from large publicly traded companies to small and micro-businesses.

TIADA supports increasing the presumed reasonable documentary fee from \$150 to \$225 to better reflect costs currently incurred by dealers. TIADA would like to note that this increase in the presumed reasonable documentary fee is the first in eight years. To provide perspective on that increase compared to other states, when TIADA reviewed cited sources in the preamble of the proposed rule, it discovered prices of documentary fees increased by \$32 on average in just one year. See "Car Dealer Doc Fee by State in 2024" (rev. Jan. 1, 2024) stating an average documentary fee of \$422 compared to "Car Dealer Doc Fee by State in 2023" (rev. Dec. 8, 2023) stating an average fee of \$390.

TIADA believes the remedies offered to other commentors requesting an annual adjustment based on a Consumer Price Index are inadequate and the OCCC should further consider other commentors request for an annual adjustment based on the Consumer Price Index for the following reasons:

Costs of providing a cost analysis creates a system that unfairly favors large dealer groups, therefore ensuring an adequate documentary fee year over year will protect microbusinesses. Licensed automobile dealers may sell as few as five vehicles a year and those microbusinesses must rely on the presumed reasonable documentary fee as they do not have the resources to provide a cost analysis. A cost analysis requires separation of mixed costs and is a significant undertaking for any business. When TIADA spoke with members that have or are in the process of requesting a larger documentary fee, none of them felt the process would be successful without an expert to handle the analysis and the costs they cited ranged from ten to twenty thousand dollars per location. A large volume dealership can easily justify those costs as they can be recouped over numerous sales but those costs cannot be justified if sales are inadequate to spread the costs over, thereby leaving microbusinesses at a significant disadvantage in obtaining a documentary fee above the presumed reasonable amount.

Periodic review of the presumed reasonable documentary fee is not resulting in the necessary presumed reasonable documentary fee. Since 2016, the presumed reasonable documentary fee has not been

TIADA Comments to OCCC – 7 TAC §84.205

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adjusted whereas an annual adjustment would have us at a similar presumed reasonable amount as now being proposed without leaving dealers without a fair presumed reasonable documentary fee in the years between now and then. Dealer costs for services related to the documentary fee rose throughout the years since 2016 and dealers were unable to recover those costs until this new amount goes into effect, and TIADA believes it would be better to ensure that does not continue going forward.

For the above-mentioned reasons, TIADA believes the OCCC should further consider the comment from other commenters that requested a automatic adjustment based on an index.

Respectfully,



Earl Cooke
Director of Compliance and Business Development
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March 29, 2024

Transmitted via email to rule.comments@occc.texas.gov

Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, TX 78705

Re: Comments on proposed amendments to §84.205 (relating to Documentary Fee) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales, as published in the Texas Register on March 1, 2024 at 49 Tex. Reg. 1172

Dear Mr. Nance:

These comments are submitted on behalf of Clay Cooley, a Dallas-area dealership group, and associated entities (hereafter referred to collectively as "Cooley"). Please consider the following as timely submitted written comments on the proposed amendments to the referenced rule.

- The amendment to §84.205(d)(2)(E)(ii), concerning costs related to obtaining credit reports, should not be adopted as proposed. Multiple federal and state laws require the seller of a motor vehicle to obtain credit reports from all prospective buyers, and these costs are accrued during the timeframe specified by the rule. Because this is a legally required cost, it should be recoverable by the seller whether or not the sale is ultimately consummated. For example, the rule allows for recovery of software costs (§84.205(d)(3)(B)(iv)) and facilities costs (§84.205(d)(3)(B)(v)), which are costs actually incurred by the seller in preparing and processing legally required documents for a motor vehicle sale. Those costs are incurred regardless of whether a sale of a motor vehicle occurs. Those costs are also prorated appropriately, based on total sales of motor vehicles, as the rule requires (§84.205(d)(3)(B)). Recovery of the cost of all credit reports run is an analogous, legally required cost incurred by dealers that is also to be prorated to comply with the rule. Cooley suggests that this provision should either be left as it is currently written or amended to allow for full recovery of costs related to obtaining credit reports.
- The amendment to §84.205(d)(3)(B)(ii)(I), concerning costs related to sales contracts, should not be adopted as proposed. While it may be the practice of some to use a single sales contract, when selling a motor vehicle, there are multiple documents that may be included in the final executed contract based on the type of sale, the circumstances of the buyer, and the conditions of the sale, such as a trade-in. In practice, a final contract may, and frequently does, include terms and conditions that are based on different combinations of more than one document from the relevant list of allowable documents. In Cooley's case, both a retail installment contract and a buyer's order are required to form the basis

for a finalized sales contract. Cooley suggests that this provision should either be left as it is currently written or amended to allow for recovery of costs related to more than one of the relevant forms, as components of a single, finalized contract for sale.

- The amendment to §84.205(d)(2)(B), concerning the precedence of the rule over Generally Accepted Accounting Principles (GAAP), should not be adopted as proposed. Additionally, the related amendment to §84.205(d)(3)(B)(v), concerning costs incurred while the dealership is closed, should not be adopted as proposed. GAAP, which includes the principle of “full absorption costing,” is established as the most efficient, consistent approach to fairly recovering business costs. Overriding GAAP by adopting contrary principles in the rule creates confusion and inconsistencies for both businesses and consumers. For example, disallowing business expenses that accrue during non-business hours is contrary to GAAP’s full absorption costing scheme. Overnight storage of legally required documents is a real, legally required cost that accrues to all businesses that process such documents. To disallow recovery of these costs essentially creates a disparity in the value of rental costs between business and non-business hours, which is unfairly contrary to the spirit of the rule.

Thank you for your consideration. Should you have any questions, please feel free to contact me.

Sincerely,

/s/ Barton J. Hejny

Barton J. Hejny

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 87 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 87 following rule review, because the reasons for the rules continue to exist.

RECOMMENDED MOTION: I move that the Finance Commission readopt 7 TAC Chapter 87 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 87. Tax Refund Anticipation Loans

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 87, concerning Tax Refund Anticipation Loans, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 87 was published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2095). 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 87 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.