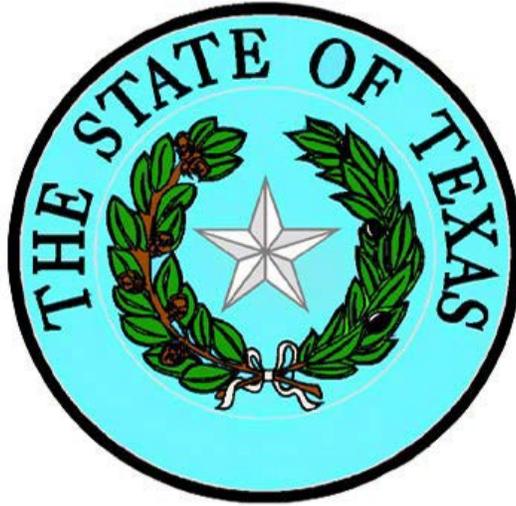


A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE**June 16, 2023**

MEETING LOCATION Finance 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 18, 2023
October 27, 2023
December 15, 2023

*** 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. Fin. Code §11.106*

Meeting Accessibility. Under the Americans with Disabilities Act, the agency will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Finance Commission Administrator several days prior to the meeting using the contact information above by mail, telephone, or email.

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FINANCE COMMISSION AGENDA

Friday, June 16, 2023

9:00 a.m.

or Upon Adjournment of the Audit Committee Meeting
Finance Commission Building
William F. Aldridge Hearing Room
2601 North Lamar Boulevard
Austin, Texas 78705

Section A.3 will take up agenda items A1, B2 – B4, B6 - B13, and C2 – C5 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 21, 2023, Finance Commission Meeting

2. General Public Comment

3. Consent Agenda

4. Finance Commission Operations

5. Audit Committee Report

A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of the Consumer Credit Commissioner's Texas Financial Education Endowment Fund Investment Portfolio Administration Audit Report as Prepared and Presented by Garza/Gonzalez and Associates

B. Discussion of the Activities of the Texas Financial Education Endowment (TFEE)

C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Revised Texas Financial Education Endowment Fund Grant Administration & Advisory Policy Manual and 2024-2025 Funding Priorities

D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Approve an Amount for the Upcoming 2024-2025 Grant Cycle for the Texas Financial Education Endowment

E. Discussion of the Activities of the Mortgage Grant Fund

6. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to § 551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff

7. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to § 551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property

8. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to § 551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of

the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation

9. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by §§ 551.076 and 551.089, Texas Government Code
10. 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; and e) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 52, Concerning Charter Applications, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 53, Concerning Additional Offices, Resulting from Rule Review*
4. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 57, Concerning Change of Office Location or Name, Resulting from Rule Review*
5. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 60, Concerning Savings Associations, Resulting from Rule Review
6. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 61, Concerning Hearings, Resulting from Rule Review*
7. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 63, Concerning Fees and Charges, Resulting from Rule Review*
8. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 64, Concerning Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Resulting from Rule Review*
9. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 65, Concerning Loans and Investments, Resulting from Rule Review*
10. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 67, Concerning Savings and Deposit Accounts, Resulting from Rule Review*
11. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 69, Concerning Reorganization, Merger, Consolidation, Acquisition and Conversion, Resulting from Rule Review*
12. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 71, Concerning Change of Control, Resulting from Rule Review*
13. *Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 73, Concerning Subsidiary Corporations, Resulting from Rule Review*
14. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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 Readoption of 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals and Rulemakings, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 10, Concerning Contract Procedures, Resulting from Rule Review*
4. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 12, Concerning Loans and Investments, Resulting from Rule Review*
5. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 25, Concerning Prepaid Funeral Contracts, Resulting from Rule Review*
6. 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; and e) Legal Division Activities; and f) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors
3. 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 21, 2023**

The Finance Commission of Texas convened at 9:07 a.m., on Friday, April 21, 2023, with the following members present:

Finance Commission Members in Attendance:

Phillip Holt, Chairman	Will Lucas
George “Cliff” McCauley, Vice Chairman	Sharon McCormick
Bob Borochoff	Roselyn “Rosie” Morris
Hector Cerna	Debbie Scanlon
G. Martin “Marty” Green	Laura Warren

Finance Commission Members Absent:

Vince Puente

Chairman Phillip Holt made a motion to excuse Vince Puente from the Finance Commission meeting held on April 21, 2023. There were no objections and the motion passed unanimously. *(0:48 on audio file)*

Commissioner Charles G. Cooper announced there was a quorum with ten (10) members present. *(1:20 on audio file)*.

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the February 17, 2023, Finance Committee Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	1:27 Start of Discussion
3. Consent Agenda – Items A1	Laura Warren made a motion to Approve Consent Agenda items A1. Rosie Morris seconded, and the motion passed.	2:00 Start of Discussion 2:18 Vote
4. Finance Commission Operations	No Action Required.	2:38 Start of Discussion
5. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies’ 2023 Second Quarter Investment Officer Reports	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ 2023 Second Quarter Investment Officer Reports passed.	6:42 Start of Discussion
1. Texas Department of Banking		6:53 Vote
2. Office of Consumer Credit Commissioner		
3. Department of Savings and Mortgage Lending		

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' 2023 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' 2023 Second Quarter Financial Statements passed.</p>	<p>7:04 Start of Discussion</p> <p>7:12 Vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's Corporate Activities Audit Report as Prepared and Presented by Garza/Gonzalez and Associates</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's Corporate Activities Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed.</p>	<p>7:23 Start of Discussion</p> <p>7:34 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Activities of the Texas Financial Education Endowment Fund</p>	<p>No Action Required.</p>	<p>n/a</p>
<p>E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Appointment of a New Grant Advisory Committee Member Raechel Peters</p>	<p>Coming upon the Recommendation from the Audit Committee, no second is required and the motion to Approve the Appointment of a New Grant Advisory Committee Member Raechel Peters passed.</p>	<p>7:50 Start of Discussion</p> <p>7:59 Vote</p>
<p>F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Activities of the Mortgage Grant Fund</p>	<p>No Action Required.</p>	<p>n/a</p>
<p>6. Discussion of and Possible Vote to Take Action on the Finance Commission Agencies' Mid-Term Accomplishment Reports</p>	<p>Laura Warren made a motion to Approve the Finance Commission Agencies' Mid-Term Accomplishment Reports. Sharon McCormick seconded, and the motion passed.</p>	<p>8:24 Start of Discussion</p> <p>9:46 Vote</p>
<p>7. Discussion of the Condition of the Texas Banking System Report (Note: Report provided separately)</p>	<p>No Action Required.</p>	<p>10:08 Start of Discussion</p>
<p>8. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff</p>	<p>No Discussion.</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
9. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	Deferred to Executive Session. No Vote Required.	n/a
10. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation	No Discussion.	n/a
11. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by §§ 551.076 and 551.089, Texas Government Code	No Discussion.	n/a
12. Discussion of Matters Made Confidential by Law Pursuant to § 551.081, Texas Government Code, Including Information Relating to the Financial Condition or Business Affairs of a Financial Institution	Deferred to Executive Session. No Vote Required.	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; 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	No Action Required.	11:29 Start of Discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	36:24 Start of Discussion
2. 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.	59:51 Start of Discussion
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 52, Concerning Charter Applications, Resulting from Rule Review	Debbie Scanlon made a motion to Approve the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 52, Concerning Charter Applications, Resulting from Rule Review. Marty Green seconded, and the motion passed.	1:12:02 Start of Discussion 1:15:24 Vote
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 53, Concerning Additional Offices, Resulting from Rule Review	Sharon McCormick made a motion to Approve the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 53, Concerning Additional Offices, Resulting from Rule Review. Will Lucas seconded, and the motion passed.	1:15:49 Start of Discussion 1:16:30 Vote
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 57, Concerning Change of Office Location or Name, Resulting from Rule Review	Debbie Scanlon made a motion to Approve the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 57, Concerning Change of Office Location or Name, Resulting from Rule Review. Marty Green seconded, and the motion passed.	1:16:56 Start of Discussion 1:17:22 Vote
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 60, Concerning Savings Associations, Resulting from Rule Review	Will Lucas made a motion to Approve the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 60, Concerning Savings Associations, Resulting from Rule Review. Marty Green seconded, and the motion passed.	1:17:46 Start of Discussion 1:23:00 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 61, Concerning Hearings, Resulting from Rule Review	Debbie Scanlon made a motion to Approve the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 61, Concerning Hearings, Resulting from Rule Review. Cliff McCauley seconded, and the motion passed.	1:23:26 Start of Discussion 1:23:54 Vote
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 63, Concerning Fees and Charges, Resulting from Rule Review	Rosie Morris made a motion to Approve the Proposal and Publication for Comment of Repeals in 7 TAC, Chapter 63, Concerning Fees and Charges, Resulting from Rule Review. Debbie Scanlon seconded, and the motion passed.	1:24:19 Start of Discussion 1:24:43 Vote
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 64, Concerning Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Resulting from Rule Review	Debbie Scanlon made a motion to Approve the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 64, Concerning Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Resulting from Rule Review. Laura Warren seconded, and the motion passed.	1:25:09 Start of Discussion 1:25:35 Vote
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 65, Concerning Loans and Investments, Resulting from Rule Review	Laura Warren made a motion to Approve the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 65, Concerning Loans and Investments, Resulting from Rule Review. Marty Green seconded, and the motion passed.	1:26:04 Start of Discussion 1:26:29 Vote
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 67, Concerning Savings and Deposit Accounts, Resulting from Rule Review	Rosie Morris made a motion to Approve the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 67, Concerning Savings and Deposit Accounts, Resulting from Rule Review. Debbie Scanlon seconded, and the motion passed.	1:26:55 Start of Discussion 1:27:27 Vote
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals to 7 TAC, Part 4, Chapter 69, Concerning Reorganization, Merger, Consolidation, Acquisition and Conversion, Resulting from Rule Review	Marty Green made a motion to Approve the Proposal and Publication for Comment of Repeals to 7 TAC, Part 4, Chapter 69, Concerning Reorganization, Merger, Consolidation, Acquisition and Conversion, Resulting from Rule Review. Debbie Scanlon seconded, and the motion passed.	1:27:48 Start of Discussion 1:28:12 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 71, Concerning Change of Control, Resulting from Rule Review	Debbie Scanlon made a motion to Approve the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 71, Concerning Change of Control, Resulting from Rule Review. Marty Green seconded, and the motion passed.	1:28:45 Start of Discussion 1:29:10 Vote
13. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 73, Concerning Subsidiary Corporations, Resulting from Rule Review	Will Lucas made a motion to Approve the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 73, Concerning Subsidiary Corporations, Resulting from Rule Review. Marty Green seconded, and the motion passed.	1:29:32 Start of Discussion 1:30:02 Vote
14. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a

Chairman Phillip Holt called for an Executive Session at 10:38 a.m. (1:31:36 on the audio file). The open meeting resumed at 12:10 p.m. (1:32:52 on the audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
Executive Session		
9. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	No Vote Required	n/a
12. 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	No Vote Required.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 12:10 p.m. (1:33:12 on the audio file).

Phillip Holt, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Ruth Wright, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

June 16, 2023

A. Finance Commission Matters

1. Review and Approval of the Minutes of the April 21, 2023, Finance Commission Meeting

B. Department of Savings and Mortgage Lending

2. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 52, Concerning Charter Applications, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 53, Concerning Additional Offices, Resulting from Rule Review
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C. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals and Rulemakings, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 10, Concerning Contract Procedures, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 12, Concerning Loans and Investments, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 25, Concerning Prepaid Funeral Contracts, Resulting from Rule Review

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B.

**Department of Savings and
Mortgage Lending**

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B. Department of Savings and Mortgage Lending

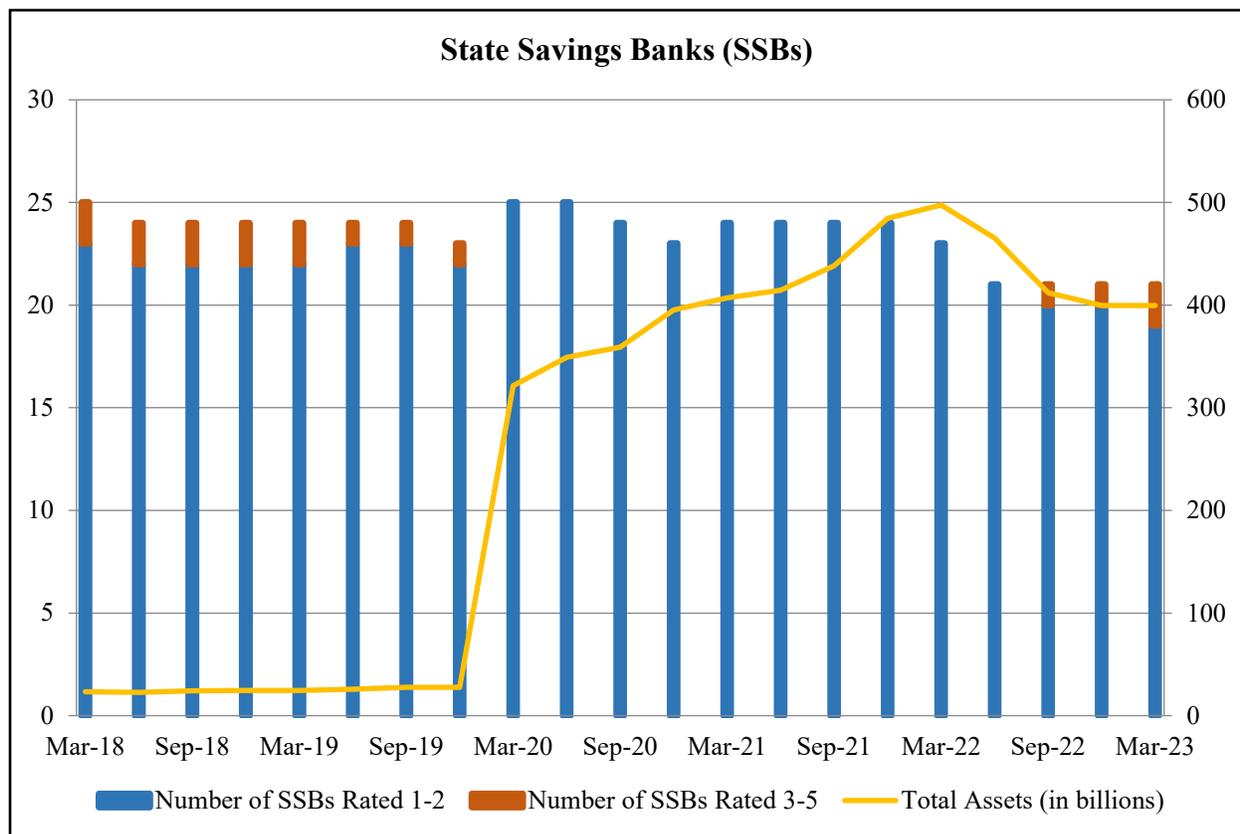
- Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities**

a) Thrift Regulation Division Activities

Industry Status

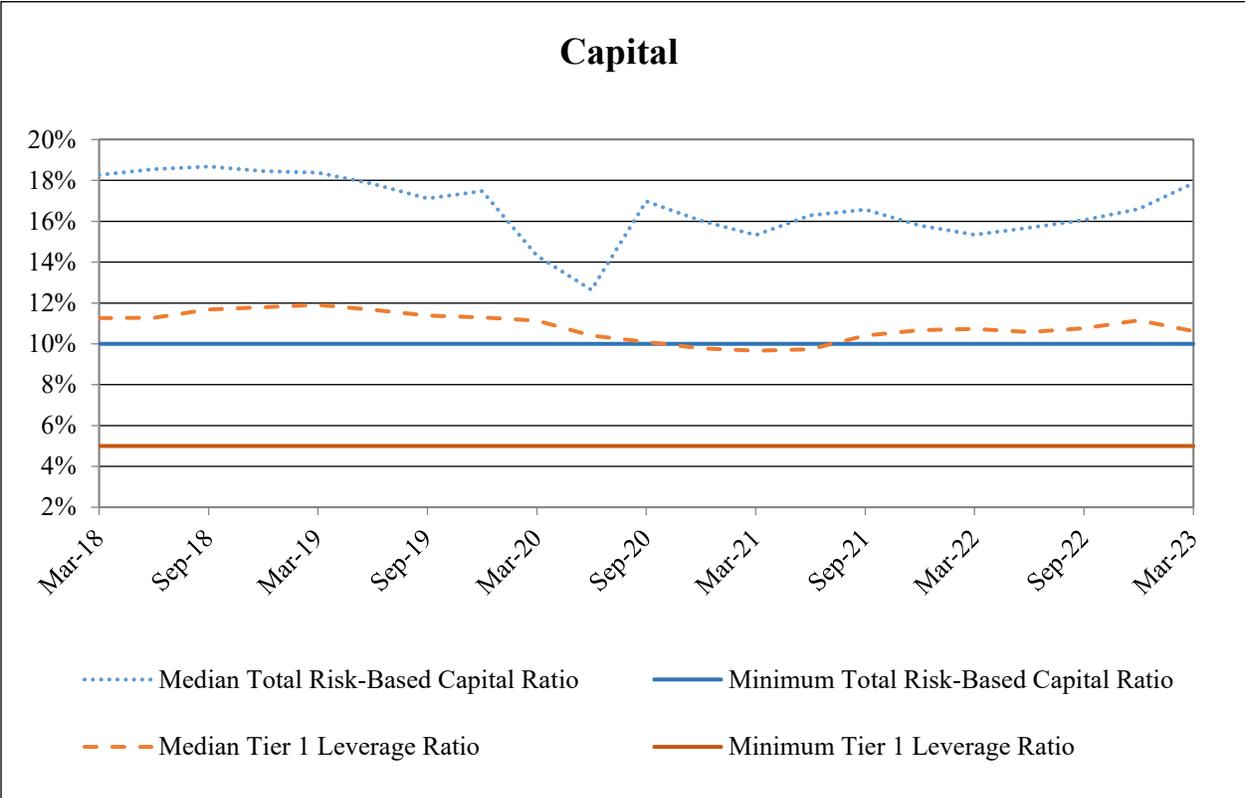
The Department continues to monitor various local, state, and national data sources to understand the risks facing the industry and individual savings banks.

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 consists of 21 state savings banks with assets totaling \$399.5 billion, as of March 31, 2023. The industry remains sound with 90% of banks being well rated as of March 31, 2023, and two informal supervisory actions in place.

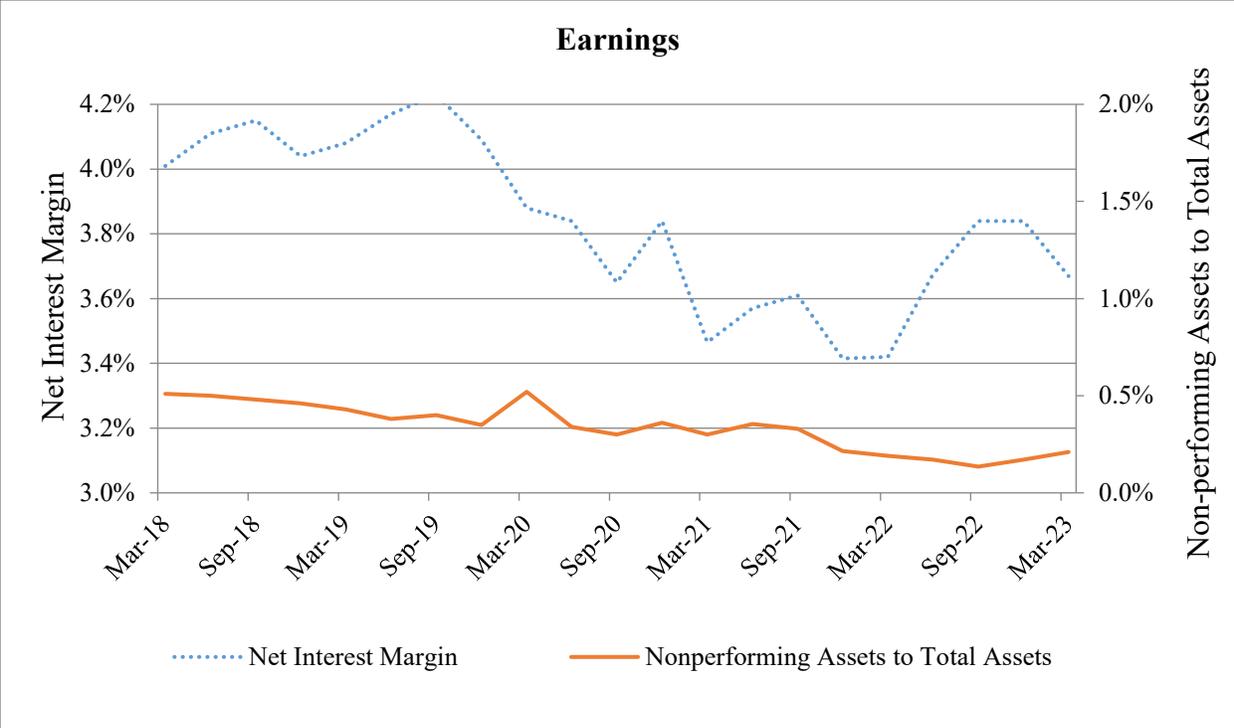


All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and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

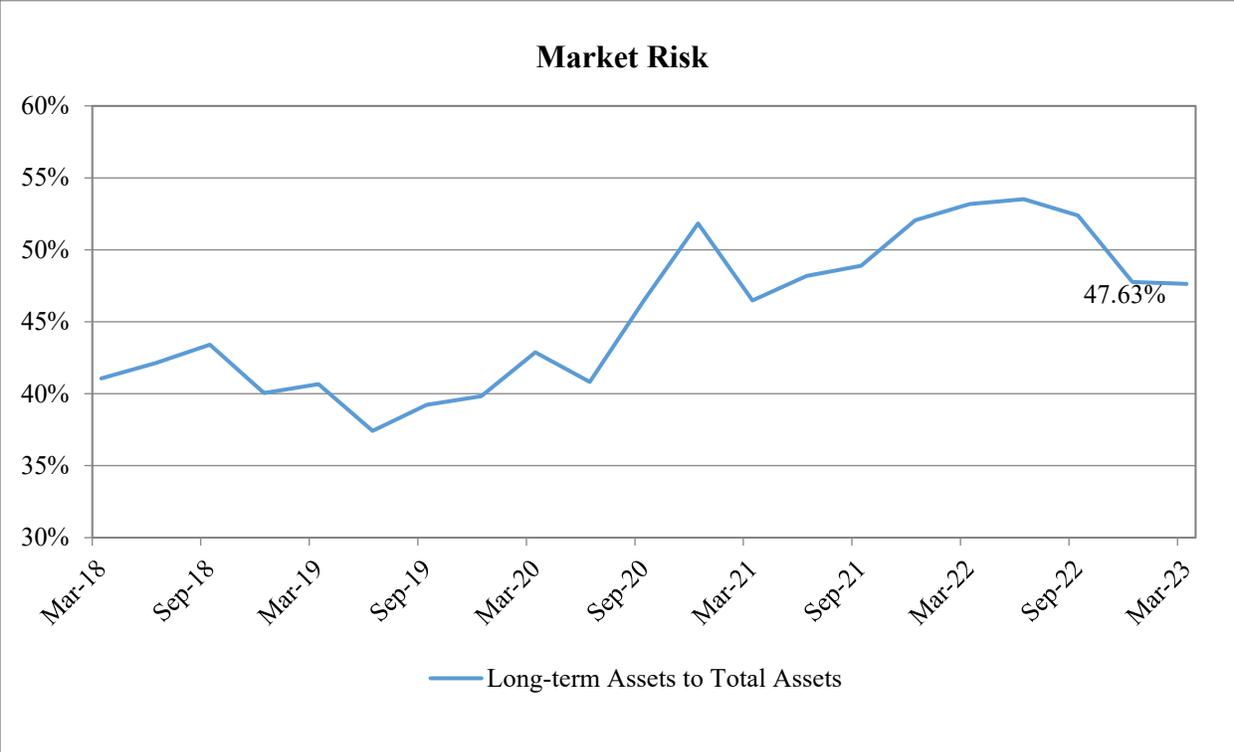
Bank capital performs several very important functions, including absorbing losses, promoting public confidence, helping restrict excessive asset growth, and providing protection to the depositors. Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of March 31, 2023, 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 17.86% and 10.62%, respectively.



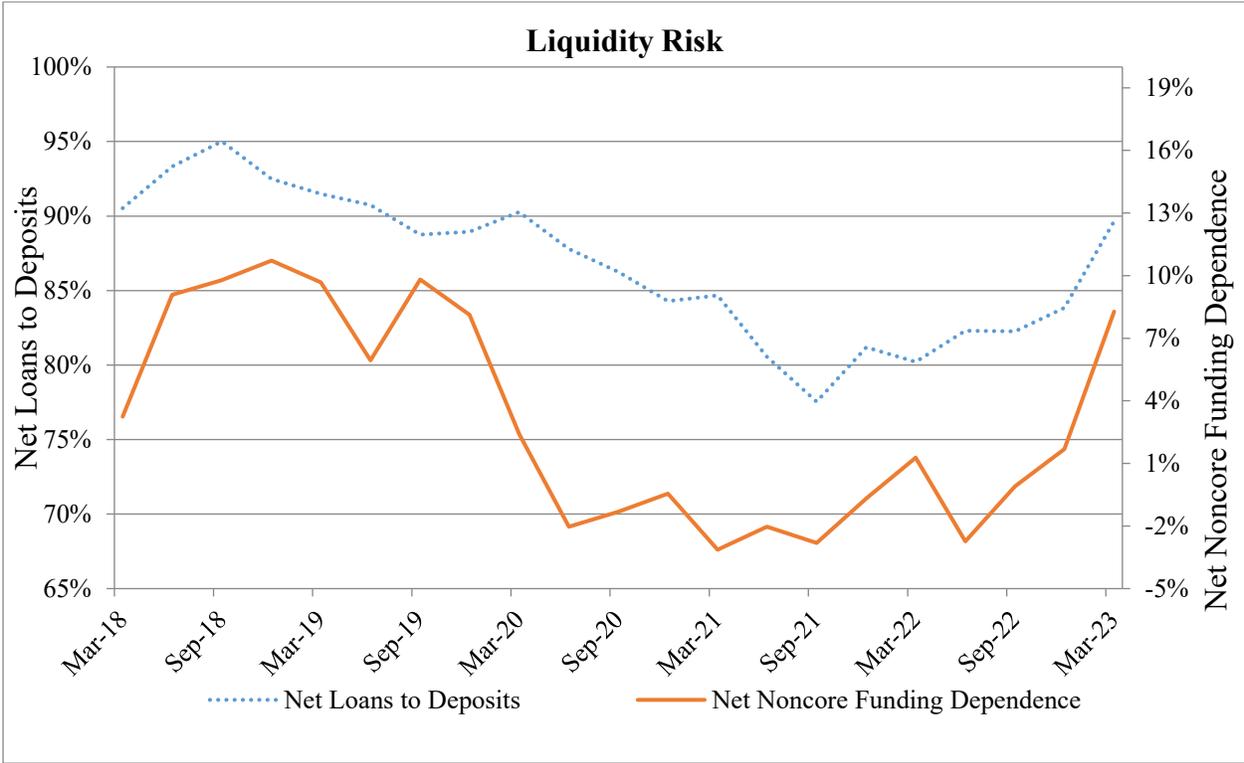
Earnings is the initial safeguard against the risk of engaging in the banking business, and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management’s strategic initiatives. The net interest or profit margin is 3.67%. Non-performing asset levels remain low at 0.21% 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, 2023, long-term assets to total assets ratio decreased to 47.63%.



Liquidity risk reflects the bank’s ability to fund assets and meet financial obligations under various scenarios, including adverse conditions. Liquidity risk continues to decline. The Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies, is 8.27%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 89.64%.



Thrift Examination Activity Report

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

Thrift Supervision Activity Report

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

No merger activity was received, approved or effective since the April 2023 Finance Commission meeting.

Outreach and Training

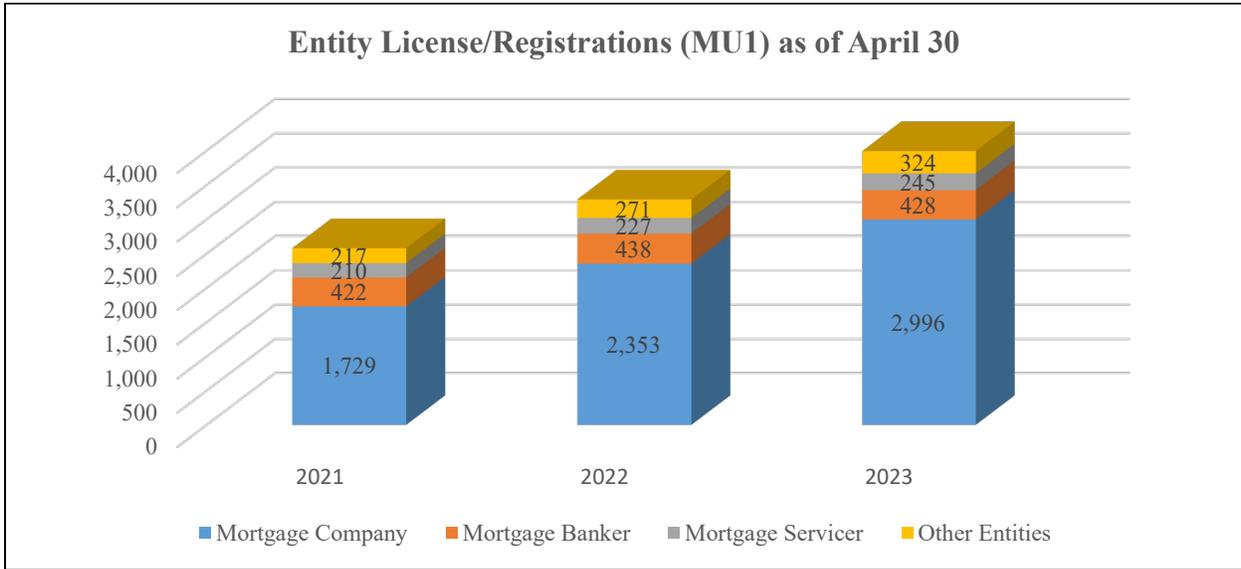
On March 18-19, 2023, Commissioner Retta, Deputy Commissioner Trotti, and General Counsel Berry, attended the Annual Texas Bankers Convention in San Antonio, Texas.

b) Mortgage Regulation Division Activities

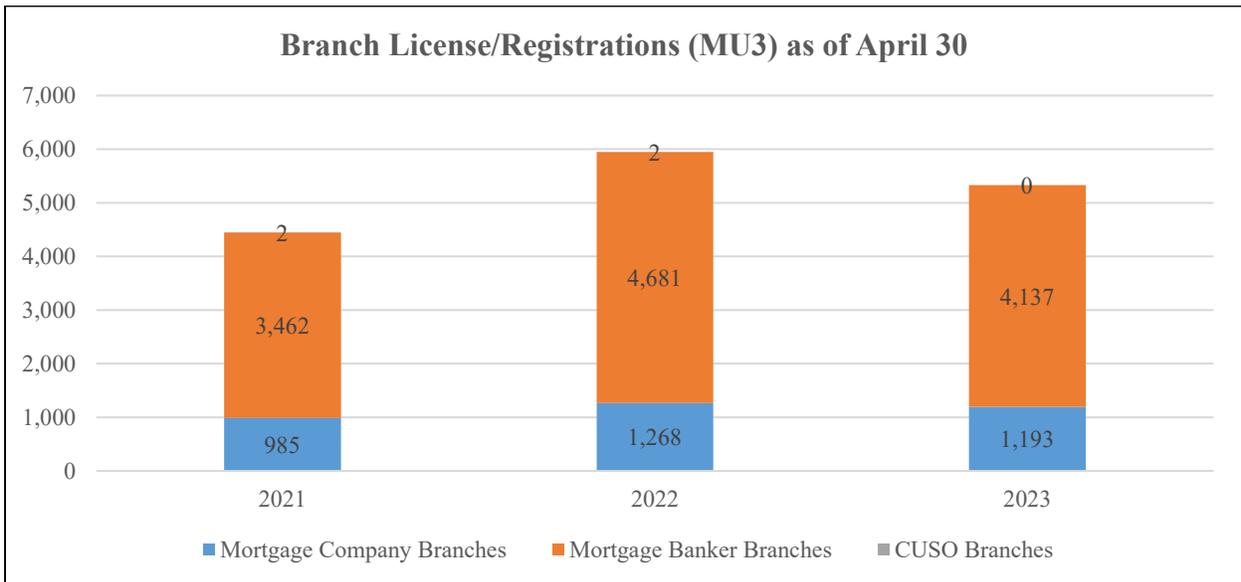
Industry Status

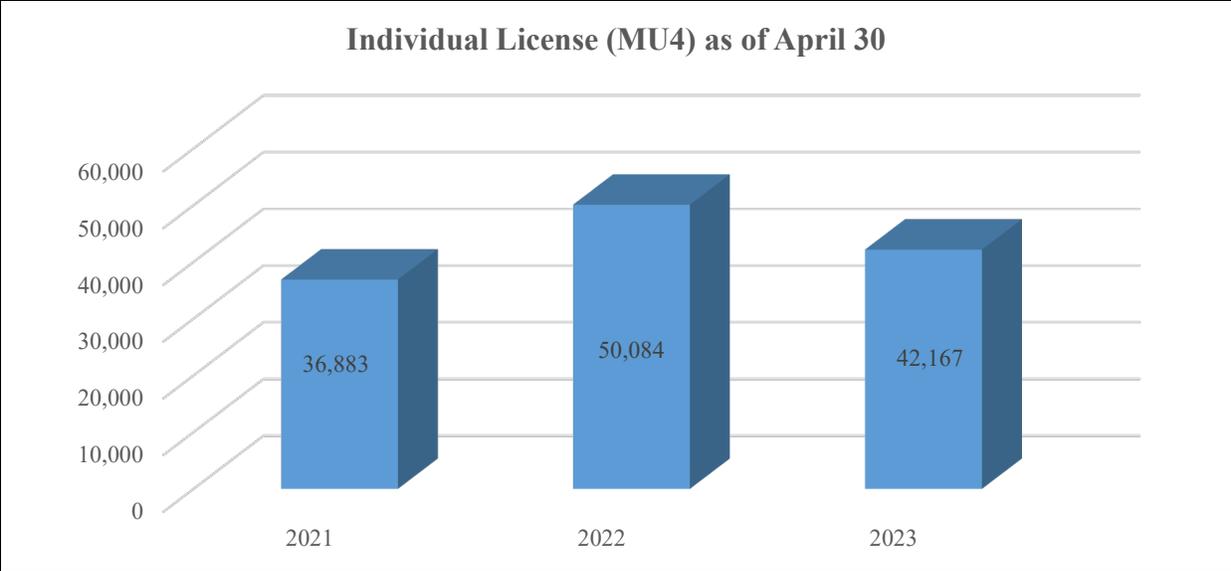
The Department continues to monitor various local, state, and national data sources closely in order to keep track of interest rate changes, housing supply and demand, and trends in homeownership for any impact on the mortgage industry.

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.





From the charts shown above, the growth in the number of licensed mortgage companies has been significant as there has been a 27.33% increase in the number of licensed mortgage companies in the past year and a 73.28% increase over the past two years. From September 1, 2022, to April 30, 2023, the Department approved 554 new mortgage companies to originate residential mortgage loans in Texas.

Due to high interest rates, reduced housing supply, and other macro issues, the number of originated loans and the dollar amount of the originated loans have decreased 42.06% and 35.67% respectively. Although the number and dollar amount of originated mortgage loans have decreased, the average dollar amount for the mortgage loan made has increased for the past two calendar years. The aggregate Mortgage Call Report information reported by licensees and registrants for calendar years 2020, 2021, and 2022 is shown in the table below.

CY2022 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
Direct	\$126,700,687,182	422,271	\$300,046
3rd Party	\$21,725,771,151	63,606	\$341,568
CY2021 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
Direct	\$201,116,279,467	740,304	\$271,667
3rd Party	\$29,620,363,288	98,339	\$301,207
CY2020 Mortgage Call Report Data			
	\$ Amount	# Loans	Average \$ Loan
Direct	\$173,473,842,472	698,104	\$248,493
3rd Party	\$24,318,102,109	87,617	\$277,550
Aggregate information as reported by licensees.			

Licensing Activity Report

From March 1, 2023, to April 30, 2023, the Mortgage Licensing section processed 2,038 applications and approved 1,794 applications, including 202 mortgage entities, 349 branch offices, and 1,243 residential mortgage loan originators. The remaining 244 applications were either withdrawn by the applicant or denied by the Department.

According to NMLS Data Analytics, the Mortgage Licensing section processed 20,670 license amendments, 1,025 credit report reviews, 6,318 sponsorship removals, and 3,306 sponsorship requests.

Mortgage Examination Activity Report

From March 1, 2023, to April 30, 2023, the Mortgage Examination section issued 80 examinations covering 1,197 individual licensees. Compared to the same reporting period in FY2022, the overall number of examinations issued (80 versus 63) and the number of individual licensees examined (1,197 versus 1,052) were 26.98% and 13.78% higher respectively.

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/Conditional Approval Letters.

Outreach and Training

During the week of April 3, 2023, Director of Mortgage Regulation William Purce, Chief Mortgage Examiner Ellena Meier, Review Examiner Justin Accola, Manager of Licensing Chris Osuna, Financial Examiner Len Hicks, and License and Permit Specialist La'Shondra Houston, attended the 2023 NMLS Annual Conference & Training in Phoenix, Arizona. The Conference included topics such as training sessions for NMLS and SES, multistate enforcement protocols, cybersecurity, mortgage exam standards, and other topics.

On April 18, 2023, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the Greater Houston Association of Mortgage Professionals (GHAMP). The presentation discussed: (1) the current legislative bills affecting the mortgage industry; (2) the current and historical licensing trends; (3) the current and historical examination trends; (4) common examination findings; (5) current complaint issues; (6) the recently adopted regulations; and (7) cybersecurity, remote work policies, and information security plans.

On May 2, 2023, Director of Mortgage Regulation William Purce and Review Examiner Justin Accola attended the 107th Texas Mortgage Bankers Association's Annual Conference in San Antonio, Texas, that included the following topics: State of the Mortgage Industry, Executive Leadership Insights, and Leveraging Technology and Data Resources.

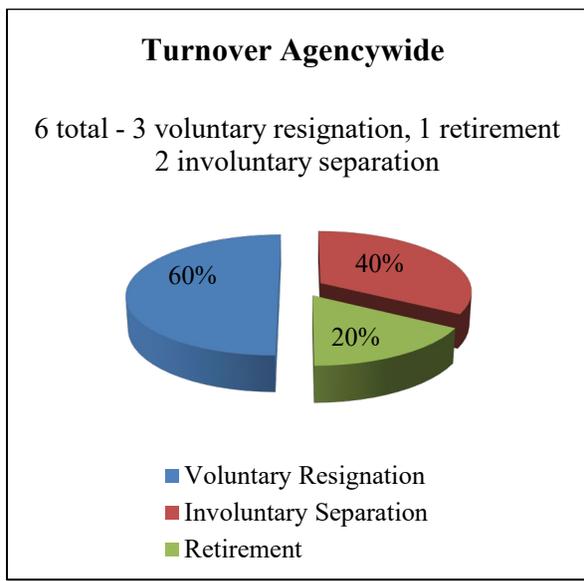
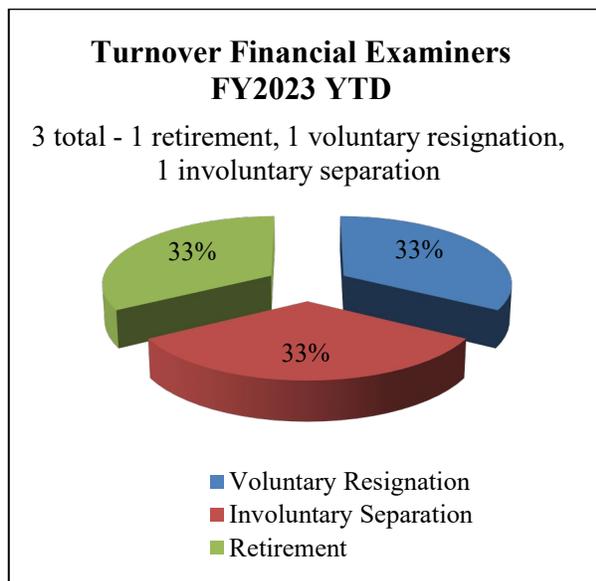
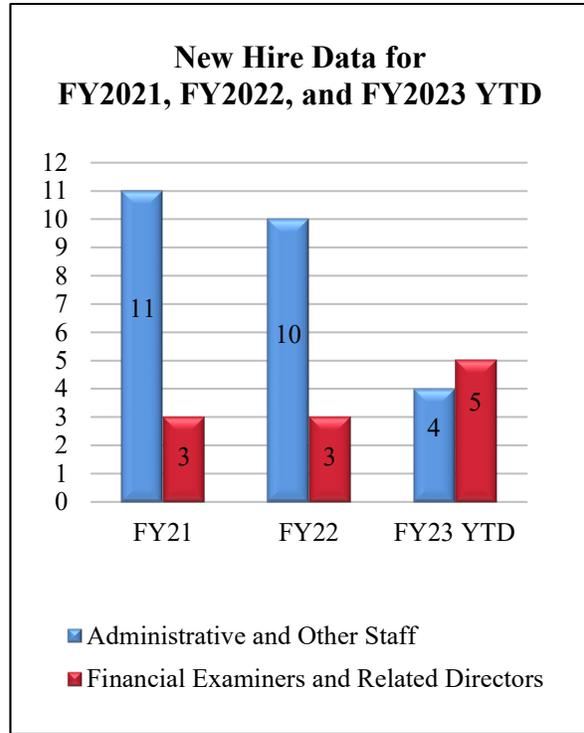
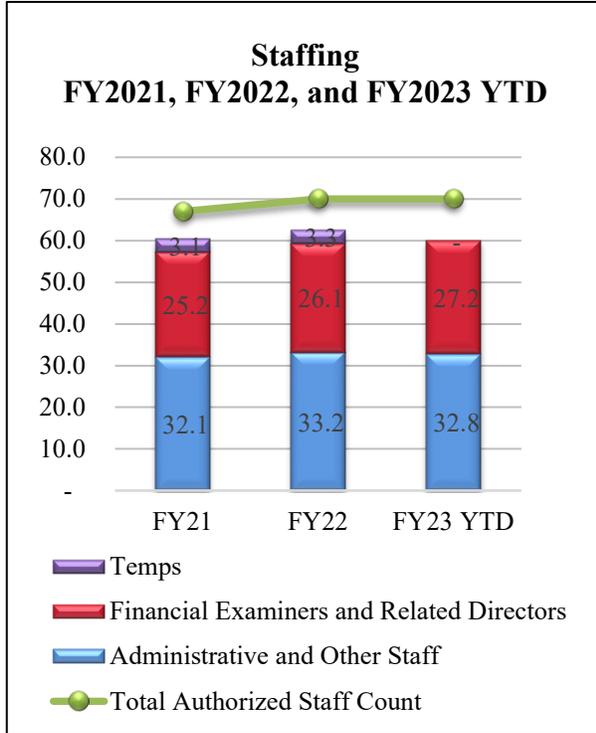
c) Operations Division Activities

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.

Human Resources

Staffing Charts as of April 30, 2023



As of June 1, 2023, the Department was staffed at 61 regular full-time employees. In April and May, an Investigator, a Financial Examiner-Thrift, and a Program Specialist separated from the Department.

Below is the status of the Department’s vacancies:

Vacancy Status	
Financial Examiner I – Mortgage Examinations - 1	Position Filled
Financial Examiner VI/VII – Thrift Examinations - 3	Collecting and reviewing applications, interviewing candidates
Financial Examiner V – Thrift Examinations	
Financial Examiner I – Mortgage Examinations - 1	
Financial Examiner I-II -Thrift Examinations (Information Technology)	
Financial Examiner I – Thrift Examinations	Collecting and reviewing applications
Attorney I/II	
Financial Examiner I – Thrift Examinations (Internship) - 2	
Investigator II-V - 2	

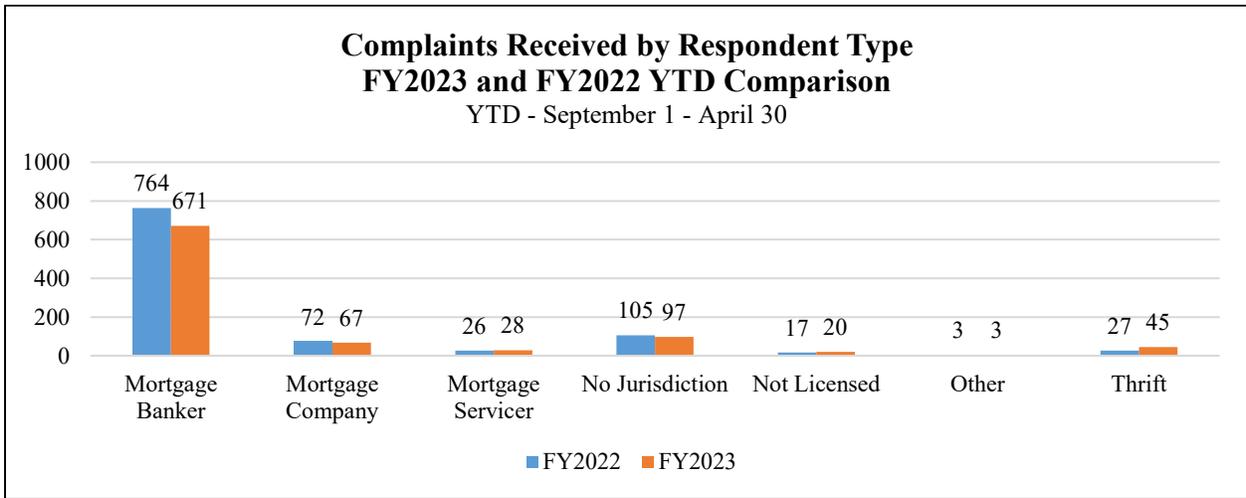
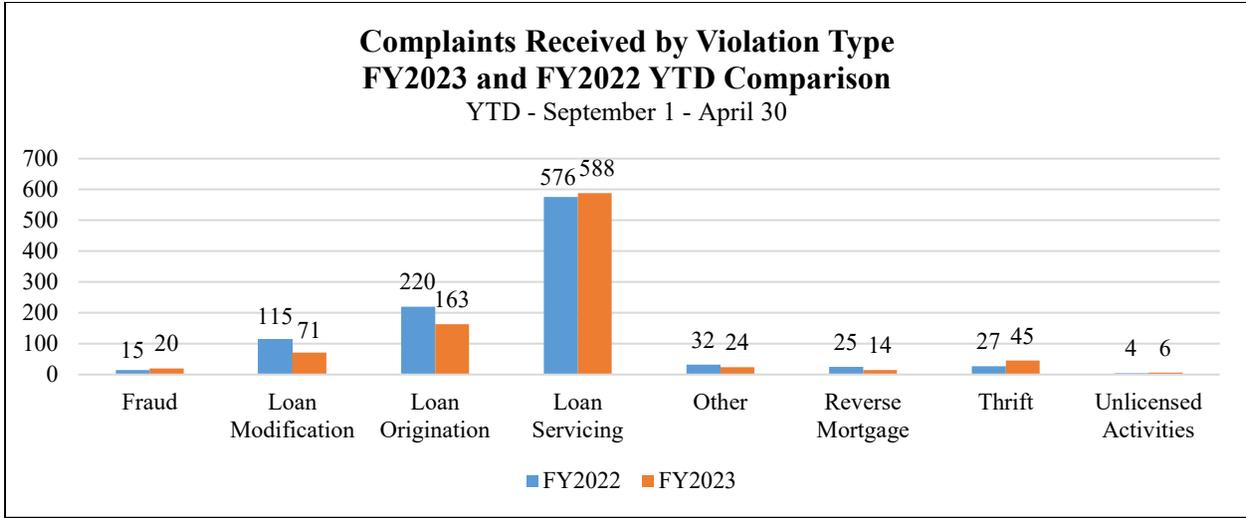
Outreach and Training

The quarterly agency-wide meeting and training was held on May 31, 2023. Sessions covered topics related to the 88th Legislative Session, Information Resources, and Human Resources updates.

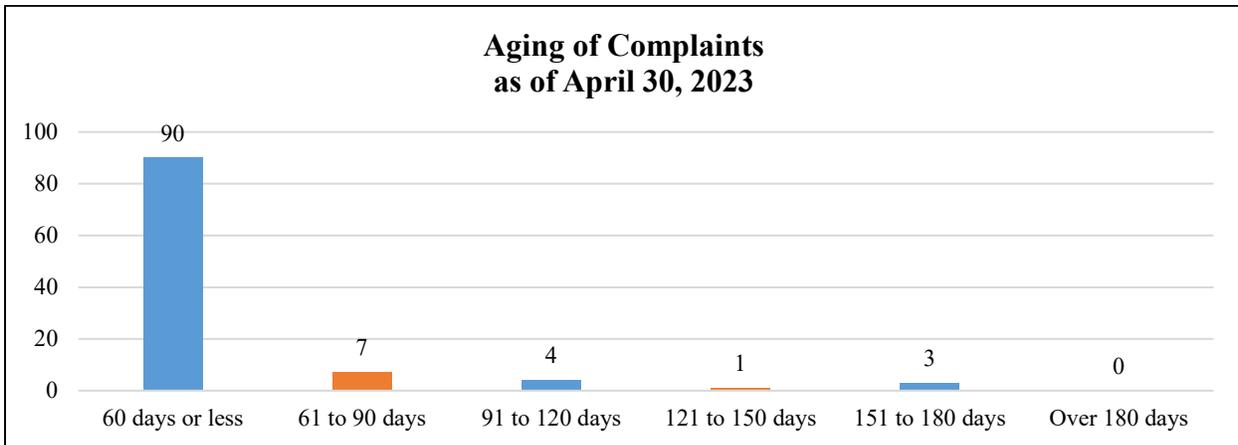
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

Complaints Received – During the fiscal year to date (September 1, 2022 – April 30, 2023), the Department received 931 complaints, compared to 1014 received during the same period in FY2022, representing an 8.19% decrease.



Aging of Open Complaints – As of April 30, 2023, there were 105 open complaint files. Complaint aging is acceptable with 96% of complaints aged 120 days or less.



Closed Complaints	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Servicing Complaints				
Number of Servicing Complaints Closed	177	212		
Average Number of Days to Close a Complaint	26	23.56		
Percentage of Complaints Closed Within 90 Days	99.4%	97.64%		
Non-Servicing Complaints				
Number of Non-Servicing Complaints Closed	120	123		
Average Number of Days to Close a Complaint	20	26.24		
Percentage of Complaints Closed Within 90 Days	100%	93.5%		
Total	297	335		

Legal and Enforcement Activity Report

Mortgage Enforcement Actions

Enforcement Action	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Advisory Letter	14	7		
Agreed Order to Take Affirmative Action	1	1		
Agreed Order to Cease and Desist	0	0		
Agreed Order – Other	0	0		
Letter of Reprimand	0	0		
Notice of Suspension/Revocation	3	0		
Order to Cease and Desist	10	3		
Order to Take Affirmative Action	19	8		
Total	47	19		

Recovery Claims

Recovery Claim Applications Received	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
	2	3		

Status of Pending Recovery Claim Applications as of April 30, 2023	
Pending Investigation	4
Pending Preliminary Determination Letter	3
Preliminary Determination Letter Issued, Pending Opportunity to Appeal	0
On Appeal	0
Open to Facilitate Resolution by the Parties	0
Total	7

Closed Recovery Claim Files	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Granted	1	0		
Denied	4	0		
Resolved by the Parties	0	0		
Claim Withdrawn	0	0		
Total	5	0		

Contested State Office of Administrative Hearings (SOAH) Cases

Kimberli Ann Tomman (SOAH Docket No. 450-23-19991.CHI; confidential proceeding) Ms. Tomman is licensed by the Department as a residential mortgage loan originator. On April 14, 2023, the Commissioner gave notice of his intent to seek suspension of Ms. Tomman’s license. On May 23, 2023, the matter was docketed at SOAH. A hearing on the merits is scheduled to occur in July 2023.

Litigation

The Department is not involved in any pending litigation.

Public Information Requests

Public Information Requests	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Requests Received	50	37		

Rulemaking

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
Chapter 78, Wrap Mortgage Loans	Rule Review	FY2024
Chapter 79, Residential Mortgage Loan Servicers	Rule Review	FY2024
Chapter 80, Residential Mortgage Loan Companies	Rule Review	FY2024
Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators	Rule Review	FY2024

Gift Reporting

During April 3 – 6, 2023, Review Examiner, Justin Accola, Mortgage Examiner, Len Hicks, and Licensing and Permit Specialist, La ‘Shondra Houston, attended the 2023 Nationwide Multistate Licensing System and Registry (NMLS) Annual Conference and Training in Phoenix, Arizona. Registration fees, totaling \$2,985.00, were waived by the Conference of State Bank Supervisors (CSBS). CSBS also reimbursed the Department for airfare and hotel expenses incurred by Len Hicks and La’Shondra Houston, totaling \$3,202.23.

During May 17 – 19, 2023, Commissioner Retta and Deputy Commissioner and Director of Thrift Regulation, Stephany Trotti, attended the Texas Bankers Association 138th Annual Convention in San Antonio, Texas. Registration fees, totaling \$1,965, were waived.

e) Legislative Activities

The last day of the 88th Regular Session (sine die) was May 29, 2023., The last day for Governor Abbott to sign or veto bills passed during the 88th Regular Session is June 18, 2023.

2. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 52, Concerning Charter Applications, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 52 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 52.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 52.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. CHARTER APPLICATIONS

7 TAC §§52.1 - 52.15

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 52, as follows: §§52.1 - 52.15. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2267). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 52.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§52.1. Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business.

§52.2. Use of Approved Forms.

§52.3. Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications.

§52.4. Publication of Notice of Charter Application.

§52.5. Notice to Associations.

§52.6. Filing Proof of Publication.

§52.7. Hearing When Application Not Protested.

**ADOPTION OF REPEALS
7 TAC CHAPTER 52
PAGE 2 OF 2**

§52.8. Purpose of Hearing; Post-Hearing Investigation.

§52.9. Time of Decision on Charter Applications.

§52.10. Motions for Rehearing.

§52.11. Definition of Community.

§52.12. Identification of Office Site; Temporary Location.

§52.13. Qualifying Management.

§52.14. Notice to Applicants.

§52.15. Appeals.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending

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3. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 53, Concerning Additional Offices, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 53 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 53.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 53.

ADOPTION OF REPEALS
7 TAC CHAPTER 53
PAGE 1 OF 2

CHAPTER 53. ADDITIONAL OFFICES

7 TAC §§53.1 - 53.5, 53.7 - 53.10, 53.17, 53.18

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 53, as follows: §§53.1 - 53.5, 53.7 - 53.10, 53.17, and 53.18. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2268). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter -

Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 53.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

- §53.1. Establishment and Operation of Additional Offices.*
- §53.2. Types of Additional Offices.*
- §53.3. Content of Branch Office Application; Filing of Another Application; Notice; Publication; Hearing; Decision.*
- §53.4. Findings Necessary for Approval of Branch Office.*
- §53.5. Loan Production Offices (Loan Offices), Administrative Offices, and Deposit Production Offices.*
- §53.7. Verification of Applications.*
- §53.8. Mobile Facility Application; Operation of Mobile Facility; Notice; Publication; Hearing.*
- §53.9. Exemption for Supervisory Sale.*
- §53.10. Designation of Supervisory Sale.*
- §53.17. Temporary Closing of Additional Offices.*
- §53.18. Offices in Other States or Territories.*

**ADOPTION OF REPEALS
7 TAC CHAPTER 53
PAGE 2 OF 2**

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending

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4. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 57, Concerning Change of Office Location or Name, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 57 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 57.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 57.

ADOPTION OF REPEALS
7 TAC CHAPTER 57
PAGE 1 OF 1

CHAPTER 57. CHANGE OF OFFICE LOCATION OR NAME

7 TAC §§57.1 - 57.4

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 57, as follows: §§57.1 - 57.4. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2269). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the

subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 57.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§57.1. Change of Office Location Not Requiring Approval; Application for Change of Location; Findings for Approval.

§57.2. Notice, Publication, Hearing.

§57.3. Change of Name.

§57.4. Application Forms.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending

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5. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 60, Concerning Savings Associations, Resulting from Rule Review

PURPOSE: The purpose of the new rules in 7 TAC Chapter 60 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 60.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 60.

ADOPTION OF NEW RULES
7 TAC CHAPTER 60
PAGE 1 OF 52

CHAPTER 60. SAVINGS ASSOCIATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts new rules in 7 TAC Chapter 60, as follows: §§60.1, 60.2, 60.101 - 60.104, 60.121 - 60.123, 60.131 - 60.133, 60.141 - 60.145, 60.161 - 60.165, 60.171, 60.181, 60.191, 60.201 - 60.204, 60.221 - 60.227, 60.231 - 60.234, 60.241 - 60.245, 60.251, 60.252, 60.261, 60.301 - 60.309, 60.321, 60.323 - 60.326, and 60.331. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2271). The following rules are adopted with changes to the published text and are republished to reflect to such changes: §§60.2, 60.101, 60.103, 60.104, 60.121, 60.122, 60.131 - 60.133, 60.141, 60.144, 60.145, 60.161, 60.162, 60.165, 60.181, 60.201, 60.203, 60.223, 60.305, 60.308, 60.309, and 60.324. The changes do not cause the rules to regulate new parties or affect new subjects of regulation. As a result, the rules will not be republished as proposed rules for public comment. The remaining rules in the proposal are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and

affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules.

Changes Concerning Loan Requirements

The department's preexisting rules in Chapter 65, §§65.4 - 65.10, 65.13, 65.14, 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such preexisting rules is not included in the adopted rules.

Changes Concerning Savings and Deposit Accounts

The department's preexisting rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such preexisting rules is not included in the adopted rules.

Changes Concerning Holding Companies

Pursuant to Finance Code §66.051(a), the department's commissioner (commissioner) is required to conduct periodic examinations of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.053, the commissioner is entitled access to the books and records of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.103(a), the commissioner may intervene in the affairs of a savings association if a person that participates in the affairs of the savings association, its subsidiaries, or any holding company of the savings association, is about to commit: a fraudulent or criminal act that may cause the savings association to be insolvent; an act that threatens harm to the public, the savings association, or its account holders or creditors; or a breach of fiduciary duty that results in substantial financial losses or other damages to the savings association or that would prejudice the interests of its account holders or shareholders. Pursuant to Finance Code §66.104, the commissioner may intervene in the affairs of a savings association if a person who participates in the affairs of the association, its subsidiaries, or any holding company of the savings association, refuses to submit to or otherwise interferes with an examination conducted by the commissioner. In order to facilitate the examination of a savings association holding company and ensure the department has adequate knowledge of its existence and affairs, the adopted rules: require a savings association to register with the department any holding company of the savings association on or before 90 days after the date the holding company becomes a holding company and pay a one-time application fee of \$2,000; require a savings association holding company and its subsidiaries to file periodic reports with the department as determined by the commissioner; require a savings association holding company and its subsidiaries to maintain books and records in the

same manner required of a savings association; clarify the preexisting requirements of Finance Code §66.051(a) by requiring a savings association holding company and its subsidiaries to submit to and bear the costs of an examination; require a savings association holding company, if directed by the commissioner, to appoint an agent for service of process; and establish conditions under which a savings association holding company may be released from the registration requirements under the adopted rules, including a requirement that a savings association holding company maintain books and records after it has been released from such registration requirements.

Changes Concerning Fees

Pursuant to Finance Code §61.007(1), the commission, by rule, determines the fees assessed by the commissioner in connection with filing an application or other documents with the department. The department's preexisting rules in Chapter 63 (repealed elsewhere this issue of the *Texas Register* in connection with the adopted rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), establish fees for various applications filed with the department. Such preexisting rules do not establish a specific fee concerning an application by a financial institution other than a savings association seeking to convert to a savings association charter. Instead, the \$10,000 fee for a de novo charter application under preexisting §63.1 is assessed. The adopted rules establish a specific fee for an application concerning such a conversion by a financial institution other than a savings association to a savings association charter. The fee is determined based on the total asset size of the financial institution seeking to convert to a savings association charter, as follows: \$0 to less than \$125 million - \$2,500; \$125 million to less than \$500 million - \$5,000; \$500 million to less

than \$1 billion - \$10,000; over \$1 billion - \$15,000. Under the adopted rules, the fee for converting to a savings association charter could therefore be higher or lower depending on the asset size of the financial institution seeking conversion; however, the department anticipates any potential application for conversion to a savings association charter under the adopted rules will be filed by a financial institution with an asset size of less than \$1 billion and will therefore result in a fee equal to or lesser than the fee under existing §63.1. The department asserts a graduated fee for an application for conversion based on the asset size of the financial institution seeking conversion better reflects the true costs of the department in processing the application and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions. Under preexisting §63.11 (repealed elsewhere this issue of the *Texas Register* in connection with the adopted rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of \$10,000 for an application concerning change of control of a savings association made in accordance with Finance Code Chapter 62, Subchapter L. The adopted rules lower such fee from \$10,000 to \$5,000. Pursuant to Finance Code §66.052, the commissioner is required to conduct periodic examinations of the savings associations it regulates. Pursuant to Finance Code §66.052(a), the commissioner may conduct additional examinations of a savings association (each a special examination) if deemed by the commissioner to be appropriate based on the condition of the savings association. Pursuant to Finance Code §66.052(a), the savings association being examined is required to bear the costs of such special examination. Under preexisting §63.5 (repealed elsewhere this issue of the *Texas Register* in connection with the adopted rules

related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of \$325 per day for each examiner performing a special examination. The adopted rules: assess a maximum fee of \$75 per hour for each examiner performing a special examination; clarify the preexisting requirement, pursuant to Finance Code §66.052(a), that a savings association bear the cost of the special examination, by clarifying that such costs include expenses related to travel, food, and lodging of the examiner performing the special examination; and clarify the commissioner's preexisting authority to assess a lower fee rate or otherwise waive any fees or costs related to a special examination. To the extent an examiner performing a special examination works a standard eight-hour day, the adopted rules have the effect of raising the per diem fee from \$325 to \$600; however, if an examiner works four hours or less on any given day, the adopted rules have the effect of lowering such per diem fee. The department asserts a per hour fee better reflects the true costs of the department in conducting a special examination and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions.

Other Modernization and Update Changes.

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance

with Government Code §2001.029 was not required. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §60.1, §60.2

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.2 is also adopted under the authority of, and to implement, Finance Code: §61.002; and §62.004(a).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.1. Purpose and Applicability.

This chapter governs the chartering, administration, and operations of a Texas-chartered savings and loan association under Finance Code Title 3, Subtitle B, the Texas Savings and Loan Act (Finance Code §61.001 et seq.).

§60.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code Title 3, Subtitle B, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(2) Affiliated person--

(A) a director, officer, or controlling person of a savings association;

(B) a spouse of a director, officer, or controlling person of a savings association;

(C) a member of the immediate family of a director, officer, or controlling person of a savings association, who is a director or officer of any subsidiary of a savings association or of any holding company affiliate of a savings association;

(D) any company (other than the savings association, its holding company, or an operating subsidiary) of which a director, officer, or controlling person of a savings association:

(i) is a director or officer;

(ii) in the case of a limited liability company, is a manager or managing member;

(iii) in the case of a partnership, is a general partner;

(iv) in the case of a partnership, is a limited partner who, directly or indirectly, either alone or with his or her spouse and the members of their immediate family who are also affiliated persons of the savings association, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of a savings association, and their spouses and their immediate family members who are also affiliated persons of the savings association, owns an interest of 25% or more in the partnership; or

(v) directly or indirectly, either alone or with their spouse and the members of their immediate

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family, who are also affiliated persons of the savings association, owns or controls 10% or more of any class of equity securities, or owns or controls with other directors, officers, and controlling persons of a savings association and their spouses and their immediate family members, who are also affiliated persons of the savings association, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of a savings association, or a member of the director's, officer's, or controlling person's immediate family, has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

(3) Application--An application requesting authorization or other relief from the Commissioner pursuant to this chapter or under the Texas Savings and Loan Act for which a filing fee is required under §60.102 of this title (relating to Application Fees and Charges).

(4) Appropriate banking agency--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(5) Board--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(6) Bylaws--The rules adopted to regulate or manage a company, regardless of the name used to designate the rules, and with respect to a limited liability company, means the company agreement, or similar rules adopted to regulate or manage the limited liability company.

(7) Capital stock--Has the meaning assigned by the Texas Savings and Loan Act (Tex. Fin. Code §61.002).

(8) Capital stock association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(9) Certificate of formation--The document evidencing the formation of the business entity, referred to in other governmental jurisdictions as the articles of incorporation, certificate of incorporation, or articles of organization, as applicable.

(10) Commissioner--The savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(11) Company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(12) Control--The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. Control is deemed to exist when a person, directly or indirectly, or acting through or in concert with one or more persons:

(A) owns, controls, or has the power to vote 25% or more of any class of voting securities of a company;

(B) is an officer or director of the company and owns, controls, or has the power to vote 10% or more of any class of voting securities of a company, and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities; or

(C) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of a company.

(13) Controlling person--A person having control as defined by paragraph (12) of this section.

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(14) Day--A calendar day, unless another method of counting days is specified.

(15) Deposit account--A savings account, certificate of deposit, withdrawable deposit, demand deposit account, checking account, or any other term referring to the amount of money a savings association owes an account holder as a result of the deposit of money in the savings association.

(16) Deposit liability--The aggregate amount of money shown by the books of the savings association to be owed to the savings association's bank deposit account holders after applying any legal or contractual reduction.

(17) FDIC--The Federal Deposit Insurance Corporation, including any successor.

(18) Finance Commission--The Finance Commission of Texas, the oversight body responsible for overseeing and coordinating the Department under Finance Code Chapter 11.

(19) Financial institution--Has the meaning assigned by Finance Code §201.101.

(20) GAAP--Generally Accepted Accounting Principles.

(21) Holding company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "savings and loan holding company."

(22) Holding company affiliate--A company of which a savings association is a subsidiary and any other subsidiary of such company other than a subsidiary of the savings association.

(23) Home office--The office where a savings association has its headquarters and from which all of its operations are directed.

(24) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(25) Issuer--The savings association that issued the security in question.

(26) Managing officer--An individual designated by the board as being responsible for, and having the authority to direct, the day-to-day operations of the savings association. The managing officer must have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that, under the management and supervision of the managing officer, the savings association will operate in compliance with applicable law and that success of the savings association is probable.

(27) Member--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(28) Mutual association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(29) Officer--The president, any vice president (but not an assistant vice president, second president, or other vice president having authority similar to an assistant or second vice president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any entity or organization, whether incorporated or unincorporated. The term "officer" includes the chairman of the board, if the savings association's certificate of formation or bylaws authorize the chairman to participate in the operating management of the entity or organization, or if the chairman actually participates in such management.

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(30) Person--An individual, corporation, a partnership, a savings association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(31) Recourse--A contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(32) Savings Association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "association."

(33) Shareholder--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(34) Subsidiary--Any company that is controlled by the savings association or by a company that is controlled by a company which is controlled, directly or indirectly, by the savings association.

(35) Surplus--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(36) Texas Savings and Loan Act--Finance Code Title 3, Subtitle B (Finance Code §61.001 et seq.).

(37) Unsafe and unsound practice--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002), and includes excessive operating expenses, excessive growth, high-risk or undiversified investment positions, and non-existent or poorly followed lending or underwriting policies, procedures, or guidelines.

(38) Voting security--Includes any security convertible into or evidencing a right to acquire a voting security.

(39) Withdrawal value--The net amount of money that may be withdrawn by an account holder from a deposit account.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



SUBCHAPTER B. APPLICATIONS

DIVISION 1. GENERAL PROVISIONS

7 TAC §§60.101 - 60.104

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §§60.101 - 60.103 are also adopted under the authority of, and to implement, Finance Code §66.002(3). 7 TAC §60.102 is also adopted under the authority of Finance Code: §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to filing an application or other documents with the department. 7 TAC §60.102 is also adopted under the authority of, and to implement, Finance Code: §62.001(a); §62.011; and §63.004(d). 7 TAC §60.103 is also adopted under the authority of, and to implement, Finance Code: §62.006(a)(1); and §62.353(a)(1). 7 TAC §60.104 is also adopted under the authority of, and to implement, Finance Code §61.006.

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The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.101. Application Filing Requirements.

(a) Purpose and Applicability. Applications submitted to the Department must comply with the requirements of this section.

(b) Application Forms. All applications must be made on the current form for the application prescribed by the Commissioner.

(c) Incomplete Filings; Notice of Acceptance; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. On or before 30 days after the date the Department receives the application, the Commissioner or the Commissioner's designee will issue a written notice to the applicant informing them either that the application is complete and accepted for filing, or that the application is incomplete and specifying the information required to render the application complete. The application may be deemed withdrawn and the applicable fee forfeited if, on or before 30 days after the date the applicant is notified the application is incomplete, the applicant fails to provide to the Department the supplemental information or supporting documentation necessary to render the application complete.

(d) Duty to Supplement. The applicant has a continuing obligation and duty to supplement the application with any other information or supporting documentation requested by the Commissioner in writing. The applicant must provide any information or supporting documentation submitted in connection with any related application made to the appropriate federal banking agency, to the extent not previously provided to the Department.

(e) Duty to Amend. If a material change occurs in the facts contained in or information furnished in support of the application, the applicant must file an amended application or otherwise supplement the application to address the material change. The applicant must endeavor to resolve any potential changes or amendments to the application prior to publishing public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application). The Commissioner may, in his or her sole discretion, require the applicant to republish the public notice.

§60.102. Application Fees and Charges.

(a) Filing Fees. An applicant must pay the following filing fees:

(1) Charter Application and Amendments.

(A) Charter application: \$10,000.

(B) Change of name: \$500.

(C) Certificate of formation or bylaws amendments: \$100 per request.

(2) Office Locations.

(A) Branch office (other than a mobile facility): \$1,500.

(B) Mobile facility: \$500, plus \$100 for each location where the mobile facility is to be conducting banking business for purposes of §60.132 of this title (relating to Mobile Facility).

(C) Relocate home or branch office: \$500.

(3) Reorganization, merger, consolidation, conversion, or purchase and assumption:

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(A) For a reorganization, merger, or consolidation transaction in which the resulting institution will be a savings association, a fee of \$2,500 for each financial institution involved in the transaction.

(B) For a purchase and assumption transaction by a savings association as purchaser, a fee of \$2,000 for each financial institution involved in the transaction.

(C) For the conversion by a financial institution that is not a savings association into a savings association, the fee will be determined based on the total asset size of the institution, as follows:

(i) \$0 - 125 million: \$2,500.

(ii) \$125 million - \$500 million: \$5,000.

(iii) \$500 million - 1 billion: \$10,000.

(iv) over 1 billion - \$15,000.

(D) For the conversion of a savings association into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings association reorganizing into, or merging or consolidating with a financial institution that is not a savings association, no fee will be assessed.

(E) for the conversion of a mutual association into a capital stock association, a fee of \$7,500.

(4) Change of control (obtaining control of a savings association): \$5,000.

(5) Permission to issue capital notes or debentures: \$1,000.

(6) Holding company registration: \$2,000.

(7) Investment in subsidiaries.

(A) Initial investment: \$1,500, plus \$100 for each office other than the home office of the proposed subsidiary.

(B) Service subsidiary application to engage in a new activity: \$500.

(C) Redesignation of operating subsidiary: \$300.

(D) Change of name: \$100.

(E) Relocate home or branch office: \$100.

(b) Reimbursement for Costs. In addition to filing fees established in subsection (a) of this section, the applicant must reimburse the Department for any costs incurred in connection with investigating or conducting a hearing on the application, including travel expenses.

(c) Protest Filing Fee. A person filing a protest to an application or otherwise requesting a hearing on an application (other than the applicant) must pay a fee of \$2,500 at the time the protest or request for hearing is filed.

(d) Fees Nonrefundable; Discretion to Waive Fees and Costs. All filing fees must be paid at the time the application is filed and are nonrefundable. Except for fees set or required by statute, the Commissioner, in his or her sole discretion, may waive, in whole or in part, any fees or costs required by this section.

§60.103. Public Notice of Application.

If an application requires that notice to the public be given, such notice must comply with the requirements of this section. The notice must use language and content preapproved by the Commissioner prior to publishing. The notice must be submitted to the publisher for publication on or before 15 days after the date the applicant receives notice that the application is

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complete and accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The notice must be published in an English language newspaper of general circulation in each county required by the rule(s) governing such application. The applicant must, on or before 10 days after the date the notice is published, provide the Commissioner with a publisher's affidavit evidencing that the notice was properly published in conformity with this section. The notice is deemed properly effected when the appropriate notice has been published in conformity with this section, and more than 10 days have elapsed.

§60.104. Motions for Rehearing.

A motion for rehearing pursuant to Finance Code §61.006 must be filed on or before 14 days after the date the decision or order that is the subject of the motion is signed. A copy of the motion for rehearing must be served on all parties who made an appearance or otherwise submitted a filing in the proceeding, and the motion must include a certificate of service reciting the parties served and the method of service. A party must file a reply to the motion for rehearing, if any, on or before 30 days after the date the decision or order that is the subject of the motion is signed. The Commissioner must act on the motion for rehearing on or before 45 days after the date the decision or order that is the subject of the motion is signed or the motion is deemed overruled by operation of law.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



**DIVISION 2. CHARTER APPLICATIONS
AND AMENDMENTS**

7 TAC §§60.121 - 60.123

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.121 is also adopted to implement Finance Code: Chapter 62, Subchapter A; §62.152; and §66.002(3). 7 TAC §60.122 is also adopted under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.121. Savings Association Charter.

(a) Application Requirements. The charter application and all required supporting information must be executed by the proposed incorporators of the proposed savings association which must consist of at least five adult residents of this state and must include all of the information required by Finance Code §62.001. The application must include a request for a corporate name to be approved by the Commissioner. The application must include the proposed home office of the savings association, the identity and qualifications of the proposed managing officer(s), and any additional information the Commissioner deems necessary to enable the Commissioner to determine the matters set forth in Finance Code §62.007.

(b) Identification of Home Office; Definition of Community; Temporary Office Location. The proposed location for the home office must be specifically identified so as to exactly locate it within the community to be served. The term

"community" as used in the Finance Code §62.007 means the geographical area surrounding the proposed location of the home office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business. The Commissioner may approve the opening and operation of a temporary home office location for an approved charter, provided that such office is within the 1/2-mile radius of the permanent home office approved in the charter. If a temporary home office location is approved, the savings association must promptly cease operations at such office upon the permanent home office being constructed or rendered fit for occupancy, but in any event must cease operations on or before 18 months after the date the charter was approved, unless extended in writing by the Commissioner.

(c) Capital Requirements. No application to incorporate a savings association will be approved unless the Commissioner determines the proposed savings association has received subscriptions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the FDIC or the amount required of a national bank. No savings association with an approved charter may open or do business as a savings association until the Commissioner certifies that the Commissioner has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings association in cash, free of encumbrance.

(d) Public Notice. A charter application is deemed to be a complete application for purposes of Finance Code §62.006 at the time the Department notifies the applicant that the

application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the charter application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the proposed savings association will have its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the application for purposes of Finance Code §62.006.

(e) Request for Hearing; Deadline to Protest. A person may protest or otherwise request a hearing on the application as provided by Finance Code §62.006. Any person desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.006 is deemed waived.

(f) Hearing. If a charter application is protested or a hearing on the application is otherwise requested, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the charter application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal

for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the charter application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by Finance Code §62.006 and subsection (e) of this section.

§60.122. Change of Name.

(a) Approval Required. A savings association may not change its name without the prior written approval of the Commissioner, and a savings association may not operate under any name which has not been approved by the Commissioner in writing.

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(c) Request for Hearing; Deadline to Protest. A person affected by the proposed name change may protest or otherwise request a hearing on the change of name application as provided by Finance Code §62.011. Any person affected by the proposed name change and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (b) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(d) Persons Affected by the Change of Name. A person is affected by a change of name for purposes of Finance Code §62.011 only if the requested name change, if granted, would result

in the savings association's name being substantially or deceptively similar to the party alleged to be affected, or is otherwise reasonably anticipated to create confusion in the marketplace involving the party alleged to be affected. A person requesting a hearing on a change of name application must allege and provide information in support of the request indicating they are a person that might be affected by the proposed name change as provided by this section. The Commissioner will review the request for hearing and determine, in his or her sole discretion, if the person might be affected so as to require a hearing under Finance Code §62.011.

(e) Hearing. If a hearing is required, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases contained in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(f) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (c) of this section.

§60.123. Certificate of Formation or Bylaws Amendments.

(a) Approval Required. A savings association may not amend its certificate of formation, bylaws, or other governing documents without the prior written approval of the Commissioner.

(b) Application Requirements. The application to amend the savings association's certificate of formation, or bylaws must include the proposed amendments together with an explanation as to why the amendments are necessary.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 3. OFFICE LOCATIONS

7 TAC §§60.131 - 60.133

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.131. Branch Office.

(a) Approval Required. A savings association may not establish a branch office or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices) without

prior written approval of the Commissioner. A branch office application is required if a savings association would like to establish and operate a courier/messenger service pursuant to §60.202 of this title.

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

(1) proposed location for the office;

(2) the personnel and office facilities to be provided;

(3) the estimated cost and projected profits of such office; and

(4) any information deemed necessary by the Commissioner to render a determination on the matters set forth in subsection (c) of this section.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that:

(1) the operation and condition of the savings association affords no basis for supervisory objection;

(2) the character, responsibility, and general fitness of the current management of the savings association warrant a belief that the branch office will be operated in accordance with the Texas Savings and Loan Act; and

(3) the financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the savings association.

(d) Commencement of Operations. The branch office must commence operations on or before 12 months after the date of approval unless the

Commissioner grants a written extension. No more than one 12-month extension will be approved by the Commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the approval for such office is deemed revoked and a new application must be made.

(e) Identification of Branch Office; Definition of Community. The proposed location for the branch office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in Finance Code §62.008 means the geographical area surrounding the proposed location of the branch office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business.

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published both in the county where the proposed branch office is to be located and in the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed branch office may protest or otherwise request a hearing on the branch office application as provided by Finance Code §62.011. Any person affected by the proposed establishment of a branch office and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (f) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the

application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

(j) Offices in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this chapter, a savings association may establish branch offices in any state or territory of the United States. Each application for permission to establish such a branch office must comply with the requirements of this section and must include a certified copy of an order from the appropriate banking agency approving the office, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve the application unless the Commissioner determines that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

§60.132. Mobile Facility.

(a) Approval Required. A savings association may not establish a mobile facility as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner.

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

(1) the proposed location(s) at and times during which the mobile facility will operate;

(2) the need for the mobile facility within the community;

(3) the personnel and office facilities to be provided; and

(4) the estimated expense to operate the mobile facility.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met. Additionally, the savings association must show that adequate safeguards exist for the security of the mobile facility.

(d) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county or counties where the proposed mobile facility will be operating and in the county where the savings association has its home office.

(e) Request for a Hearing; Deadline to Protest. A person affected by the proposed establishment of a mobile facility may protest or otherwise request a hearing on the mobile facility application, as

provided by Finance Code §62.011. Any person affected by the proposed establishment of a mobile facility and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(f) Hearing. If a hearing is required, the Commissioner will set a hearing on the application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (e) of this section.

§60.133. Relocate Home or Additional Office.

(a) Approval Required. A savings association may not move its home office or any additional office as provided by §60.202 of this title (relating to Types of Additional Offices) beyond its immediate vicinity without the prior written approval of the Commissioner.

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(b) Immediate Vicinity. The term "Immediate vicinity" as used in Finance Code §62.011 means the area within a radius of 1 mile from the present location of such office. However, if the office to be relocated has not been open for business at its present location for more than 2 years, approval in accordance with this section is required as if the office were not within the immediate vicinity. If the existing office has been open for more than 2 years, prior written notice must be provided to the Commissioner describing the saving association's plans for the relocation, including the precise location for the new office, the date of the relocation, and information supporting that the new location of the office will be within the immediate vicinity of the present location and does not require the Commissioner's approval.

(c) Relocation of Existing Offices. Notwithstanding subsection (a) of this section, a savings association may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the Commissioner prior written notice. Upon such notification, the establishment of such office is deemed to be an approved branch office of the savings association.

(d) Required Information. Each application for prior approval, or prior written notice, whichever is applicable, must provide the following information, subscribed to and sworn before a notary:

(1) the addresses of the existing and new office location;

(2) a description of the land and building to be built or leased and terms thereof;

(3) estimates of the cost of removal to and maintenance of the new location;

(4) whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office;

(5) evidence of the board's approval of the relocation; and

(6) any other information deemed necessary by the Commissioner.

(e) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met.

(f) Public Notice. An applicant seeking to change the location of the home or an additional office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the office is presently located, the county where the proposed new location is located, and the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or additional office location may protest or otherwise request a hearing on the application, as provided by Finance Code §62.011. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (f) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the

application on or before 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal or decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision on or before 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 4. REORGANIZATION, MERGER,
CONSOLIDATION, CONVERSION,
PURCHASE, AND ASSUMPTION AND
ACQUISITION

7 TAC §§60.141 - 60.145

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings

associations. 7 TAC §60.141 is also adopted under the authority of, and to implement, Finance Code: Chapter 62, Subchapters B, H, and I; and §66.002(3). 7 TAC §60.142 is also adopted under the authority of, and to implement, Finance Code §62.353. 7 TAC §60.143 is also adopted under the authority of, and to implement, Finance Code: Chapter 62, Subchapter E; and §66.002(3). 7 TAC §60.144 is adopted under the authority of, and to implement, Finance Code: Chapter 62, Subchapter F; and §66.002(a)(3). 7 TAC §60.145 is also adopted under the authority of, and to implement, Finance Code: §62.002; and §66.002(3).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.141. Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association.

(a) Applicability. This section governs:

(1) A reorganization, merger, or consolidation transaction in which the resulting institution will be a savings association; and

(2) A purchase and assumption transaction by a savings association as purchaser.

(b) Non-Applicability. This section does not govern:

(1) the conversion of a savings association into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings association reorganizing into, or merging or consolidating with, a financial institution that is not a savings association, which is governed by section §60.143 of this title (relating to Reorganization, Merger or Conversion by a

Savings Association to Another Financial Institution Charter); or

(2) the conversion by a financial institution that is not a savings association into a savings association, which is governed by section §60.144 of this title (relating to Conversion into a Savings Association).

(c) Plan Required. Any savings association seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in which the resulting institution will be a savings association must do so pursuant to a plan adopted by the board and filed with the Commissioner as a part of an application for approval. Purchase and assumption transactions include purchases of assets, deposit accounts, or other liabilities in bulk not made in the ordinary course of business.

(d) Application Required. The application for approval of the plan must contain: proof that the plan was adopted by the board of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the members or shareholders entitled to vote on the plan; a statement that the corporate continuity of the resulting institution will possess the same incidents as that of a savings association which has converted in accordance with the Texas Savings and Loan Act; and a statement identifying the home office of the resulting institution. A true and correct copy of the plan, as adopted, must be filed as part of the application. All documents and their contents must be subscribed and sworn to before a notary.

(e) Public Notice. An applicant seeking reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition must publish a public notice of the plan and application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each

county in which a financial institution participating in the plan has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the plan and application for purposes of Finance Code §62.353.

(f) Request for Hearing; Deadline to Protest. Any interested person desiring to protest the plan and application or otherwise request a hearing on the plan and application must file a written protest with the Department on or before 10 days after the date the public notice is made as provided by subsection (e) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.353 is deemed waived.

(g) Hearing. If a hearing is required, the Commissioner will set a hearing on the plan and application on or before 60 days after the date the protest or request for hearing and the required fee are received, unless the Commissioner determines that the provisions set forth in §60.142 of this title (relating to Exemption for Supervisory Merger) apply, and the merger is designated as a supervisory merger for purposes of Finance Code §62.353(e). The hearing is governed by the procedural requirements concerning contested cases set forth in Government Code Chapter 2001 and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(h) Time of Decision. To the extent a hearing on the plan and application is required, the Commissioner will render a decision on or before 30 days after the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. If a hearing on the plan and application is not required, the Commissioner

will render a decision on or before 30 days after the time period for requesting a hearing on the plan and application lapsed as provided by subsection (f) of this section, unless the Commissioner establishes a longer time period, with written notice to the applicant.

(i) Transactions Involving Financial Institutions in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this section, a savings association may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state or territory. Each such application must include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve such an application unless the Commissioner determines that all requirements of this section have been met, and all applicable requirements of the laws of the state or territory in question have been met.

§60.142.Exemption for Supervisory Merger.

(a) The Commissioner may designate a transaction under §60.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association) as a supervisory merger when:

(1) the Commissioner has placed one or more of the savings associations involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings and Loan Act;

(2) the Commissioner has determined that one or more of the savings associations involved is in an unsafe condition; or

(3) the FDIC has determined, and certified to the Commissioner, that the merger of one or more of the institutions involved is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition means that the savings association is (or savings associations are) insolvent or in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation(s) of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the savings association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its capital; or that the savings association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the Commissioner, or any agreement between the savings association and the Commissioner; or that the savings association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the savings association by the Commissioner or other duly authorized personnel of the Department; or any other condition affecting the savings association which the Commissioner and the board agree place the savings association in an unsafe condition.

(c) Effect of Exemption. If the Commissioner designates the transaction as a supervisory merger, the application and all information relating to the application are deemed confidential. As a result, the requirements of §60.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association), concerning public notice of the application, and a hearing on the application, are not applicable.

§60.143. Reorganization, Merger or Conversion by a Savings Association to Another Financial Institution Charter.

(a) A savings association is authorized to reorganize, merge, or convert into another type of financial institution charter subject to applicable law and regulation relating to the type of charter which will be held by the resulting institution.

(b) The Commissioner must be given written notice of the intention of the savings association to reorganize, merge, or convert no less than 30 days prior to the proposed transaction.

(c) The savings association must file with the Commissioner:

(1) a copy of the application filed with the appropriate banking agency having jurisdiction over the surviving financial institution;

(2) a certified copy of all minutes of meetings of the board, shareholders, or members that relate to the transaction, including those reflecting approval to engage in the transaction by a majority vote of the shareholders of members;

(3) a publisher's certificate certifying the publication of the notice required to be published by the appropriate banking agency; and

(4) evidence to ensure that no undue harm will be caused to the public interest or to any other existing financial institution.

(d) The Commissioner is deemed to have consented to the reorganization, merger or conversion into another type of financial institution charter at the time the Department notifies the savings association that the filing made in accordance with this section is complete and has been accepted for filing as provided by

§60.101 of this title (relating to Application Filing Requirements). Upon compliance with the provisions of this section and the granting of a successor charter by the appropriate banking agency, a copy of which must be filed with the Commissioner, the savings association receiving the new charter ceases to exist as a savings association and will no longer be subject to the jurisdiction of the Commissioner. The foregoing notwithstanding, the Commissioner must receive the original charter certificate or a certified affidavit of lost certificate in order to be released from the requirement to pay annual assessments as provided by §60.251 of this title (relating to Annual Assessments.)

§60.144. Conversion into a Savings Association.

(a) The Commissioner may authorize any financial institution to convert itself into a savings association in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) Plan and Application. In order to obtain such authorization, the converting institution's board must approve and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings association will be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, must be filed with the Commissioner and mailed to the appropriate banking agency on or before 10 days after the date of its adoption. At the meeting to vote on a conversion to a savings association, the members or stockholders must also vote on the directors of the savings association. The proposed directors must execute an application for savings association charter as provided by Finance Code Chapter 62, Subchapter A, and

§60.121 of this title (relating to Savings Association Charter).

(c) Review by Commissioner; Approval. The Commissioner, on receipt of the application and verified copy of the minutes, will conduct an examination of the financial institution seeking conversion. Following the examination, the Commissioner will approve the conversion if the Commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code Chapter 62, Subchapter A, and §60.121 of this title.

§60.145. Mutual to Stock Conversion.

(a) The application for mutual to stock conversion must include:

(1) a plan of conversion;

(2) amendments to the savings association's certificate of formation and bylaws;

(3) a copy of the proxy and soliciting materials to be used; and

(4) such other information the Commissioner may require.

(b) The plan of conversion must provide:

(1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;

(2) that the shares of the converting savings association be offered to persons with subscription rights and management, in that order, and that any remaining shares will be sold either in a public offering through an underwriter

or directly by the converting savings association in a direct community offering;

(3) that a direct community offering by the converting savings association will give a preference to natural persons residing in the counties in which the savings association has an office;

(4) that the sale price of the shares of capital stock to be sold in the conversion will be a uniform price determined in accordance with paragraph (1) of this subsection, and specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be completed on or before 24 months after the date the savings association members approve the plan of conversion;

(6) that each savings accountholder of the converting savings association will receive, without payment, a withdrawable savings account or accounts in the converted savings association equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings association;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion are reasonable;

(9) that the converting savings association may not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings association;

(10) that the proxies held with respect to voting rights in the saving association will not be voted regarding the conversion, and that new proxies

will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder will be the total of the deposit balances in the accountholder's savings accounts in the converting savings association as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than \$50 (or any lesser amounts) will not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion must be adopted by not less than two-thirds of the board.

(d) Public Notice. An application for mutual to stock conversion is deemed to be a complete application at the time the Department notifies the applicant that application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which the savings association has an office, and must prominently post the notice in each of its offices.

(e) Following approval of the application for conversion by the Commissioner, the plan of conversion must be submitted to the members at an annual or special meeting and the plan must be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members.

(f) No offer to sell securities of a savings association pursuant to a plan of conversion may be made prior to Commissioner's approval of the:

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(g) Within 45 days:

(1) of the date of the mailing of the subscription form, the subscription rights must be exercised;

(2) after the last day of the subscription period, the sale of all shares of capital stock of the converting savings association to be made under the plan of conversion, including any sale in a public offering or direct community marketing, must be completed.

(h) The converting savings association must pay interest at not less than the savings account interest rate on all amounts paid in cash or by check or money order to the savings association to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings association until the conversion is completed or terminated.

(i) For the purpose of this rule, the public offering and a direct community offering is deemed to commence upon the declaration of effectiveness by the Commissioner of the final offering circular.

(j) The Commissioner may grant a written waiver from any requirement of this rule that is not otherwise required by statute.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 6. CHANGE OF CONTROL

7 TAC §§60.161 - 60.165

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The adopted rules are also made under the authority of, and to implement, Finance Code: Chapter 62, Subchapter L; and §66.002(3).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.161. Acquisition of a Savings Association.

The following procedures must be followed when a person desires to obtain control of a savings association (including change of control of a savings association holding company).

(1) No person other than the issuer may make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings association if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings association, unless such person has filed with the Commissioner all of the following information on an application form approved by the Commissioner and which application form is deemed by the Commissioner to be complete and has received a written order from the

Commissioner approving such acquisition or change of control:

(A) the background and identity of the applicant, if such applicant and any affiliate is an individual, or all individuals who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Such filing must contain the following information:

(i) name and address;

(ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

(iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulations, and, if so, giving the date, style of the

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suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the Commissioner;

(B) if the applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there must be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare dividends to liquidate such savings associations, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guarantees given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the savings association's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings association in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the Commissioner determines are relevant to the review of the application; and

(J) any other relevant information requested by the Commissioner.

(2) If the person required to file the information required by paragraph (1) of this section is a partnership, limited partnership, syndicate, trust, or other group, the Commissioner may require that the information must be given to:

(A) each partner of such partnership or limited partnership;

(B) each member of such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information required by paragraph (1) of this section is a corporation, the Commissioner may require that the information called for must be given with

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respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings association may not be consummated until the Commissioner approves the application for acquisition of control. The application will be processed and considered in accordance with Finance Code §62.555 and §62.556. The Commissioner will render a decision on or before 60 days after the application is complete and accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The application will be denied if the Commissioner finds any of the following:

(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings association or savings bank industry in any part of the state, unless the Commissioner also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) the financial condition of any acquiring party might jeopardize the financial stability of the savings association being acquired;

(C) plans or proposals to liquidate or sell the savings association or its assets are not in the best interest of the savings association;

(D) the experience, ability, standing, competence, trustworthiness, or integrity of the

applicant is such that the acquisition would not be in the best interest of the savings association;

(E) the savings association will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;

(F) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the savings association or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings association has been evidenced;

(G) the applicant has not provided information pertinent to the application requested by the Commissioner; or

(H) the applicant is not acting in good faith.

§60.162. Notice and Hearing.

(a) Public Notice. An applicant timely requesting a hearing on the Commissioner's decision to deny the application must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(b) Hearing. If a hearing is required, the Commissioner will set a hearing on the denial on or before 60 days after the date the request for a hearing on the denial is received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(c) Time of Decision. To the extent a hearing on the Commissioner's decision to deny the application is required, the Commissioner will render a decision on or before 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to be closed for purposes of Finance Code §62.556.

§60.163. Retention of Control.

(a) The following conditions affecting any controlled savings association, regardless of when or how such control has been acquired, are grounds for the Commissioner to investigate, seek to enjoin, or set aside any change of control of a savings association, if the Commissioner deems the transfer to be against the public interest:

(1) the violation of any law, these regulations, abuse of the fiduciary responsibility held by a savings association, or other demonstration of untrustworthiness by the savings association, its holding company, or any controlling person, affiliates, affiliated persons, or any of the officers or directors which would affect the savings association; or

(2) the violation of any antitrust law of this state by the savings association, the holding company, or any affiliate.

(b) The Commissioner may require the submission of such information as necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) When the Commissioner determines reasonable cause exists to believe that a change

of control may have taken place without prior approval, the Commissioner may call a hearing to determine whether there has been in fact a change of control. If the Commissioner finds by a preponderance of the evidence that such unauthorized control exists, the Commissioner may, after notice and hearing, issue an order requiring immediate divestiture by certain persons of unapproved or indirect control, or the Commissioner may issue any other supervisory order the Commissioner deems appropriate.

§60.164. Abeyance of Other Applications.

When an application for approval of acquisition of control of a savings association has been received by the Commissioner and the savings association also has other applications on file with the Commissioner, such applications may, at the Commissioner's discretion, be held in abeyance until the change of control application has been disposed of.

§60.165. Exempt Transactions.

The following transactions are exempt from the application requirements of this division:

(1) control of an insured institution acquired solely as a result of foreclosure on the stock of a savings association which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the Commissioner on or before 30 days after the date of acquisition and provided further that the acquiror may not retain such control for more than one year after the date on which such control was acquired. The Commissioner may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed three years, if the Commissioner finds such extension is warranted and would not be detrimental to the public

interest. Nothing in this subsection prevents such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same; and

(3) acquisition of additional stock of a savings association by any person who has held power to vote 25% or more of any class of voting stock in such savings association continuously for the three-year period preceding such acquisition, or has maintained control of the savings association continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 7. CAPITAL NOTES AND DEBENTURES

7 TAC §60.171

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings

associations. The rule is also adopted under the authority of, and to implement, Finance Code §63.004(d).

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.171. Capital Notes and Debentures.

(a) Approval Required. No savings association may issue and sell its capital notes or debentures without the prior written approval of the Commissioner. The Commissioner, in approving the issuance and sale, may impose any conditions the Commissioner determines necessary with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

(b) Requirements. A savings association may, by resolution of its board and with prior approval of the Commissioner, issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing savings association, provided:

(1) the savings association provides adequate proof to the satisfaction of the Commissioner that the holders of such obligations will receive properly amortized payments of both principal and interest at regularly stated intervals, or that proper provision is made for sinking fund allocations to retire all principal of and interest on such obligations; and

(2) sufficient evidence is furnished to the Commissioner as to the need and utilization of such funds by the savings association in a profitable manner.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 8. HOLDING COMPANY APPLICATIONS

7 TAC §60.181

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code: §66.002(3); §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.181. Registration.

A holding company must apply and register with the Commissioner on or before 90 days after the date the company becomes a holding company. The application must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the Commissioner finds necessary and appropriate. On written request, the Commissioner may, in his or her sole discretion, extend the time within which a holding company is required to register and file the required information.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 9. SUBSIDIARY APPLICATIONS

7 TAC §60.191

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code: §64.001; §64.002(18) and (19); and §66.002(3).

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.191. Subsidiary Application.

(a) In order to obtain approval for a subsidiary, the savings association must file with the Commissioner an application accompanied by the following information:

(1) an audited financial statement in the event of acquisition of an existing company;

(2) a certified board resolution of the board of the applying savings association approving the investment in the proposed subsidiary;

(3) a certified copy of the certificate of formation and bylaws of the proposed subsidiary;

(4) the acquisition terms, cost, or investment requirements of the savings association;

(5) projected operating statements of the proposed subsidiary for the first 3 years of operation;

(6) an attorney's opinion letter as to direct, indirect, and/or contingent liability of the savings association and the proposed subsidiary;

(7) an outline of plans for operation of the proposed subsidiary;

(8) evidence that the proposed subsidiary will have adequate management and operating personnel with proper supervision by savings association management;

(9) plans for the safeguarding of assets of the proposed subsidiary;

(10) affidavits from all directors of a savings association and the proposed subsidiary fully disclosing any interest they may directly or indirectly have in the proposed subsidiary; and

(11) such other information or data as the Commissioner may require.

(b) The Commissioner may approve an investment in a subsidiary if the Commissioner finds that:

(1) the operation and condition of the savings association affords no basis for supervisory objection;

(2) there are adequate income and reserves to support the proposed investment;

(3) the operations of the subsidiary will be clearly distinguishable from those of the parent savings association; and

(4) the subsidiary is or will be profitably operating within a reasonable period of time or the investment is reasonably projected to result in economic benefit to the savings association.

(c) If the Commissioner finds that a savings association has abused or is abusing the authority to invest in a subsidiary, the Commissioner may exercise discretion in denying such savings association the right to future exercise thereof until such abuse or abuses have been corrected.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



SUBCHAPTER C. OPERATIONS

DIVISION 1. OFFICE LOCATIONS

7 TAC §§60.201 - 60.204

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code §62.011.

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.201. Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.

(a) Approval Required. No savings association may establish, maintain, or relocate its home office, or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices), without the prior written approval of the Commissioner, except as otherwise provided by §60.133 of this title (relating to Relocate Home or Additional Office).

(b) Ancillary Facilities. An authorized or approved office of a savings association is the place where the business of the savings association is conducted, and with the prior written consent of the Commissioner, may include facilities ancillary thereto for the extension of the savings association's services to the public. Any authorized or approved office of a savings association also means, with the prior written consent of the Commissioner, separate quarters or facilities to be used by the savings association for the purpose of performing service functions in the efficient conduct of its business.

(c) Notice of Home Office. All offices of a savings association which are located outside the county of its home office must display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such savings association.

(d) Closing an Office. Before closing an approved branch or other office, other than a temporary closure as provided by §60.203 of this title (relating to Temporary Closing of Additional Offices), or an emergency closure as provided by Finance Code §63.009, a savings association must comply with the notice requirements of federal law, and provide the Commissioner with a copy of the closing notice filed with the appropriate federal banking agency, if applicable, upon filing such notice. A savings association must provide the Commissioner with confirmation on or before 10 days after the actual closing date. Once closed,

prior written approval from the Commissioner to operate a branch or other office is deemed revoked, and a savings association may not reopen the branch or other office without seeking new approval from the Commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings association, or any combination thereof, may be performed at a location other than the home or a branch office and such location does not constitute an "additional office" requiring notice to or the prior approval of the Commissioner for purposes of Finance Code §62.011:

(1) Automated or remote activities. A savings association may engage in limited banking activities through infrastructure and equipment by automated or remote means, including use of an automated teller machine (ATM), automated loan machine, automated device for receiving deposits (remote deposit capture), or other remote service unit.

(2) Loan production activities. A savings association may engage in loan production activities including taking loan applications, making a credit decision, accepting payments on loans, or managing or selling real estate owned by the institution in connection with such loans, unless such activity conflicts with applicable state or federal law.

(3) Administrative activities (administrative offices). A savings association may establish or maintain administrative offices to perform the internal operations of the institution, provided the savings association does not conduct banking activities.

(4) Advertising and marketing. A savings association may advertise and market itself to the public including soliciting deposits, providing information about the financial products of the savings association, and assisting persons in

completing application forms to open a deposit account, provided the savings association does not conduct banking activities.

(5) Trade association participation; community events and engagement. A savings association may participate in trade association events promoting the banking or financial services industry broadly. A savings association may also host, attend, or otherwise participate in community events, provided the savings association does not conduct banking activities at such event.

(6) Information technology (IT) infrastructure. A savings association may operate information technology infrastructure or equipment including the placement of IT infrastructure in a data center, the hosting or processing of a website or data by a third-party IT service provider, or such other physical presence tied to the IT infrastructure of the savings association.

(7) Ancillary customer service activities. A savings association may engage in customer service activities ancillary to its banking functions including relating to accessing or using its website or a software application.

§60.202. Types of Additional Offices.

The following types of additional offices may be established and maintained by a savings association:

(1) branch offices at which the savings association may transact any business that could be done in the home office;

(2) mobile facilities at which the savings association may transact any business of the institution which could be done in the home office (a detailed record of the transactions at such facility must be maintained); and

(3) courier/messenger service to transport items relevant to the savings associations' transactions with its customers, including courier services between financial institutions.

§60.203. Temporary Closing of Additional Offices.

In the event a savings association closes any additional office of any type on a temporary basis, such office must be reopened on before 12 months after the date of such closing, unless otherwise extended by written authorization of the Commissioner. In the event such office is not reopened within the allotted 12-month period, or the longer period established by the Commissioner, if applicable, the Commissioner's approval to establish such office for purposes of §60.201 of this title (relating to Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office) is deemed revoked. Written notice of any temporary closing must be provided to the Commissioner on or before 10 days after the date of such closing, and the office may not reopen until the Commissioner receives written notification on or before 10 days prior to such reopening.

§60.204. Operation of a Mobile Facility.

Mobile facilities must be operated consistent with the following requirements:

(1) Such facility may be operated only at locations approved by the Commissioner, each of which must at all times be appropriately identified at the site and on the facility and located within 100 miles of the savings association's home office or a branch office.

(2) The savings association must maintain adequate safeguards for the security of the mobile facility. The Commissioner may require additional safeguards, if in the Commissioner's sole discretion, existing safeguards are

inadequate, with written notice to the savings association.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 2. BOOKS, RECORDS,
ACCOUNTING PRACTICES, FINANCIAL
STATEMENTS, AND RESERVES

7 TAC §§60.221 - 60.227

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.221 is also adopted under the authority of, and to implement, Finance Code: §66.002(4) and (6); and §66.053. 7 TAC §60.222 is also adopted under the authority of, and to implement, Finance Code §66.002(5). 7 TAC §60.223 is also adopted under the authority of, and to implement, Finance Code: §66.002(8); and §66.051. 7 TAC §60.225 is also adopted under the authority of, and to implement, Finance Code §66.002(10). 7 TAC §60.226 is also adopted under the authority of, and to implement, Finance Code §66.051. 7 TAC §60.227 is also adopted under the authority of, and to implement, Finance Code: §62.051(b)(2); §62.007(b)(3); §62.010; §62.106; and §62.151(a).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.221. Books and Records.

A savings association must create and maintain books and records of its operations, including complete minutes of the meetings of its members and the board, and actions taken by written consent in lieu of such meetings. Records must be maintained in compliance with the applicable requirements of the appropriate federal banking agency and established industry best practices promoted by the Federal Financial Institution Examination Counsel. Records must be accurate, complete, current, legible, readily accessible, and readily sortable. A savings association may store original records or copies of records at a location other than the home office; however, a savings association must ensure that a complete set of its books and records is readily accessible at the home office at all times so as to facilitate the examination of the savings association by the Commissioner at the home office. A savings association may maintain copies of its books and records in an electronic, digital, or magnetic format. A true and correct copy of an original record stored in an electronic, digital, or magnetic format is deemed to be an original record.

§60.222. Accounting Practices.

A savings association must use such forms and observe such accounting principles and practices as the Commissioner may require from time to time.

§60.223. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, on or before 90 days after the date its fiscal year ends, each savings association is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of the FDIC set forth in 12 C.F.R.

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§363.2 and §363.3, with the exception of any matters specifically addressed by this section, the Texas Savings and Loan Act, or the rules (regulations) adopted thereunder.

§60.224. Misdescription of Transactions.

A savings association may not, either directly or indirectly, knowingly make any entry on its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction.

§60.225. Charging Off or Setting Up Reserves Against Bad Debts.

The Commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with GAAP.

§60.226. Examinations.

(a) The Commissioner will examine each savings association once in each year, or more frequently if the Commissioner determines that the condition of the savings association justifies more frequent attention to enforce the Texas Savings and Loan Act. The Commissioner may defer an examination for not more than six months if the Commissioner considers the deferment appropriate to the efficient enforcement of the Texas Savings and Loan Act and consistent with the safe and sound operation of the institution.

(b) An examination under this section may be performed jointly or in conjunction with an examination by the saving association's

appropriate federal banking agency. The Commissioner may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

§60.227. Bylaws.

(a) The bylaws of a savings association must contain sufficient provisions to govern the institution in accordance with the Texas Savings and Loan Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board. Bylaw amendments may not take effect before being filed with and approved by the Commissioner in accordance with §60.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

(b) A savings association is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Business Organizations Code to the same extent permitted under state law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the savings association.

(c) Other optional bylaws may be adopted by a savings association with the approval of the Commissioner obtained in accordance with §60.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 3. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§60.231 - 60.234

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.231 and §60.232 are also adopted under the authority of, and to implement, Finance Code: §62.002(b); §62.003(b); §62.052(c); §62.152; and §66.002(1) and (2). 7 TAC §60.233 is also adopted under the authority of, and to implement, Finance Code Chapter 66, Subchapter C. 7 TAC §60.234 is also adopted under the authority of, and to implement, Finance Code §63.004(d).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.231. Capital Requirements.

(a) Unless the context clearly indicates otherwise, when used in this division, "capital" for a savings association includes (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings association's capital under GAAP) plus any retained earnings and additional paid-in capital as well as such other items as the Commissioner may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings association must maintain capital at levels that are required for institutions whose accounts are insured by the FDIC.

§60.232. Increase or Decrease of Minimum Capital Requirements.

(a) The Commissioner may increase or decrease the minimum capital requirement set forth in this chapter upon written request by a savings association or by supervisory directive if the Commissioner determines that:

(1) the savings association's failure to meet the minimum capital requirement, if applicable, is not due to unsafe and unsound practices in the conduct of the affairs of the savings association, a violation of any provision of the certificate of formation or bylaws of the savings association, or a violation of any law, rule, or supervisory action applicable to the savings association or any condition that the Commissioner has imposed on the savings association by written order or agreement;

(2) the savings association is well managed. In determining whether the savings association is well managed, the Commissioner may consider:

(A) management's record of operating the savings association;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the savings association in changing economic conditions; and

(E) such other factors as the Commissioner may deem necessary to properly evaluate the quality of the savings association's management; and

(3) the savings association has submitted a plan acceptable to the Commissioner for restoring capital within a reasonable period of time. Such plan must describe the means and schedule by which capital will be increased. The plan must also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and payment for services or products furnished by affiliated persons. The plan must provide for improvement in the savings association's capital on a continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in capital until near the end of the waiver or variance period or that does not appear to the Commissioner to be reasonably feasible will not be acceptable. The Commissioner may require modification of the savings association's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Progress Reports. Any savings association which receives an increase or decrease of its minimum capital requirement from the Commissioner must file quarterly progress reports regarding compliance with its capital plan. The Commissioner may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the Commissioner for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the Commissioner may impose any condition, limitation, or restriction on such increase or decrease as the Commissioner may deem necessary to ensure compliance with law and

regulations and to prevent unsafe and unsound practices.

(d) The Commissioner may withdraw or modify any increase or decrease granted pursuant to this section if:

(1) the savings association fails to comply with its capital plan;

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings association undergoes a change of control or a material change in management that was not approved by the Commissioner;

(4) the savings association engages in practices inconsistent with achieving its minimum capital requirement;

(5) information is discovered that was not made available to the Commissioner at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings association engages in unsafe and unsound practices, violates any provision of its certificate of formation or bylaws, or violates any law, rule, or supervisory order applicable to the savings association or any condition that the Commissioner has imposed upon the savings association by written order or agreement; or

(7) the savings association fails to submit the reports required by this section.

§60.233. Business Plans.

(a) All savings associations whose operations are considered by the Commissioner unsafe or unsound or that have total capital less than the

amount required under §60.231 of this title (relating to Capital Requirements) or §60.232 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan must be at least 1 year but may be for so long as the Commissioner may require.

(b) The savings association's business plan will be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board, at least annually.

§60.234. Joint Issuance of Capital Obligations.

Joint Issuance of Capital Obligations. On the same terms and conditions as stated in §60.171 of this title (relating to Capital Notes and Debentures), a savings association may, by resolution of its board and with prior approval of the Commissioner, join other savings associations in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 4. HOLDING COMPANIES

7 TAC §§60.241 - 60.245

Statutory Authority

The rules are adopted under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code: §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.241. Reports.

Each holding company and each subsidiary of a holding company, other than a savings association, must file with the Commissioner reports required by the Commissioner. The reports must be made under oath and must be in the form and for the periods prescribed by the Commissioner. Each report must contain information concerning the operations of the holding company and its subsidiaries as the Commissioner may require. A holding company must file with the Commissioner copies of any filings, documents, statements, or reports required to be filed with the appropriate federal banking agency, unless such filing, document, statement, or report is publicly available.

§60.242. Books and Records.

Each holding company must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §60.221 of this title (relating to Books and Records), pertaining to savings associations.

§60.243. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as the Commissioner may prescribe. The holding company or the savings association must pay the

cost of an examination. The confidentiality provisions of Finance Code §89.052 apply to an examination performed in accordance with this section, however, the Commissioner may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the Commissioner, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§60.244. Agent for Service of Process.

The Commissioner may require a holding company or a person other than a corporation connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§60.245. Release from Registration.

The Commissioner at any time, on the Commissioner's own motion or on written request, may release a registered holding company from a registration made by the company if the Commissioner determines that the company no longer controls a savings association. If released, the savings association associated with the holding company must maintain the books and records of such holding company.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 5. ASSESSMENTS AND FEES

7 TAC §60.251, §60.252

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations; §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to the supervision and examination of savings associations. 7 TAC §60.252 is also adopted under the authority of, and to implement, Finance Code §66.052(a).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.251. Annual Assessments.

(a) Annual assessment. All savings associations chartered under the laws of the state and all foreign savings associations (as defined by the Texas Savings and Loan Act in defining "foreign association") holding a certificate of authority to do business in this state must pay to the department an annual assessment fee in an amount determined by the Commissioner as provided by subsection (c) of this section in accordance with the rate requirements set by the Finance Commission of Texas, and subject to the maximum assessment rates established by subsection (d) of this section. The Department will maintain on its website information concerning current rate requirements.

(b) Payment of Assessment. The annual assessment must be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings association

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must pay the assessment fee by electronic/ACH payment, or by another method, if directed to do so by the Department.

(c) Determination of Assessment. The assessment will be determined based on the total assets of the savings association. The valuation of assets will be determined as of the close of the calendar quarter immediately preceding the effective date of the assessment.

(d) Maximum Assessment Rates. The assessment rates set by the Finance Commission of Texas may not exceed the maximum rates established in the following rate schedule:

Figure: 7 TAC §60.251(d)

§60.252. Fee for Special Examination.

(a) A special examination is one that is conducted outside the context of a savings association's annual examination and includes, but is not limited to, examinations of a savings association holding company, and interstate branches of savings associations in Texas as the host state. The savings association or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable to the special examination, and the actual costs by the examiner in conducting the special examination.

(b) The fee for a special examination under this section will be calculated at a rate not to exceed \$75 per examiner per hour. The entity that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The Commissioner, in his or her sole discretion, may

lower the applicable rate for the examination fee or waive, in whole or in part, any fees or costs chargeable in accordance with this section.

(c) In connection with an examination under this section, the regulated entity or other legally responsible party must pay the examination fee and costs incurred as provided by this section.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 6. COMPLAINT PROCEDURES

7 TAC §60.261

Statutory Authority

The rule is adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rule is also adopted under the authority of, and to implement, Finance Code: §13.011(a); and Chapter 66, Subchapter C.

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.261. Savings Association Complaint Notices.

(a) Definitions.

(1) Privacy notice means any notice which a state savings association gives regarding a consumer's right to privacy, regardless of whether it is

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required by a specific state or federal law or given voluntarily.

(2) Required notice means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings associations must use the following notice: The (name of state savings association) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings association) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Phone: (877) 276-5550, Fax: (512) 936-2003, or through the Department's website at www.sml.texas.gov.

(2) A required notice must be included in each privacy notice that a state savings association sends out.

(3) Regardless of whether a savings association is required by any state or federal law to give privacy notices, each savings association must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings association conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be

conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings association must give the required notice when the customer relationship is established.

(C) The required notice must be posted on each website of the savings association that is accessible by the public and either used to conduct banking activities or from which the savings association advertises to solicit such business. The required notice is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



SUBCHAPTER D. LOANS, INVESTMENTS,
SAVINGS, AND DEPOSITS

DIVISION 1. AUTHORIZED LOANS AND
INVESTMENTS

7 TAC §§60.301 - 60.309

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code: §64.001; and §64.002. 7 TAC §60.303 is also adopted under the authority of, and to implement, Finance Code Chapter 64, Subchapter E.

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.301. Definitions.

As used in this division, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Commercial real estate--Land on which structures or improvements do not qualify the property as residential real estate are located.

(2) Home--A structure designed and used as a residence by one family, or a structure designed and used for occupancy for one to four family units. The term also includes common areas around town houses or condominium units which are incidental to ownership of the residence.

(3) Home improvement loan--Any loan made for the improvement, maintenance, repair, modernization, or equipment of a home.

(4) Interim construction loan--A loan made to finance the improvement of or the building of residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans.

(5) Manufactured home--A structure, transportable in one or more sections, which in the traveling mode is 8 feet or more in width or and 40 feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

(6) Personal property--Tangible and intangible property that is not real property, including the following items as defined in the Texas Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel paper, documents, general intangibles, cash proceeds, and non-cash proceeds.

(7) Residential real estate--Land on which a house, a home, or an apartment house is located, including combinations of farm residences and commercial farm real estate.

(8) Unimproved real estate--Land which has no substantial improvements or utilities. All other real estate will be considered either residential real estate or commercial real estate.

§60.302. Loans Authorized.

(a) A savings association may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans or participations subject to the requirements of the Texas Savings and Loan Act, and this subchapter, including:

(1) residential real estate loans, including loans on the security of leasehold interests in residential real estate;

(2) home improvement loans;

- (3) manufactured home loans,;
- (4) interim construction loans;
- (5) other real estate loans, including loans on the security of leasehold interest in real estate;
- (6) personal property loans;
- (7) commercial real estate loans, including loans on the security of leasehold interest in real estate;
- (8) non-real estate commercial loans;
- (9) loans fully secured by savings accounts owned or otherwise pledged for or by the borrower;
- (10) unsecured loans; and
- (11) loans which are insured or guaranteed by the United States or any instrumentality thereof.

(b) Parity. A savings association may purchase or commit to purchase any loan it could make if it were incorporated and operating as a federal savings association domiciled in this state, so long as for each such transaction the savings association complies with all applicable regulations governing such activities by federal savings banks. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

§60.303. Local Service Area Investment Requirement.

- (a) A savings association must ensure compliance with the local service area investment requirements set forth in Finance Code Chapter 64, Subchapter E.
- (b) Local Service Area. A savings association's "local service area" means the geographical area

designated by the Commissioner under Finance Code §64.082. A savings association's local service area is deemed to include any zip code for which any portion of the zip code is located within the 50-mile radius of the home office or any branch office of the savings association and is deemed to be removed from the local service area at the time such office permanently closes.

(c) Categories of Assets and Investments. The following categories of assets and investments constitute loan and investments for purposes of Finance Code §64.081:

- (1) first and second lien residential mortgage loans or foreclosed residential mortgage loans secured by real estate located in the local service area;
- (2) home improvement loans concerning real estate located in the local service area;
- (3) interim residential construction loans concerning real estate located in the local service area;
- (4) mortgage-backed securities collateralized by loans secured by real estate located in the savings association's local service area; and
- (5) loans for community reinvestment purposes concerning a community located in the local service area.

(d) For purposes of identifying qualifying assets and investments under this section:

- (1) Mortgage-backed securities includes mortgage-back bonds, mortgage pass-through securities, collateralized mortgage obligations, and such other securities determined by the Commissioner to be collateralized by first or second lien residential mortgages.

(2) It is the responsibility of the savings association to capture and maintain information and documentation to support a mortgage back security as being collateralized by loans secured by real estate located in the local service area.

(3) A qualifying loan or investment includes the loans sold by the savings association or any subsidiary (including finance subsidiaries) within the preceding 12 months that otherwise meet the requirements of this section.

(e) Any request by a savings association for a waiver under Finance Code §64.084 must be accompanied by a written explanation and justification as to why qualifying loans are not available in saving association's local service area.

§60.304. Unsecured Loans.

(a) A savings association may make unsecured loans or purchase participations in unsecured loans, on the terms and in amounts consistent with the savings association's lending policies, subject to the limitations of this section.

(b) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for real estate or personal property loans, so long as all requirements of this section are met.

§60.305. Loan Policies and Documentation.

(a) Policies. Each savings association must establish written policies approved by its board establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings association's capital. Credit underwriting standards should consider the

nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board; take adequate account of concentration of credit risk; and are appropriate to the size of the savings association and the scope of its lending activities.

(b) Loan Documentation Standards. Loan documentation standards must be established and maintained to enable the savings association to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings association may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their agent (and if the borrower is a corporation, a board resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

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(2) a statement signed by the borrower or their agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date on or before 180 days prior to the date the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, and any conditions of approval;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by

the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the savings association);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the savings association as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the savings association arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Title (Finance Code §301.001 et seq.).

(c) Unsecured Loans. Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (b)(1) and (3) - (7) of this section.

(d) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(e) Closing Agent. A savings association may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents must be forwarded to the savings association on or before 5 business days after the date of closing, or immediately after recording, for those documents which require filing of record.

(f) Permanent Loan File Requirements.

(1) Loan documentation must be in the possession of the savings association or an escrow agent designated by the savings association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records must be placed in one permanent loan file immediately upon receipt by the savings association.

(2) The permanent loan file required by this section must be located at an office of the savings association. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings association's discretion. Files for loans which are fully secured by accounts at the association may be maintained at the office where the loan was originated.

(3) The permanent loan file must contain evidence that the savings association obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings association's interest therein. This requirement does not apply to loan participations purchased by the savings association.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw must be part of the permanent file.

(5) When a savings association purchases whole loans or participations in loans, it must cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement must be a part of the permanent file. The savings association must obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(g) The records of the savings association must reflect that the board has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings association and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings association. Loans originating in branch offices, loan offices, or agencies must be approved in the same manner as loans originating in the principal office.

(h) A savings association must maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address

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of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§60.306. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees are subject to the requirements of Federal Reserve Board Regulations O and W, which sections are hereby incorporated by reference. The Department will monitor and enforce compliance with such provisions.

§60.307. Letters of Credit.

A savings association may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, subject to the following requirements:

- (1) The savings association must maintain a letter of credit register containing name of customer, address, amount of credit extended, and identifying number.
- (2) Each letter of credit must conspicuously state that it is a letter of credit or must be conspicuously entitled as such.
- (3) The savings association's undertaking must contain a specified expiration date or be for a definite term and must be limited in amount.
- (4) The savings association's obligation to pay arises only upon presentation of a draft and other documents as specified in the letter of credit and

there is no obligation on the part of the savings association to determine questions of fact or law at issue between the account party and the beneficiary.

(5) The savings association must obtain an unqualified obligation from its customer to reimburse it for payments made under the letter of credit.

(6) Each letter of credit's terms is subject to the limitations and documentation requirements to the same extent as if it were a loan made under this chapter.

(7) An appropriate fee may be collected for each letter of credit issued.

§60.308. Investment in Securities.

(a) A savings association is deemed to have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the FDIC; in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the FDIC; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings association's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state;

and in such other securities or obligations approved by the Commissioner.

(b) A savings association investing in securities under this section must ensure that the securities are delivered to the savings association, or for the savings association's account to a custodial agent or trustee designated by the savings association, on or before 3 business days after the date the savings association pays for or becomes obligated to pay for the securities. The savings association may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the FDIC, any financial institution legally exercising trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation, or such other trust company approved in advance by the Commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings association must ensure that it receives a custodial or trust receipt for the securities on or before 3 business days after the date the securities are delivered.

(c) No savings association or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes, or other securities of any affiliated person without the prior written approval of the Commissioner.

(d) No savings association or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings association.

(e) Investments in equity securities.

(1) A savings association or any service corporation, operating subsidiary, or finance subsidiary of a savings association may not invest in stock or equity securities unless the securities qualify as investment grade securities.

Additionally, no savings association may invest in stock or equity securities unless the securities are eligible investments for federal associations.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings association.

(f) A savings association may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

§60.309. *Investment in Banking Premises and Other Real Estate Owned.*

(a) A savings association may not, without prior written consent of the Commissioner, invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) A savings association may not acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association, or for the use of the savings association in future expansion of its banking facilities.

(c) Real estate acquired for the future expansion of a savings association's facilities not improved

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and occupied as banking facilities on or before 5 years after the date of its acquisition must be sold or otherwise disposed of. Existing bank facilities must be sold or otherwise disposed of on or before 5 years after the date the real estate ceases to be used for banking purposes. The Commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association may be held by a savings association for no more than 5 years, unless the Commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings association must substantiate the market value of the real estate by obtaining an appraisal on or before 90 days after the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is \$500,000 or less. The Commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings association acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than 1 year old.

(g) An evaluation must be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal must be made at least once every 3 years on real estate

with a recorded book value in excess of \$500,000.

(h) Notwithstanding any other provision of this section, the Commissioner may require an appraisal of real estate if the Commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the FDIC in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 2. SUBSIDIARIES

7 TAC §§60.321, 60.323 - 60.326

Statutory Authority

The rules are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. The rules are also adopted under the authority of, and to implement, Finance Code §64.002(18) - (20).

The adopted rules affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.321. Investment in and Divestiture of Subsidiaries.

(a) A savings association may, only after prior written approval of the Commissioner, invest in a subsidiary.

(b) Subsequent to obtaining approval for its initial investment and activity, a subsidiary may not engage in additional or substitute activities without the prior written approval of the Commissioner.

(c) A savings association may, with prior written approval of the Commissioner, divest itself of a subsidiary or merge or consolidate the subsidiary with another company if the Commissioner finds that the terms and conditions of the transaction are in the best interests of the savings association.

§60.323. Authorized Subsidiary Investments.

(a) Activities of a subsidiary must consist of one or more of the following:

(1) loan origination, purchasing, selling, and servicing;

(2) acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdividing;

(3) purchasing, selling, owning, renting, leasing, managing, subdividing, improving, operating for income, or otherwise dealing in and with real property, whether improved or unimproved (excluding any investment of any nature in an oil and gas drilling venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures);

(4) acquisition of improved residential real estate and mobile home lots to be held for sale or rental;

(5) acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(6) maintenance and management of rental real estate;

(7) serving as real estate brokers;

(8) serving as insurance broker or agent;

(9) engaging in or owning an interest in insurance companies engaged in the property, casualty, fire and marine, life, health and accident, title, fidelity, guaranty, and surety insurance business;

(10) serving in the capacity of trustee under deeds of trust or escrow agent;

(11) preparation of state and federal tax returns for the savings association's accountholders and/or borrowers;

(12) acquisition, maintenance, and management of real estate to be used for savings association offices and related facilities;

(13) investing in obligations of, or guaranteed as to principal and interest by, the United States or this state, and in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state;

(14) investing in venture capital through small business investment corporations; and

(15) other activities which may be approved by the Commissioner.

(b) A subsidiary may not, without prior approval of the Commissioner, invest in the stock of any savings and loan association or savings bank.

(c) A subsidiary may not receive payments on new or established savings accounts or pay out withdrawals of monies from savings accounts, and may not perform any duties for the savings association other than those specifically authorized in this section.

(d) The savings association must maintain the originals of all documents relating to the activities of its subsidiaries that do not require prior approval by the Commissioner, which documents must be made available at all times to state and federal supervisory authorities for examination and review.

§60.324. *Subsidiary Operations.*

(a) The savings association must obtain prior written approval of the Commissioner for the establishment and location of the home office, and any branch office, agency office, or any other office or facility of the subsidiary, and for any change of name of the subsidiary.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments must be furnished to the savings association on or before 30 days after the date of execution.

(c) The subsidiary must furnish, at the expense of the subsidiary or parent savings association or its holding company, an independent appraiser's report or other expert opinion as determined to be necessary by the Commissioner for the purpose of establishing the value of any investments made by the subsidiary.

(d) Each subsidiary must maintain fidelity bond coverage with an acceptable bonding company in

an amount that adequately protects the subsidiary from such loss. Coverage as an additional insured entity under a fidelity bond of the parent savings association or its holding company may satisfy this requirement.

(e) All directors of the savings association and subsidiary must furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

(f) Each subsidiary must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §60.221 of this title (relating to Books and Records), pertaining to savings associations.

§60.325. *Subsidiary Investment and Debt Limitation.*

Investment in subsidiaries is deemed to include investment in the subsidiary's capital stock, paid-in capital, subordinated debentures, unsecured loans, advances, contingencies, and other obligations (excluding secured conforming loans), and may not, in the aggregate, exceed 10% of the savings association's total assets without prior approval.

§60.326. *Operating Subsidiaries.*

A savings association is authorized to invest in operating subsidiaries, the activities of which are exclusively limited to activities which could be conducted directly by the parent savings association. Because an operating subsidiary is limited to activities that could otherwise be conducted directly by the savings association, operating subsidiary investment is not limited by the percentage of assets or dollar amount restrictions applicable to subsidiary corporations as set forth in §60.325 of this title (relating to Subsidiary Investment and Debt Limitation). Notwithstanding this exclusion, all other

provisions of this chapter applicable to a subsidiary apply equally to an operating subsidiary.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



DIVISION 3. SAVINGS AND DEPOSITS

7 TAC §60.331

The rule is adopted under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations; and §59.310, requiring the commission to adopt rules to implement Finance Code Chapter 59, Subchapter D. The rule is also adopted under the authority of, and to implement Finance Code Chapter 59, Subchapter D.

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.331. User Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code §59.301, have the same meanings assigned by such section.

(b) Measurement of Candle Foot Power. For purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as

fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by Landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator must notify the landlord in writing of the requirements of the Finance Code Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety Evaluations.

(1) The owner or operator of an unmanned teller machine must evaluate the safety of each machine on a periodic basis no less frequently than annually.

(2) The scope of the safety evaluation must include, at a minimum, the factors identified in Finance Code §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation

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if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices must furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Texas Business & Commerce Code §322.008.

(1) When Notice is Required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of Notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video Surveillance Equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under Finance Code §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned Teller Machines Located in a Bank Vestibule. The provisions of the Finance Code Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of Compliance. The security officer of each depository must certify compliance with the Finance Code Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending

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DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

MAXIMUM ANNUAL ASSESSMENT RATE SCHEDULE

Assets Over	Not Over	Amount	Plus	Over
\$0	\$2 million	\$5,548	0.000000000	\$0
2 million	20 million	5,548	0.000219058	2 million
20 million	100 million	9,491	0.000175245	20 million
100 million	200 million	23,510	0.000113940	100 million
200 million	1 billion	34,900	0.000096381	200 million
1 billion	2 billion	112,004	0.000078857	1 billion
2 billion	6 billion	190,861	0.000070094	2 billion
6 billion	20 billion	471,237	0.000059643	6 billion
20 billion	40 billion	1,306,239	0.000044928	20 billion
40 billion	250 billion	2,204,799	0.000035103	40 billion
250 billion		9,576,429	0.000034751	250 billion

6. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 61, Concerning Hearings, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 61 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 61.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 61.

ADOPTION OF REPEALS
7 TAC CHAPTER 61
PAGE 1 OF 1

CHAPTER 61. HEARINGS.

7 TAC §§61.1 - 61.3

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 61, as follows: §§61.1 - 61.3. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2298). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter -

Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 61.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§61.1. Hearings Officer.

§61.2. Rules of Procedure for Contested Hearings.

§61.3. Publication of Hearings Notice.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



7. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 63, Concerning Fees and Charges, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 63 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 63.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 63.

ADOPTION OF REPEALS
7 TAC CHAPTER 63
PAGE 1 OF 2

CHAPTER 63. FEES AND CHARGES

7 TAC §§63.1 - 63.9, 63.11 - 63.13, 63.15

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 63, as follows: §§63.1 - 63.9, 63.11 - 63.13, and 63.15. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2299). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter -

Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 63.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

- §63.1. Fee for Charter Application.*
- §63.2. Fee for Branch Office.*
- §63.3. Fee for Mobile Facility.*
- §63.4. Fee for Change of Name or of Location.*
- §63.5. Fee for Special Examination or Audit.*
- §63.6. Fee for Corporate Document Amendments.*
- §63.7. Fee for Permission to Issue Capital Obligations.*
- §63.8. Annual Fee to do Business.*
- §63.9. Fee for Reorganization, Merger, and Consolidation.*
- §63.11. Fee for Change of Control.*
- §63.12. Fee for Subsidiaries.*
- §63.13. Fee for Charter Application under §62.051.*
- §63.15. Fees for Public Information Requests.*

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



8. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 64, Concerning Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 64 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 64.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 64.

ADOPTION OF REPEALS

7 TAC CHAPTER 64

PAGE 1 OF 2

CHAPTER 64. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, RESERVES, NET WORTH, EXAMINATIONS, COMPLAINTS

7 TAC §§64.1 - 64.10

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 64, as follows: §§64.1 - 64.10. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2300). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it

should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 64.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§64.1. Location of Books and Records.

§64.2. Accounting Practices.

§64.3. Reproduction and Destruction of Records.

§64.4. Financial Statements; Annual Reports.

§64.5. Misdescription of Transactions.

§64.6. Charging Off or Setting Up Reserves Against Bad Debts.

§64.7. Capital Requirements.

§64.8. Waiver of Minimum Net Worth Requirements.

§64.9. Examinations.

§64.10. Savings and Loan Association Complaint Notices.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending

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9. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 65, Concerning Loans and Investments, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 65 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 65.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 65.

ADOPTION OF REPEALS
7 TAC CHAPTER 65
PAGE 1 OF 2

CHAPTER 65. LOANS AND INVESTMENTS

7 TAC §§65.1 - 65.21, 65.23, 65.24

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 65, as follows: §§65.1 - 65.21, 65.23, and 65.24. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2302). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60.

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter -

Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 65.

Changes Concerning Loan Requirements

The department's preexisting rules in Chapter 65, §§65.4 - 65.10, 65.13 - 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such rules is not included in the department's related adoption concerning new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register*.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§65.1. Types of Loans, Letters of Credit, and Investments Authorized.

§65.2. Loans and Investments Made under Prior Rules and Purchases of Such Loans or Participations Therein.

- §65.3. Definitions.*
- §65.4. Limitations on Aggregate Loans to One Borrower.*
- §65.5. Residential Real Estate Loans.*
- §65.6. Commercial Real Estate Loans.*
- §65.7. Unimproved Real Estate Loans.*
- §65.8. Personal Property Loans.*
- §65.9. Oil and Gas Loans.*
- §65.10. Wrap-around Real Estate Loans.*
- §65.11. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.*
- §65.12. Unsecured Loans.*
- §65.13. Manufactured Home Loans.*
- §65.14. Home Improvement Loans.*
- §65.15. Acquisition, Development, and Construction Loans.*
- §65.16. Interim Construction Loans.*
- §65.17. Loan Policies and Documentation.*
- §65.18. Letters of Credit.*
- §65.19. Investments in Real Property.*
- §65.20. Investments in Deferred Payment Obligations.*
- §65.21. Investment in Securities.*
- §65.23. Restrictions on Loan Transactions with Third Person.*
- §65.24. Local Service Area Investment Requirement.*

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



10. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 67, Concerning Savings and Deposit Accounts, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 67 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 67.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 67.

ADOPTION OF REPEALS

7 TAC CHAPTER 67

PAGE 1 OF 2

CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §§67.1 - 67.3, 67.6 - 67.13, 67.15, 67.17

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 67, as follows: §§67.1 - 67.3, 67.6 - 67.13, 67.15, and 67.17. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2267). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules in 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the

subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 67.

Changes Concerning Savings and Deposit Accounts

The department's preexisting rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such preexisting rules is not included in the department's related adoption concerning new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register*.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§67.1. Distribution or Payment of Dividends or Interest.

§67.2. Account Balance to Which Dividends or Interest Are Applied.

§67.3. Method of Computing Dividends.

§67.6. Provisions for Distribution of Earnings on Other Than Regular Accounts.

§67.7. Notice Prior to Withdrawal.

§67.8. Deposit Accounts.

§67.9. Provisions for Issuance of Secured or Unsecured Capital Obligations.

§67.10. Joint Issuance of Capital Obligations.

§67.11. Required Average Daily Balance of Liquid Assets; Failure to Meet Requirement.

§67.12. NOW Accounts.

§67.13. Checking Accounts.

§67.15. Noninterest-Bearing Deposit Accounts.

§67.17. User Safety at Unmanned Teller Machines.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending



11. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 69, Concerning Reorganization, Merger, Consolidations, Acquisition, and Conversion, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 69 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 69.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 69.

ADOPTION OF REPEALS
7 TAC CHAPTER 69
PAGE 1 OF 2

CHAPTER 69. REORGANIZATION,
MERGER, CONSOLIDATION,
ACQUISITION, AND CONVERSION

7 TAC §§69.1 - 69.11

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 69, as follows: §§69.1 - 69.11. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2305). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 -

65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 69.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

- §69.1. Filing of Plan.*
- §69.2. Form and Content of Application.*
- §69.3. Use of Approved Forms.*
- §69.4. Notice and Hearing.*
- §69.5. Publication.*
- §69.6. Time of Decision.*
- §69.7. Denial and Appeal.*
- §69.8. Exemption for Supervisory Merger.*
- §69.9. Designation as Supervisory Merger.*
- §69.10. Acquisitions Involving Associations in Other States or Territories.*
- §69.11. Conversion into another Financial Institution Charter.*

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

Iain A. Berry

General Counsel
Department of Savings and Mortgage Lending



12. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 71, Concerning Change of Control, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 71 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 71.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 71.

ADOPTION OF REPEALS
7 TAC CHAPTER 71
PAGE 1 OF 1

CHAPTER 71. CHANGE OF CONTROL

7 TAC §§71.1 - 71.8

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 71, as follows: §§71.1 - 71.8. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2306). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter -

Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 71.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§71.1. Introduction.

§71.2. Definitions.

§71.3. Acquisition of an Association.

§71.4. Hearings.

§71.5. Retention of Control.

§71.6. Application for Approval of the Acquisition of Control of a Savings and Loan Association.

§71.7. Abeyance of Other Applications.

§71.8. Exempt Transactions.

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

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

◆ ◆ ◆

13. Discussion of and Possible Vote to Take Action on the Adoption of Rule Repeals in 7 TAC, Part 4, Chapter 73, Subsidiary Corporations, Resulting from Rule Review

PURPOSE: The purpose of the rule repeals in 7 TAC Chapter 73 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule adoption.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 73.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the rule repeals in 7 TAC Chapter 73.

ADOPTION OF REPEALS
7 TAC CHAPTER 73
PAGE 1 OF 1

CHAPTER 73. SUBSIDIARY
CORPORATIONS

7 TAC §§73.1 - 73.6

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts the repeal of all preexisting rules in 7 TAC Chapter 73, as follows: §§73.1 - 73.6. The commission's proposal for the rules was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2307). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the

subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The adopted rules repeal all preexisting rules in Chapter 73.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

The adopted rule repeals affect the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§73.1. Investment in and Divestiture of Subsidiary Corporations.

§73.2. Application.

§73.3. Authorized Subsidiary Investments.

§73.4. Operations.

§73.5. Investment in Debt Limitation.

§73.6. Operating Subsidiaries.

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

Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending

◆ ◆ ◆

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

Anticipated Litigation

None

Pending Litigation

None

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C.

Texas Department of Banking

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Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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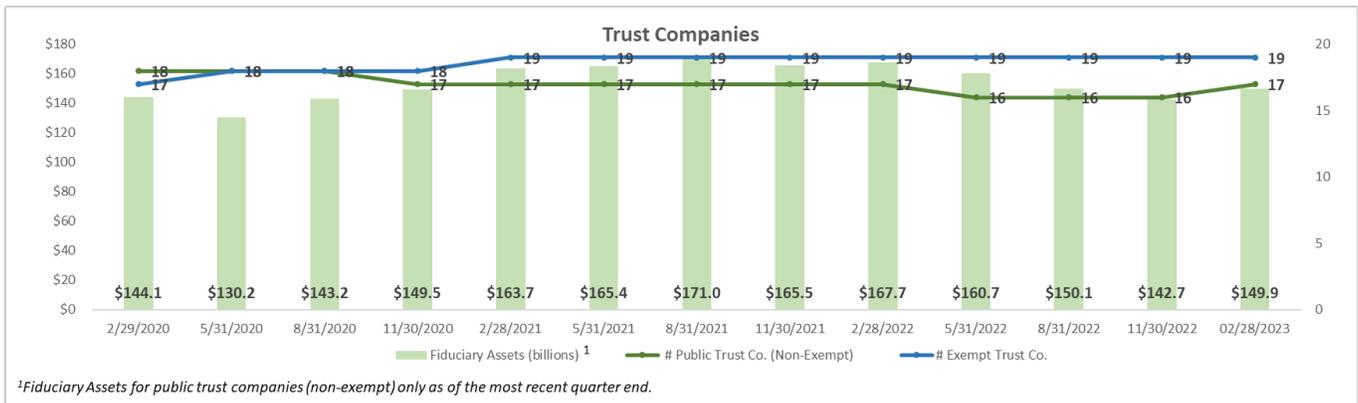
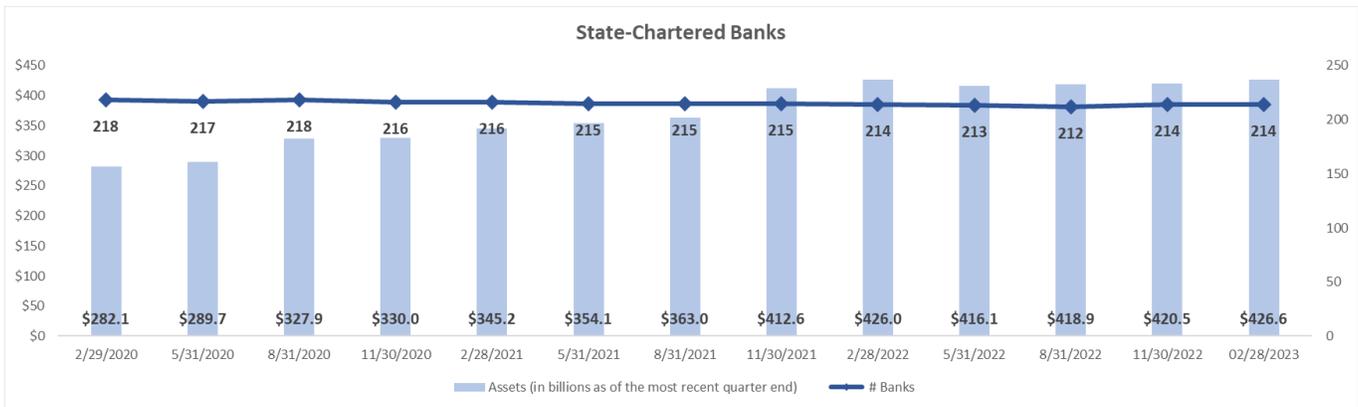
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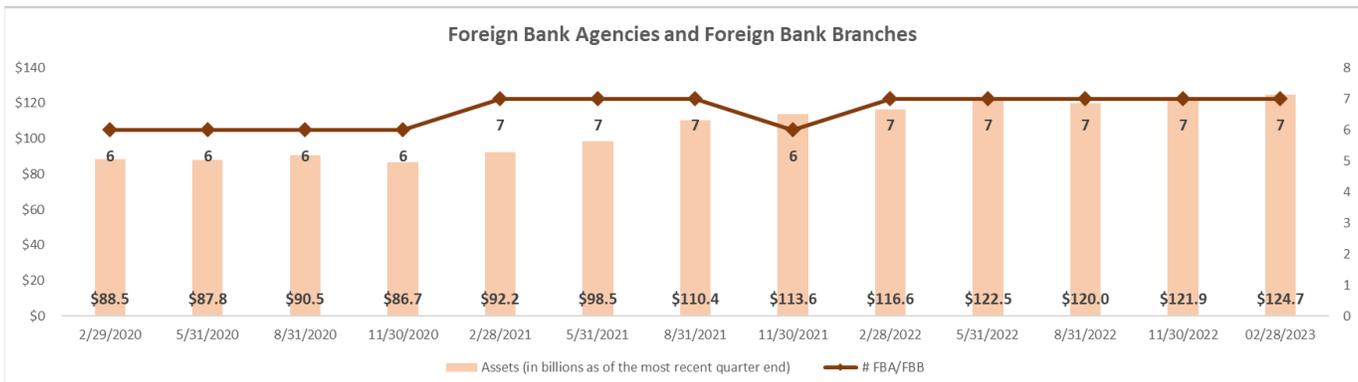
To: Finance Commission Members
 From: Jared Whitson, Review Examiner 
 Date: May 31, 2023
 Subject: Summary of the Bank & Trust Supervision Division Activities

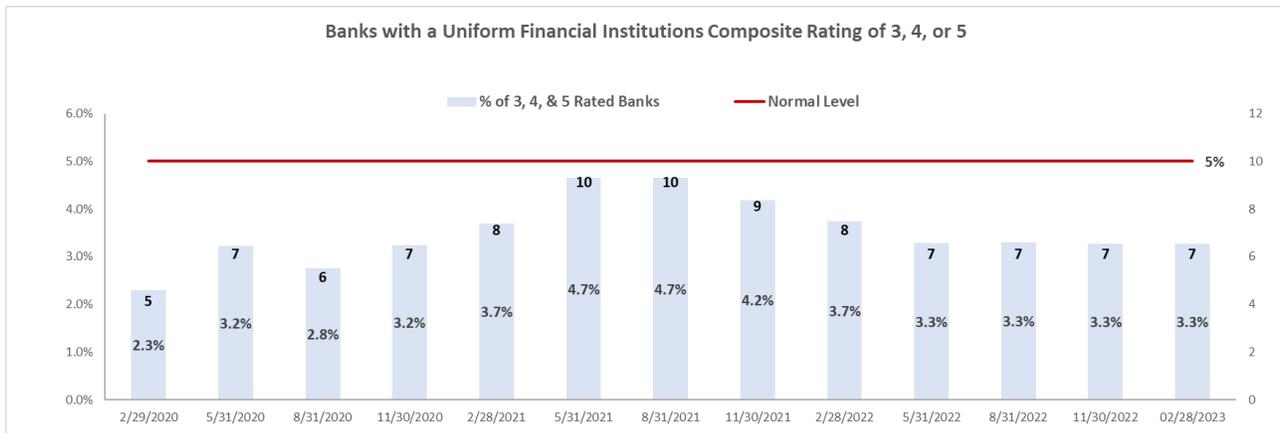
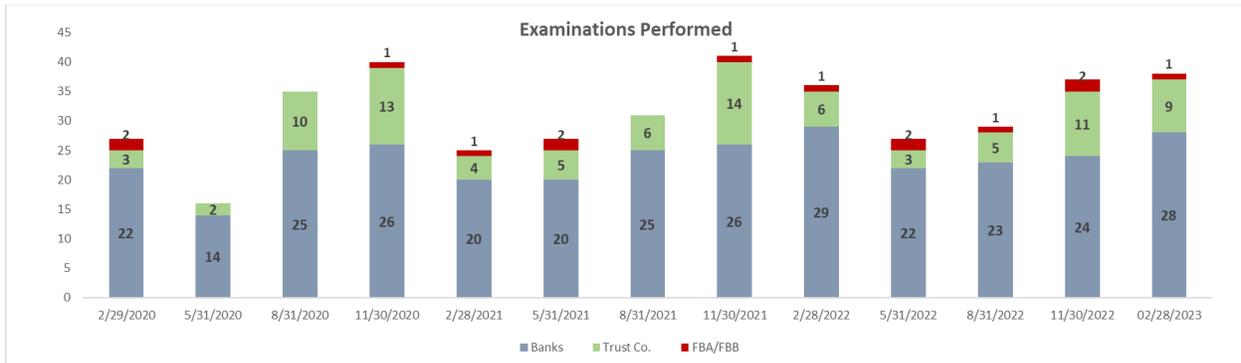
Bank and Trust Supervision – Industry Profiles

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



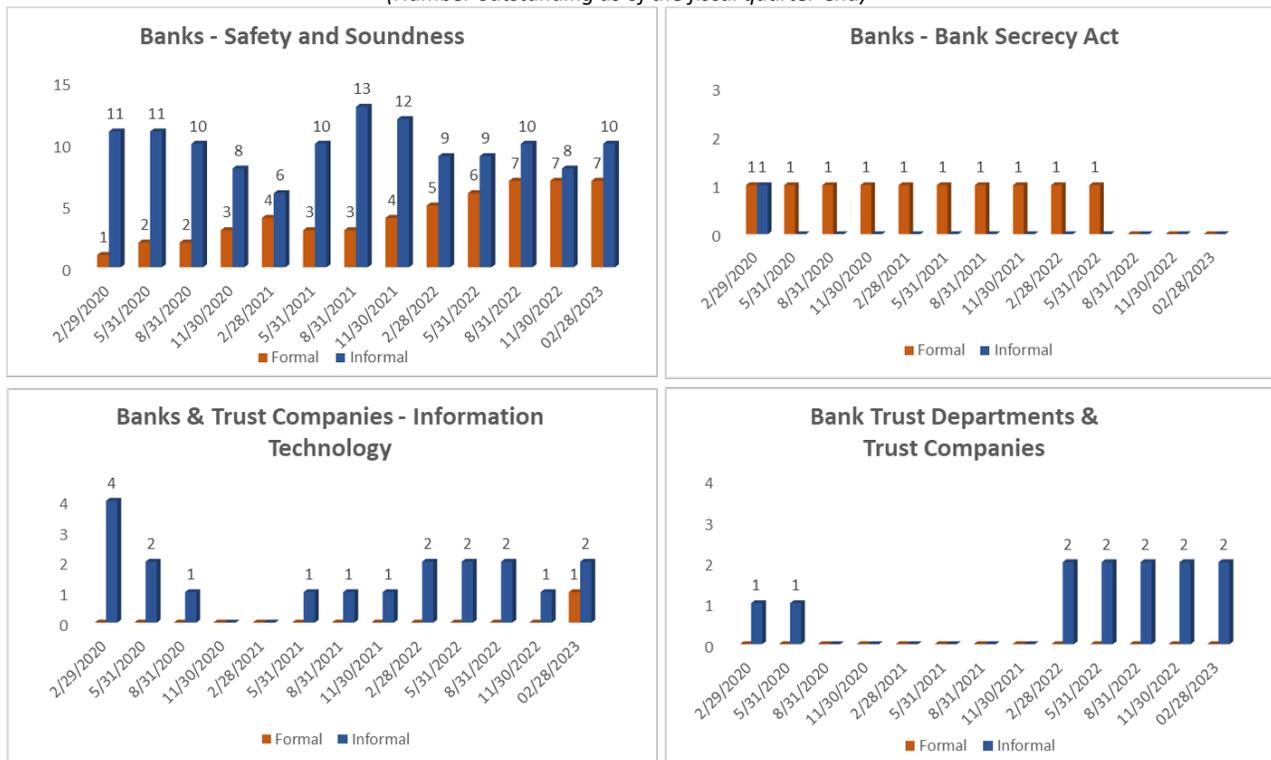
¹Fiduciary Assets for public trust companies (non-exempt) only as of the most recent quarter end.





The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem banks remain in the normal range between 3% and 5% of the total number of institutions.

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 2022	FY 2023 (YTD – April 2023)
Commercial Banks	96%	92%
IT	95%	92%
Trust Departments	100%	84%
Foreign Banks (FRB)	92%	100%
Trust Companies (DOB)	96%	75%
IT	88%	75%

Examination categories with less than 95% of examinations conducted within guidelines for FY 2023 include:

- Bank Examinations – Eight exams past due by an average of 13 days.
- IT Examinations of Banks – Eight exams past due by an average of 16 days.
- Trust Departments – Three exams past due by an average of 15 days.
- Trust Companies – Six exams past due by an average of 11 days.
- IT Examinations of Trust Companies – Two exams past due by an average of 23 days.

Division Highlights

- **Liquidity Monitoring:** The Bank & Trust division continues monitoring the liquidity posture of Texas state-chartered banks. This monitoring includes contacting banks about their liquidity positions, including obtaining real time information on liquidity and deposit trends.
- **Special Operations and Conferences:**
 - On April 13, 2023, Regional Director (RD) Kenneth Kuntschik represented the Department on a regulatory panel at the Risk Management Association, Central Texas Chapter Conference in San Antonio, Texas.
 - On April 21, 2023, Review Examiner (RE) Travis Graham represented the Department on a regulatory panel at the Texas Bankers Association (TBA) Compliance School in Georgetown, Texas.
 - On April 27, 2023, Commissioner Charles G. Cooper represented the Department at the Texas Bankers Hall of Fame Gala and the James B. Bexley Bank Executives and Directors Seminar in Huntsville, Texas.
 - On April 28, 2023, RE Kevin Wu represented the Department on a regulatory panel at the TBA Risk Officers Forum in Austin, Texas.
 - Beginning on May 15, 2023, Commissioner Cooper represented the Department at the Conference of State Bank Supervision (CSBS) Government Relations Fly-In in Washington, D.C.
 - Beginning on May 17, 2023, Commissioner Cooper, Deputy Commissioner Wendy Rodriguez, RE Jared Whitson, RD Kuntschik, Regional Review Examiner Allen Millsap, Financial Examiners Mallory DeBord, Lino Garcia, and Garnette Klingsporn represented the Department at the TBA Annual Convention in San Antonio, Texas. Commissioner Cooper received a “50 Years in Banking” award and was part of a Fireside chat.
 - On June 1, 2023, Commissioner Cooper and Deputy Commissioner Rodriguez attended the SW Graduate School of Banking at SMU Cox School of Business 66th Anniversary Keynote Banquet. Commissioner Cooper was awarded the Distinguished Alumni Award. The award is the highest honor bestowed on a graduate of the SW Graduate School of Banking.



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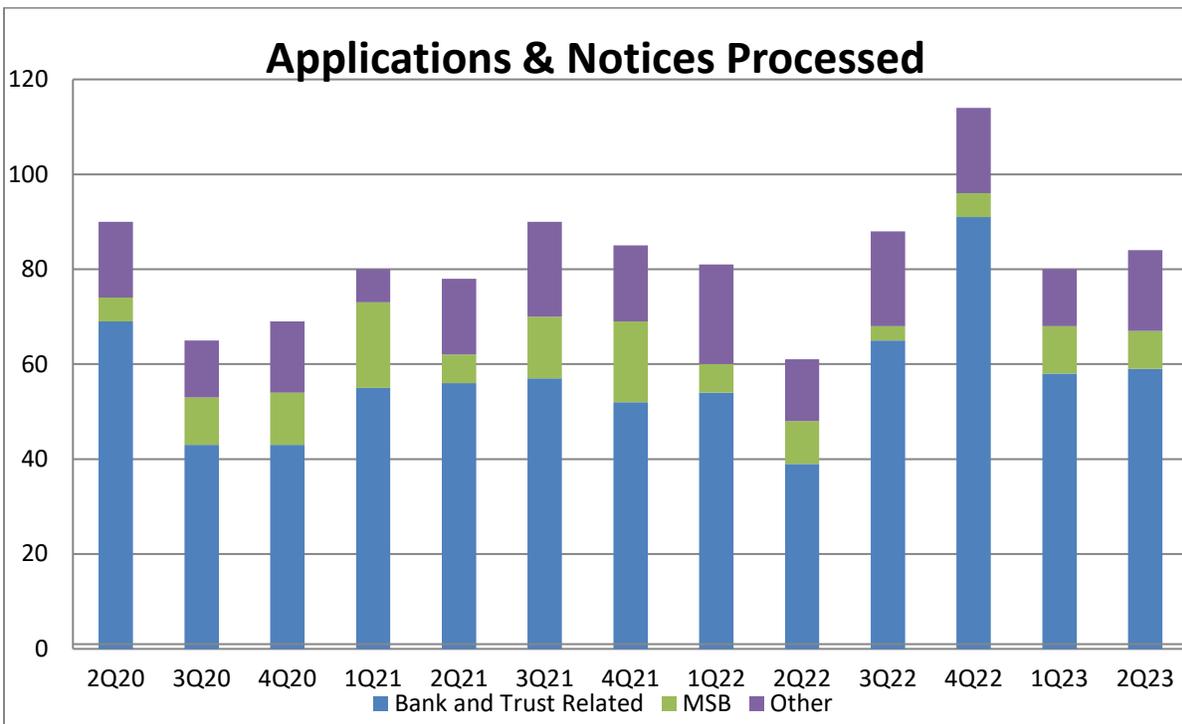
Charles G. Cooper
Commissioner

To: Finance Commission Members

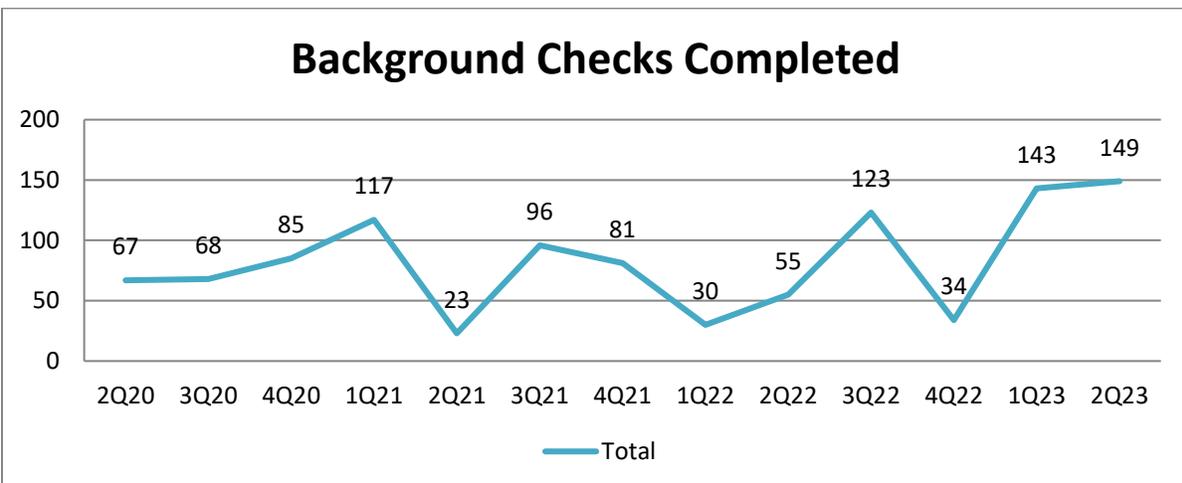
From: Mark Largent, Director of Corporate Activities *Mark R. Largent*

Date: May 31, 2023

Subject: Summary of the Corporate Division's Activities



Information on a Fiscal Quarter Basis.



Information on a Fiscal Quarter Basis.

Entities/Activities	Applications and Notices Under Review (as of April 30, 2023)
Bank Related	19
Trust Companies	6
Money Services Business (MSB)	39
Others	3
Totals	67

Division Highlights

- Open filings declined by about 18% compared to the level reported at the last Finance Commission meeting with most of the improvement coming from resolution of many MSB applications. Compared to our last report, the Corporate Division’s filings under review at month-end by category type changed by:
 - Bank related - decreased 2 (10%)
 - Trust company – unchanged 0 (0%)
 - MSB related - decreased 14 (26%)
 - Other - increased 1 (50%)

- The Corporate Division has addressed each finding and observation listed in the Garza/Gonzalez & Associates Fiscal Year 2023 Internal Audit Report on Corporate Activities. Resolution of the audit items have resulted in:
 - Improved monitoring of overall processing times;
 - Alignment of process, written procedures, and delegation of signature authority related to application approval letters;
 - Improved Corporate report accuracy and report distribution; and
 - Improved reporting and review of Corporate database changes.

- Charter, Conversion, and Merger Activity: Since the last report, the following transactions have consummated:
 - *Banks*
 - FirstCapital Bank of Texas, N.A., Midland, Texas merged into Prosperity Bank, El Campo, Texas [estimated gain in state banking assets of approximately \$2.2 billion].
 - Harmony Bank, N.A., Kemp, Texas merged into Texas Brand Bank, Dallas, Texas, which resulting state-chartered bank changed its name to Harmony Bank with [estimated gain in state banking assets of approximately \$375 million].
 - First Bank & Trust, Lubbock, Texas merged into HTLF Bank, Denver, Colorado [estimated loss in state banking assets of approximately \$3.0 billion].
 - *Trust Companies*
 - None.



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Charles G. Cooper
Commissioner

To: Finance Commission Members
From: Jesus "Jesse" Saucillo, Director of Non-Depository Supervision
Date: June 1, 2023
Subject: Summary of Non-Depository Supervision (NDS) Activities

		FY 2023								
Entity	FY 2022		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	194	\$315.1	194	\$315.0	195	\$314.7	*	*		
Prepaid Funeral Contract (PFC)	335	\$4.6	336	\$4.6	337	\$4.7	*	*		
Perpetual Care Cemeteries (PCC)	244	\$435.6**	243	\$438.9**	243	\$440.8**	*	*		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	*	*		
Examinations Performed										
MSB	91		29		19		*			
MSB Limited Scope	1		1		1		*			
MSB Accepted other State	16		0		0		*			
PFC	223		39		69		*			
PFC Limited Scope	1		1		0		*			
PCC	152		45		31		*			
PCC Limited Scope	2		0		0		*			
Ratings (# / %) Assigned to All Regulated Entities										
1	294	39.10%	292	38.57%	297	39.18%	*	*		
2	401	53.32%	410	54.16%	403	53.17%	*	*		
3	49	6.52%	48	6.34%	49	6.46%	*	*		
4 & 5	8	1.06%	7	0.93%	9	1.19%	*	*		
Noncompliance with Examination Priorities (Past Due)										
MSB	25		16		16		*			
PFC	1		11		4		*			
PCC	3		5		3		*			

NOTES:

Limited scope examinations do not receive a rating.

* Third quarter of fiscal year 2023 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, examination results for third quarter of fiscal year 2023 were not available as of the date of this report. Nonetheless, due to the ongoing financial examiner vacancies and the continued training of recently hired staff, the division does not anticipate meeting examination performance measures for the third quarter of fiscal year 2023. Specifically, NDS expects to be within approximately 2%, or 10 examinations, of meeting the acceptable quarterly output measure variance. Below is a summary of the division's personnel status:

- A PFC/PCC financial examiner (II) submitted a resignation notice effective April 2023. The division currently has two financial examiner vacancies in the PFC/PCC area, while one PFC/PCC financial examiner that started in March 2023 is in the early stages of the training phase.
- While the division is fully staffed in the MSB area, two MSB financial examiners remain in the training phase and are expected to complete their initial training in the summer of 2023.
- The division expanded staffing in the MSB area and hired two financial analysts to start in June 2023. One of the analysts is a former MSB financial examiner and has more than 10 years of experience in regulatory examination. The other financial analyst possesses approximately 20 years of regulatory experience. The addition of the two experienced individuals will further enhance the division's ability to provide effective oversight in the MSB area, including support in the processing of license applications.

Division Activities

- Director Saucillo participated as a speaker at the annual convention of the Texas Cemeteries & Crematories Association held on May 1st, in Round Rock, Texas. The convention discussed various concerns and issues relating to cemeteries and crematories in Texas. The conference provided an opportunity for the Department to discuss current matters impacting PCC owners/operators in-person.
- On May 23rd, the Prepaid Funeral Guaranty Fund Advisory Council (Council) meeting was held via teleconference. The funds' activities covering March 1, 2022, to February 28, 2023, and other routine agenda items, were discussed and reviewed by the Council.
- NDS continued to monitor legislation in the 88th Texas Legislature that impacts MSB/PFC/PCC license holders, including the bills detailed below. NDS is coordinating with the various divisions within the Department to revise and implement appropriate rules, resources, policies, and procedures necessary to enforce applicable bills that become law.
 - SB 895 relating to the Money Transmission Modernization Act (MTMA). The MTMA is designed to establish nationwide common standards and requirements for money transmission designed to harmonize regulations across state lines. The bill was signed on May 29, 2023 and will become effective September 1, 2023.
 - HB 1666 relating to commingling of funds by digital asset service providers. The bill has passed the Senate and was sent to the Governor on May 22, 2023.
- To protect the rights and interests of Texas consumers, the division continues to monitor and takes actions on licensed and unlicensed entities. During this reporting period, NDS issued regulatory enforcement action against an entity offering and conducting MSB activities in violation of applicable rules and regulations.



Charles G. Cooper
Commissioner

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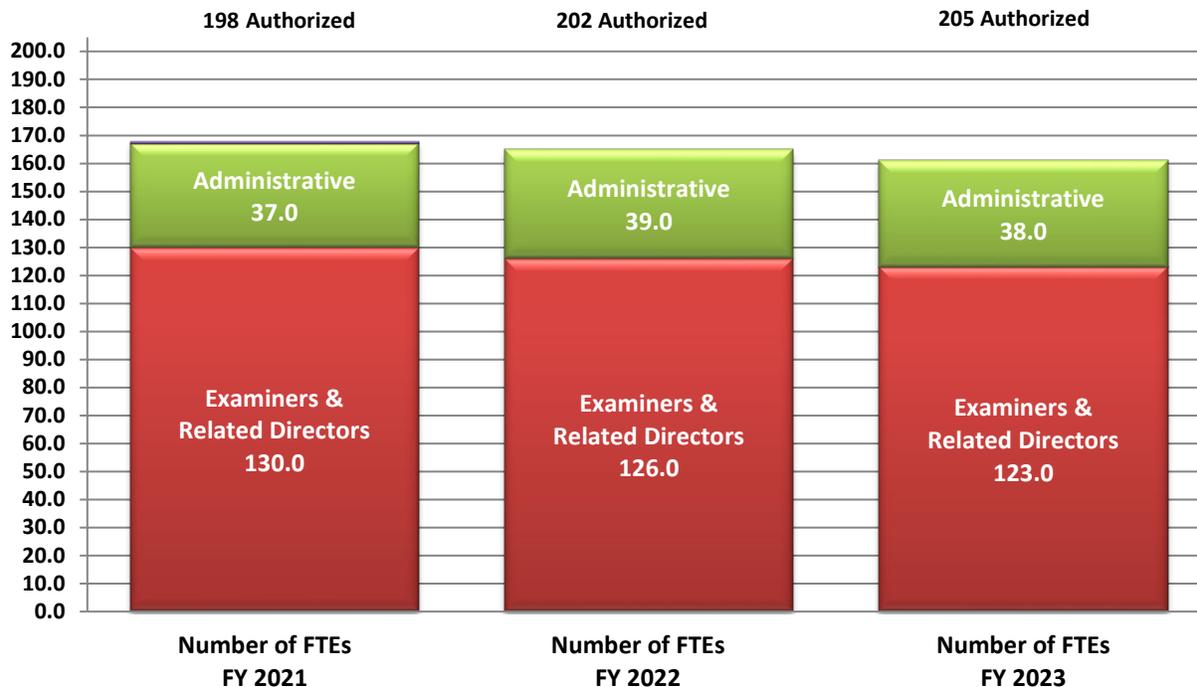
Memorandum

To: Finance Commission Members
From: Lori Wright, Director of Human Resources
Date: May 31, 2023
Subject: Summary of the Human Resources Division Activities

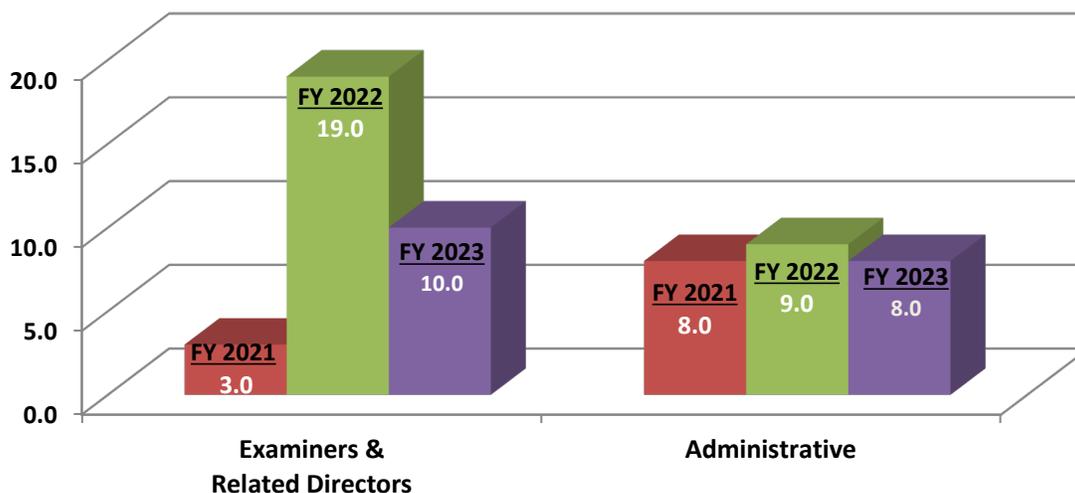
Active Postings				
Number of Positions	Position	Division	Status	Activities
1	Accountant V	Administrative Services	Open Until Filled	Recruiting/Interviewing
2	Compliance Analyst I- II Consumer Assistance Specialist	DSS	Open Until Filled	Recruiting
1	Financial Examiner IV-VI Financial Analyst – Training Coordinator	DSS	Open Until Filled	Recruiting
3	Attorney II-III	Legal	Open Until Filled	Recruiting/Interviewing
2	Financial Examiner I-II PFC/PCC	NDS	Closing June 5, 2023	Recruiting
2	Financial Examiner V – VII Training Facilitator (Temporary - Internal)	Bank and Trust	Closing June 6, 2023	Recruiting
NA	Financial Examiner IV-V Commercial Bank Examiner	Bank and Trust	Perpetual Posting	Recruiting
NA	Financial Examiner VI-VII Commercial Bank Examiner	Bank and Trust	Perpetual Posting	Recruiting
NA	Financial Examiner V Credit Review Specialist	Bank and Trust	Open Until Filled	Recruiting

- CAPPS Recruit Go Live May 17, 2023. (full cycle recruiting/onboarding platform).
 - Marked increase in application rates and quality for hard to fill positions in accounting, consumer assistance, and legal after just one week on platform.
- 2023 Internal Employee Satisfaction Survey results under review.
 - Memo summarizing results included in packet.
- On-boarding 20 new employees in June 2023:
 - 12 Assistant Financial Examiners (Bank and Trust)
 - 2 Summer Interns (Bank and Trust)
 - 2 MSB Analysts (NDS)
 - 1 Systems Administrator (MIS)
 - 1 Chief Accountant (Admin. Services)
 - 1 Attorney (Legal)
- Temporary Human Resources Specialist started May 2, 2023.

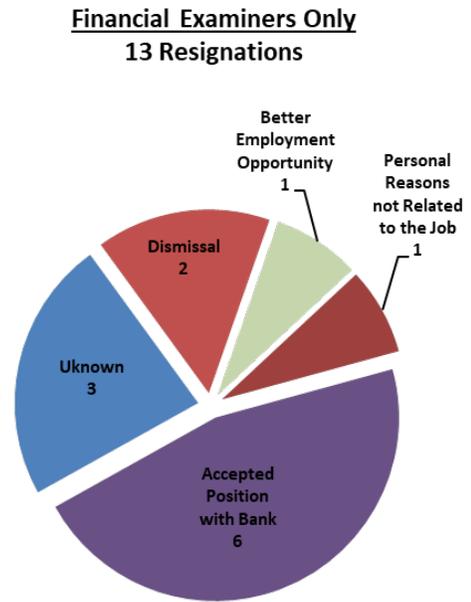
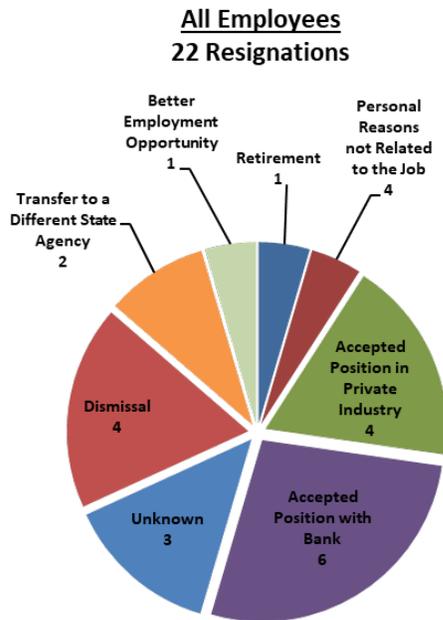
Texas Department of Banking Employee Data for Fiscal Years 2021, 2022 and 2023 as of 05/31/2023



New Hire Data for Fiscal Years 2021, 2022 and 2023



FY 2023 Employee Turnover Reasons



As of 05/31/2023



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

To: Finance Commission Members
From: Lori Wright, Director of Human Resources
Date: June 1, 2023
Subject: 2023 Internal Employee Survey

In March 2023, the Department conducted an internal survey to staff using Survey Monkey. We voluntarily conduct this internal survey in even number years to help continue to improve the agency. Highlights of the survey include:

- 119 employees or 72% of staff responded to the survey.
- 64 employees indicated that they were overall satisfied with their job, the way they are treated, and the direction the Department is headed. These employees chose not to answer the individual questions.
- The questions' ratings ranged from 1 strongly agree to 4 strongly disagree.
- Five administrative and ten financial examiner staff members expressed dissatisfaction with their compensation.
- Items with a weighted average above 2.0 are indicative of further review. These items include:
 - User training for CAPPS HR/Payroll (timekeeping system)
 - Response to employment issues
 - Internally developed computer programs and Intranet
 - Adequacy of hardware and software (specifically cellular internet devices)
 - Time allotted for pre-course work when attending external training programs
 - Regional Office team building and interactive communication
- The Employee Advisory Council has received the results of the survey and will review and provide suggestions for improvement to Senior Staff.
- Senior staff has met and will develop an action plan for areas that need improvement.

Overall, we would like to see a better response rate in the future but are pleased with the scores and comments received.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

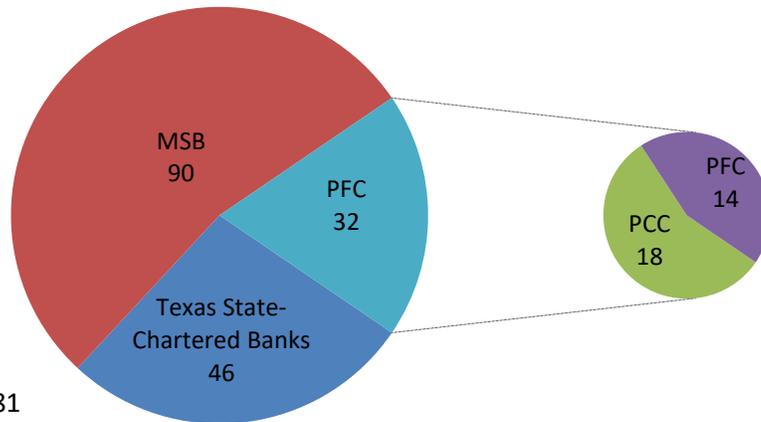
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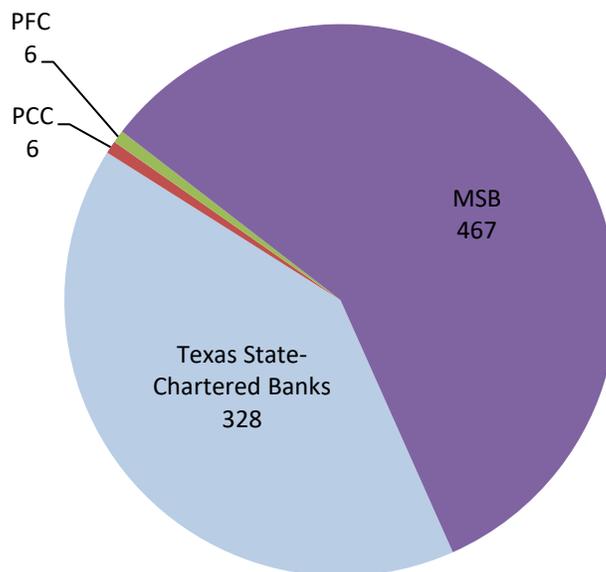
To: Finance Commission Members
From: Phil Lena, Financial Analyst
Date: June 1, 2023
Subject: Summary of the Strategic Support Division Activities

Jurisdictional Written Complaints September 2022-April 2023



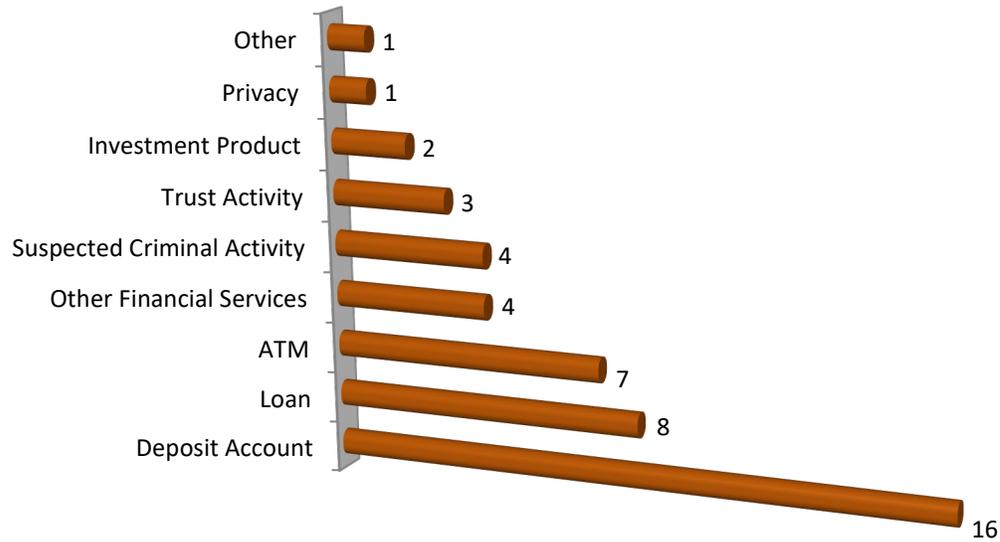
Recoveries = \$106,577.81
Total = 168

Inquiries on Jurisdictional Entities September 2022-April 2023



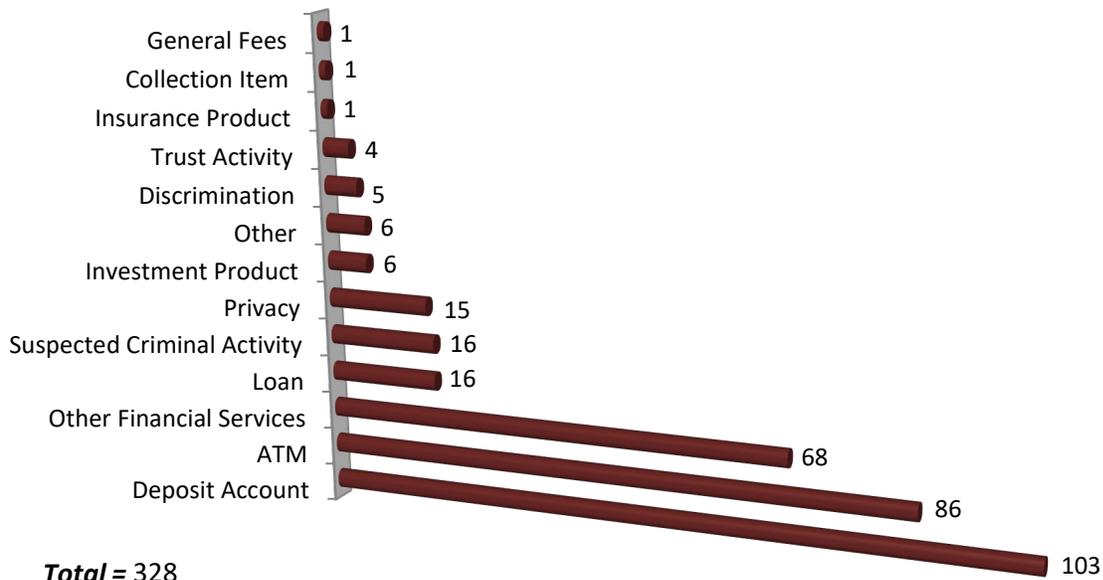
Total = 807

State-Chartered Banks and Trust Companies Written Complaints by Type September 2022-April 2023



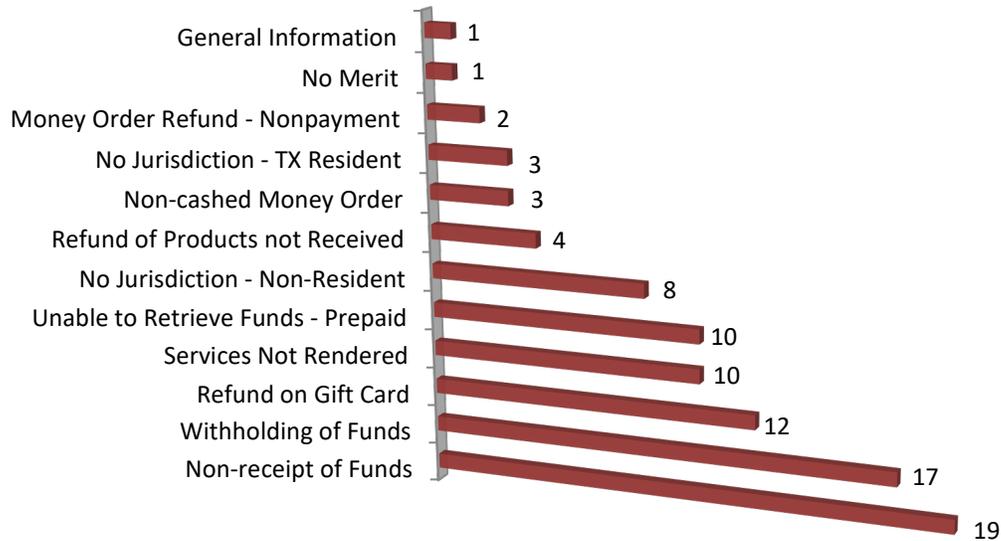
Total = 46

State-Chartered Banks and Trust Companies Inquiries by Type September 2022-April 2023



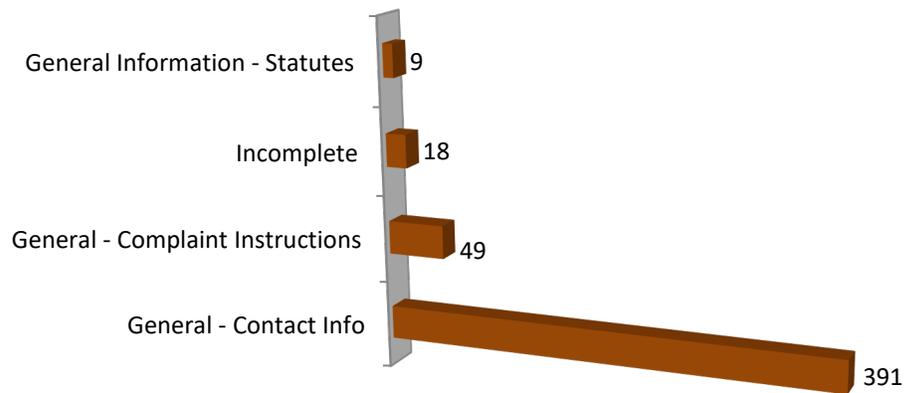
Total = 328

Money Services Businesses Written Complaints by Type September 2022-April 2023



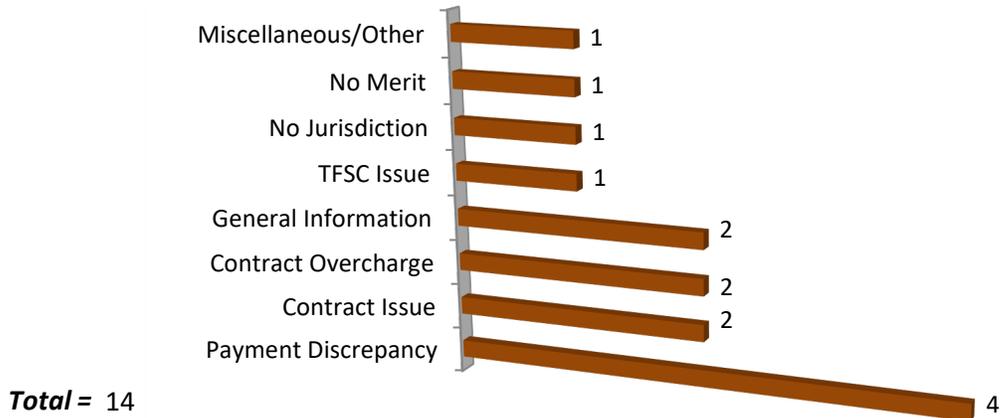
Total = 90

Money Services Businesses Inquiries by Type September 2022-April 2023

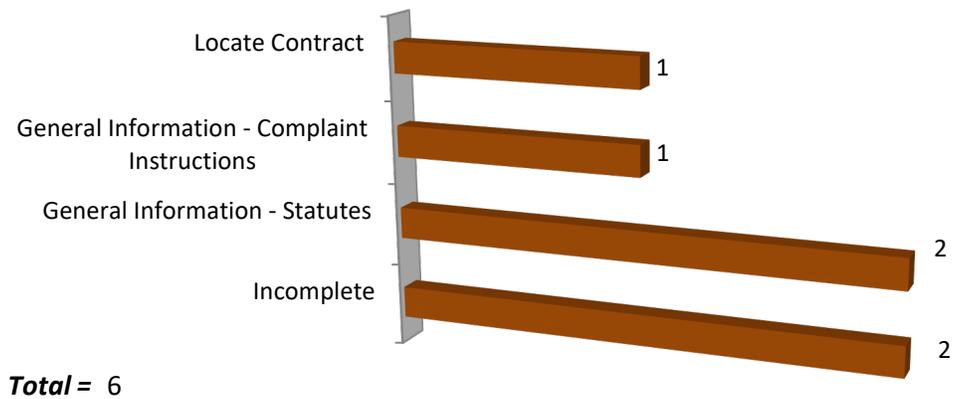


Total = 467

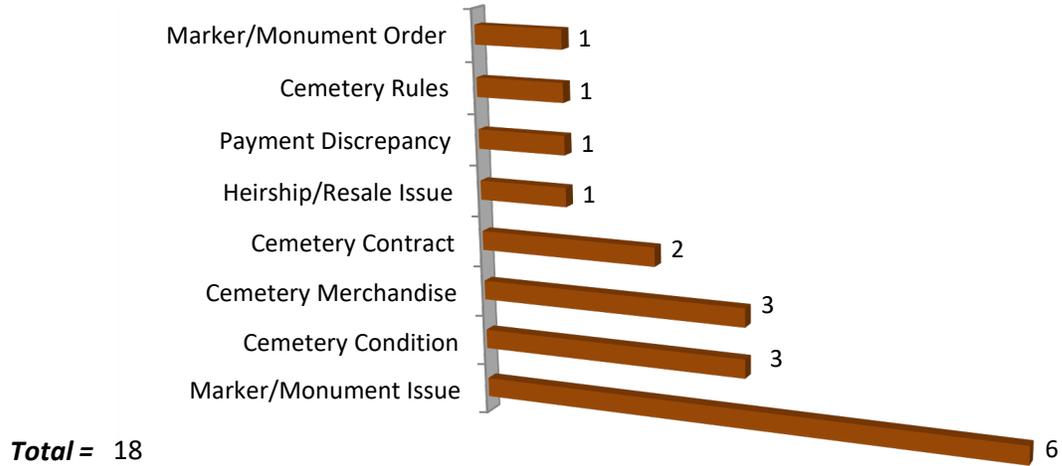
Prepaid Funeral Contract Sellers Written Complaints by Type September 2022-April 2023



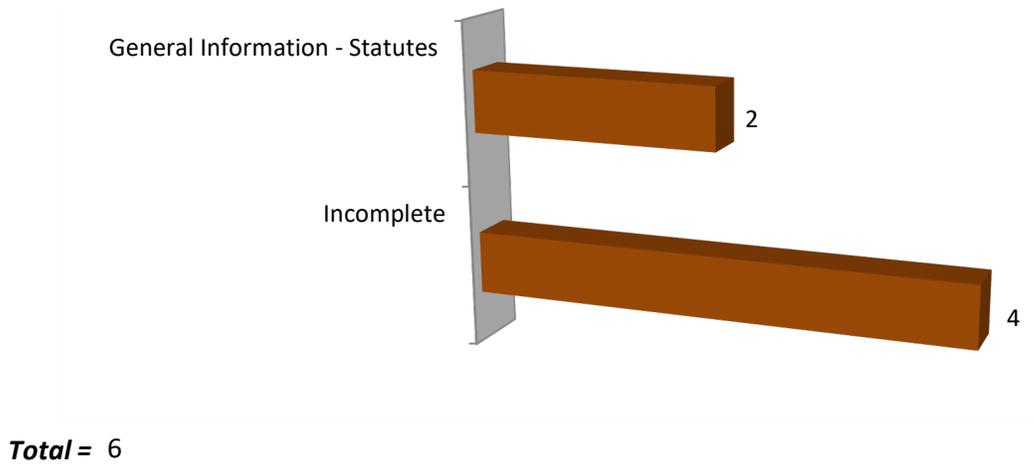
Prepaid Funeral Contract Sellers Inquiries by Type September 2022-April 2023



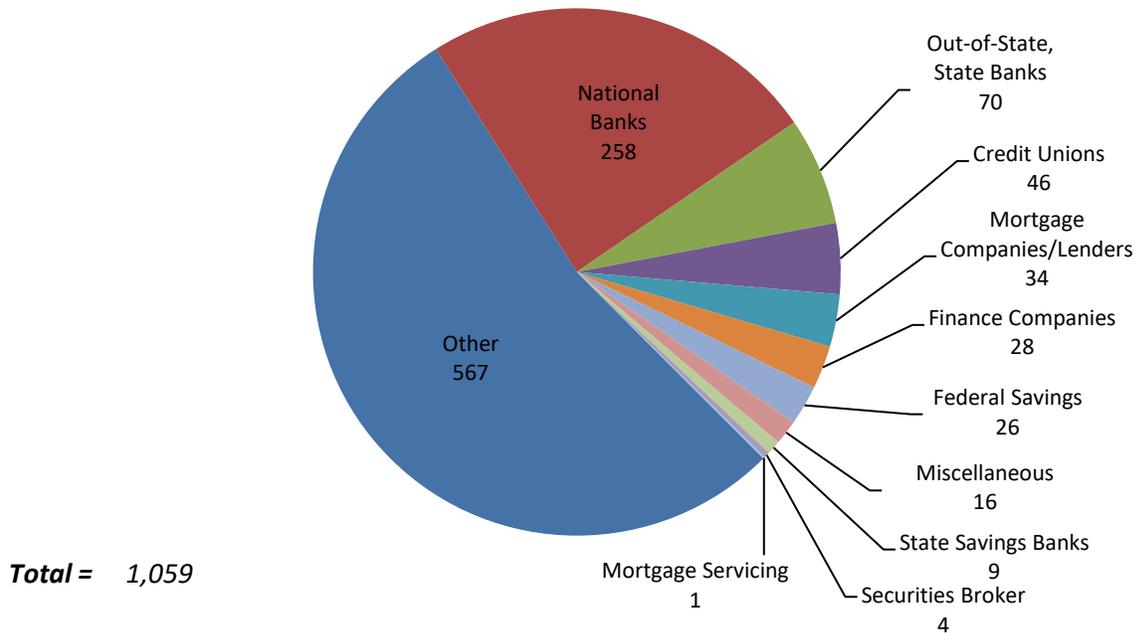
Perpetual Care Cemeteries Written Complaints by Type September 2022-April 2023



Perpetual Care Cemeteries Inquiries by Type September 2022-April 2023



Complaints and Inquiries Against Non-Jurisdictional Entities September 2022-April 2023



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

Complaint Activities Information by Quarter

	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.
State-Chartered Banks				
Avg. Number of Days to Close a Written Complaint	12	12	11	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	-
Number of Written Complaints Resolved	14	17	21	-
Trust				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	-
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	-
Number of Written Complaints Resolved	N/A	N/A	N/A	-
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	21	19	24	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	-
Number of Written Complaints Resolved	7	12	13	-
MSB				
Avg. Number of Days to Close a Written Complaint	26	21	21	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	-
Number of Written Complaints Resolved	39	33	35	-

Closed Account Notification System (CANS) Activity
January 1, 2020 – May 31, 2023

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	182	332
Texas State-Chartered Savings Banks	23	53
Federal Savings Banks	10	0
State Credit Unions	135	602
Federal Credit Unions	229	490
National Banks	171	99
Out-of-State State-Chartered Banks	12	61
Out-of-State National Banks	6	0
Total	768	1,637

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

	FY 2020	FY 2021	FY 2022	FY 2023 As of 05/31/2023
I. General Knowledge	4*	6	5	1
II. Loan Analysis	7	1	3	3
III. Panel	10	3	3	4
IV. Test Bank	7	5	3	5
Total FE3	15	17	13	14

Promotions

Commissioned Examiners	7	5	3	5
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**Includes a FE V Credit Specialist*

Other Divisional Items:

88th Legislative Session

- The last day of the regular session of the 88th Legislature was May 29, 2023. The House and Senate adjourned sine die passing 1,254 (15%) of the 8,345 bills and joint resolutions filed. The Governor has until June 18th to either sign or veto the bills. Department staff is evaluating all the bills that passed this session to see how they will affect the agency or our regulated entities.
- The governor immediately called a special session to address property taxes and border security. Additional special sessions are expected to address some of the governor's other priorities that did not pass during the regular session.

Examination Procedures:

- *Commercial*
 - Capital (April 2023)
 - Earnings (April 2023)

- Allowance for Credit Losses (May 2023)
- **Trust**
 - IRA Line Sheet (May 2023)

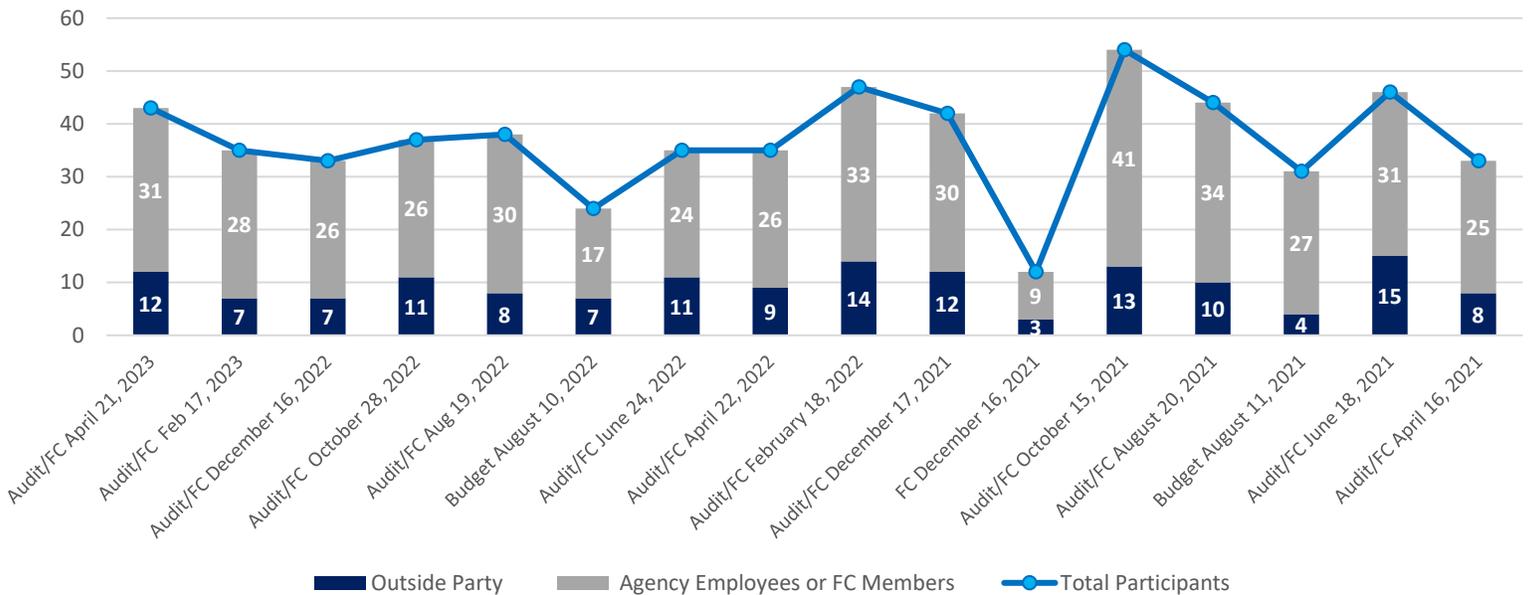
Personnel and Policies Manual Updates

- **Revised Administrative Memorandums (AM):**
 - AM 2031 – Delegation of Authority (May 2023)

Training

- In February, a committee was established to develop a new training program to offer a structured training regimen for new financial examiners. The program will be governed by a training development committee and managed by key personnel. The inaugural class of 19 will begin June 12, 2023 in Austin, Texas.
- The Department issued a Request for Proposal for a facility to host an agencywide conference in the Denton, Texas area for fiscal year 2024. This will be the first large group event since October 2019.
- Allowance for Credit Losses (ACL) & Current Expected Credit Losses (CECL) Lunch and Learn was held via Teams on May 3, 2023, for commercial examiners. The presentation covered CECL and the new ACL examination procedure.

Finance Commission Webcast Historical Data





Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

Memorandum

To: Finance Commission Members
From: Catherine Reyer, General Counsel
Date: June 1, 2023
RE: Legal Division Update

Litigation

Cornelius Campbell Burgess v. Charles G. Cooper, in his official capacity as the Texas Banking Commissioner, Cause No. D-1-GN-22-000504, in the 345th Judicial District Court of Travis County, Texas. This case, filed January 31, 2022, included a petition for mandamus seeking to compel the Commissioner to refer the administrative case against Mr. Burgess to the State Office of Administrative Hearings (SOAH), instead of having it heard by the Department's contracted independent administrative law judge. In April, both parties filed Motions for Summary Judgment; a remote hearing on the motions was conducted on May 16, 2022. On June 15, 2022, the district court granted Burgess' motion for summary judgment, and ordered that the case be heard by SOAH. On November 9, 2022, the Office of Attorney General (OAG) filed an appeal of this case in the Texas Third Court of Appeals.

Contested Case Hearings

In the Matter of Edward Russell Weaver, individually and as administrator of the Estate of Aaron Weaver, dba Pierce Boone Funeral Home, and Karen E. Randle, Wharton, Texas; Docket No. 451-23-10251. Respondents were alleged to have sold prepaid funeral benefits to at least three Texas customers without the required permit. Staff attended a hearing on May 5, 2022, seeking \$6,100 in restitution for customers and a monetary penalty of \$9,000. This case was heard in a remote proceeding before SOAH on February 24. On April 25, 2023, SOAH issued its proposal for decision recommending the Commissioner issue an order requiring payment of \$6,100 in restitution and a penalty of \$3,000 against Respondent Russell Weaver. Commissioner Cooper issued a final order on May 25, 2023, adopting the SOAH recommendations.

Banking Commissioner of Texas v. SCI Texas Funeral Services, LLC, Prosper, Texas; Docket No. 451-23-12409.NDS. This case was brought to contest the Department's denial of an application for a certificate of authority to operate a perpetual care cemetery. Case was set for hearing at SOAH on March 20, 2023. Parties agreed to continue the hearing and participated in a prehearing conference on that date instead. On March 29, we filed a motion for summary disposition, and Respondents filed a response and cross-motion for partial summary disposition. The hearing on those motions was held remotely on May 22, 2023. Decision on the motions is pending.

Orders Issued April 1, 2023 – May 31, 2023

The Commissioner issued four enforcement orders during this period:

Bank and Trust Supervision

- Order Prohibiting Further Participation dated May 23, 2023; Sallie Marie Perry aka Sallie Lazzaro, Arlington, Texas¹
- Order to Cease and Desist Activity dated May 23, 2023; Bitcoin Bank America Corporation and John Corbin Corona, Dallas, Texas²

Non-Depository Supervision

- Consent Order dated April 5, 2023; Bittrex, Inc., Seattle, Washington
- Final Order dated May 25, 2023; Edward Russell Weaver and Karen Randle, Wharton, Texas

Public Information Requests

From April 1, 2023, through May 31, 2023, staff received and responded to 17 requests for public information addressed to the Department of Banking and received six inquiries from the “Ask a Question” feature. During the same period, we received and responded to one public information request addressed to the Finance Commission. No requests for an OAG opinion were submitted during this period.

Gifts

Commissioner Cooper attended and was a participant in a fireside chat at the Texas Bankers Association (TBA) 138th Annual Convention held in San Antonio, Texas, May 17-19, 2023. TBA waived the Commissioner’s registration fee for the event, value \$425.

Hotel room charges of an estimated \$122 and \$98 (\$220 total) were comped for Phil Lena while conducting onsite visits of potential hotel locations for the Department of Banking Conference at the Hyatt Regency in Houston, Texas, April 20, 2023, and Embassy Suites in Denton, Texas, April 25, 2023.

FY 2023 Quarterly Order Activity

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

¹ On March 31, 2023, Perry was sentenced to imprisonment for a term of 15 months and supervised release for four years, and was ordered to pay restitution by the United States District Court for the Northern District of Texas.

² The Respondents have until June 13, 2023 to request a hearing on this matter, otherwise the Order to Cease and Desist becomes final and nonappealable as of that date.

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

MONEY SERVICES BUSINESS				
Consent Order	4	6	2	0
Cease & Desist	1	0	0	0
Final Order after hearing	0	0	0	0
Total	5	6	2	0

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

PREPAID FUNERAL CONTRACT				
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Final Order	0	0	1	0
Total	0	0	1	0

The above tables have been revised to accurately reflect the number of orders issued in FY 2023.

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings, Resulting from Rule Review.

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 9 was published in the *Texas Register* as required on May 5, 2023 (48 TexReg 2393). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 9 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 9 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 9 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), comprised of Subchapter A (§§9.1 - 9.3); Subchapter B (§§9.11 - 9.23 and 9.25 - 9.39); Subchapter C (§9.71 and §9.72); and Subchapter D (§§9.81 - 9.85).

Notice of the review of Chapter 9 was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2393). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 9 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 9 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 10, Concerning Contract Procedures, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 10 was published in the *Texas Register* as required on May 5, 2023 (48 TexReg 2393). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 10 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 10 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 10 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 10 (Contract Procedures), comprised of Subchapter A (§§10.1 - 10.21); Subchapter B (§10.30); and Subchapter C (§10.40).

Notice of the review of Chapter 10 was published in the May 5, 2023, issue of the Texas Register (48 TexReg 2393). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 10 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 10 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 12, Concerning Loans and Investments, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 12 was published in the *Texas Register* as required on May 5, 2023 (48 TexReg 2393). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 12 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 12 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 12 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 12 (Loans and Investments), comprised of Subchapter A (§§12.1 - 12.12); Subchapter B (§§12.31 - 12.33); Subchapter C (§12.61 and §12.62); and Subchapter D (§12.91).

Notice of the review of Chapter 12 was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2393). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 12 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 12 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

5. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 2, Chapter 25, Concerning Prepaid Funeral Contracts, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 25 was published in the *Texas Register* as required on May 5, 2023 (48 TexReg 2394). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 25 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 25 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 25 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 25 (Prepaid Funeral Contracts), comprised of Subchapter A (§§25.1 - 25.9); and Subchapter B (§§25.10 - 25.14, 25.17 - 25.19, 25.21 - 25.25, 25.31 and 25.41).

Notice of the review of Chapter 25 was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2394). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 25 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 25 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 25 in accordance with the requirements of the Government Code, §2001.039.

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D.

**Office of Consumer Credit
Commissioner**

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Consumer Protection and Consumer Assistance Report

The OCCC's FY 2023 examination program is on target with its pro rata production goals as of May 31, 2023. A large enterprise CAB exam was finalized in May. Two out of state exams have been completed and are in the report writing phase. These exams will be issued by the end of June 2023. Another large enterprise CAB exam is well under way and will be finalized by the end of July 2023. Finally, the first Crafted Precious Metals Dealer examination for FY 23 was completed in May. The remainder of the goal for this examination category is anticipated to be completed by the end of the fiscal year.

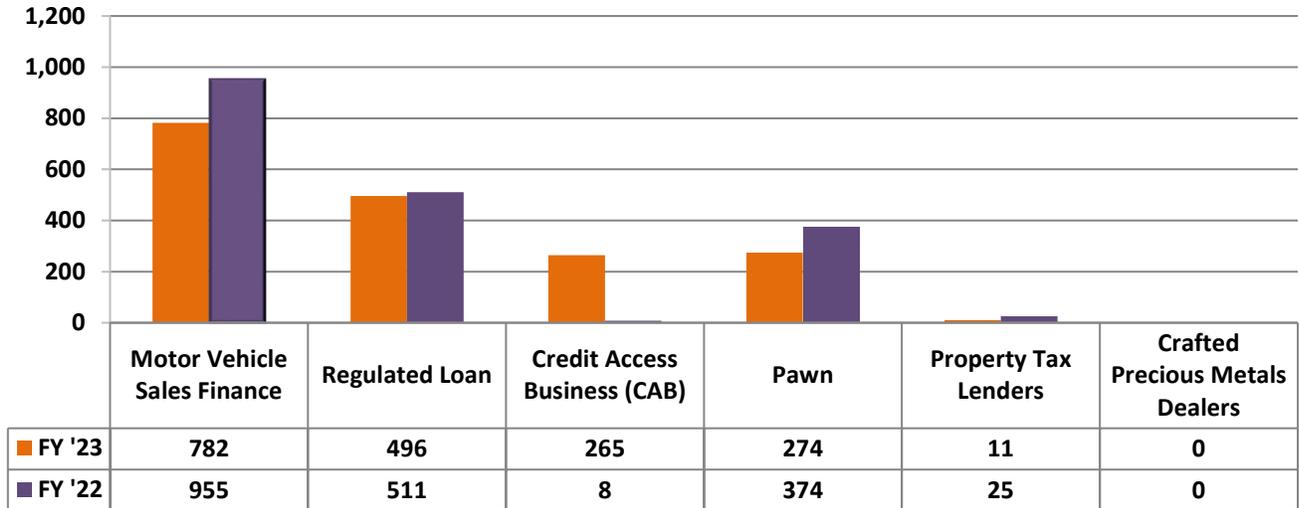
Work is winding down on a multi-state auto finance exam. It is anticipated that the states will complete their work and be able to issue a report by the end of June 2023.

The Multi-State Mortgage Committee (MMC) has begun work on a multi-state mortgage exam. As noted in the December briefing, OCCC participation in this exam, though important in the larger context of networked supervision and enforcement, will not contribute to examination completion this fiscal year.

Examiner training and development remains a high priority for the examination department. Significant progress toward examiner recruitment, certification, and retention has been made during the prior and current fiscal year. The OCCC has hired eight financial examiners since August of 2021 and continues to focus on recruitment with two new examiners having begun employment on June 5, 2023. The chart below illustrates the number and type of examination certifications achieved by Financial Examiners during the prior and current fiscal year.

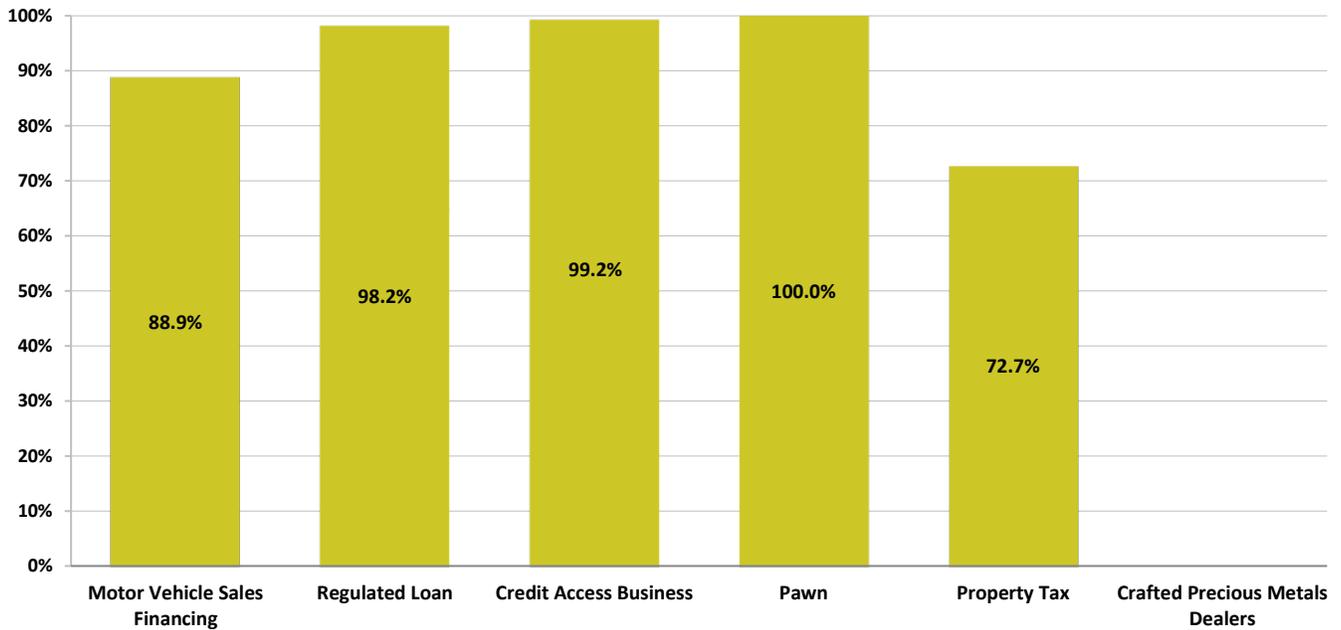
Financial Examiner Certifications						
	Pawn	342-F Regulated Lending	Motor Vehicle Sales Finance	342-E Regulated Lending	Property Tax Lending	Total
FY 2022	3	3	3	-	-	9
FY 2023(YTD)	4	4	2	4	2	16

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

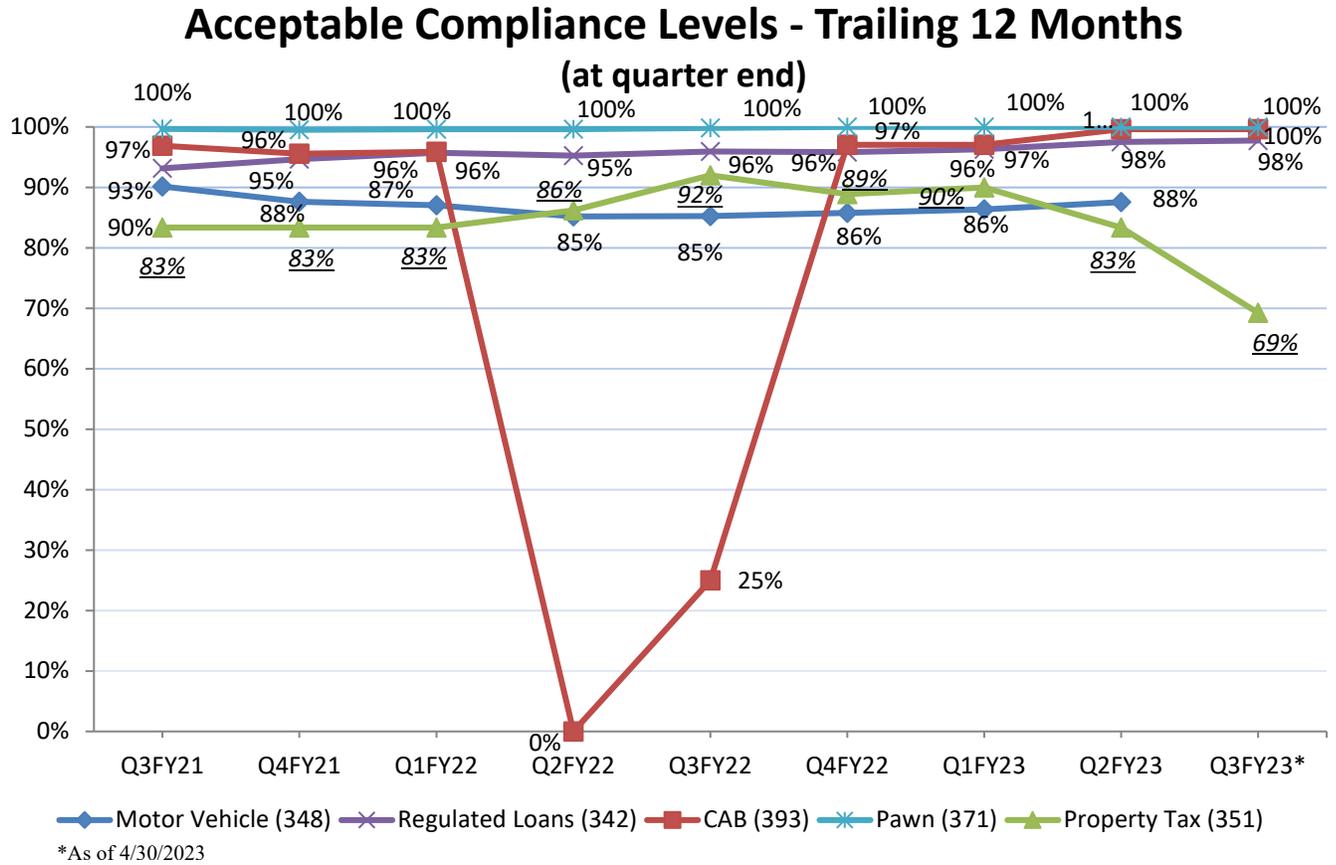


During the reporting period no Crafted Precious Metal examinations were conducted.

**Acceptable Level of Compliance FY '23
(Sept 2022 - Apr 2023)**



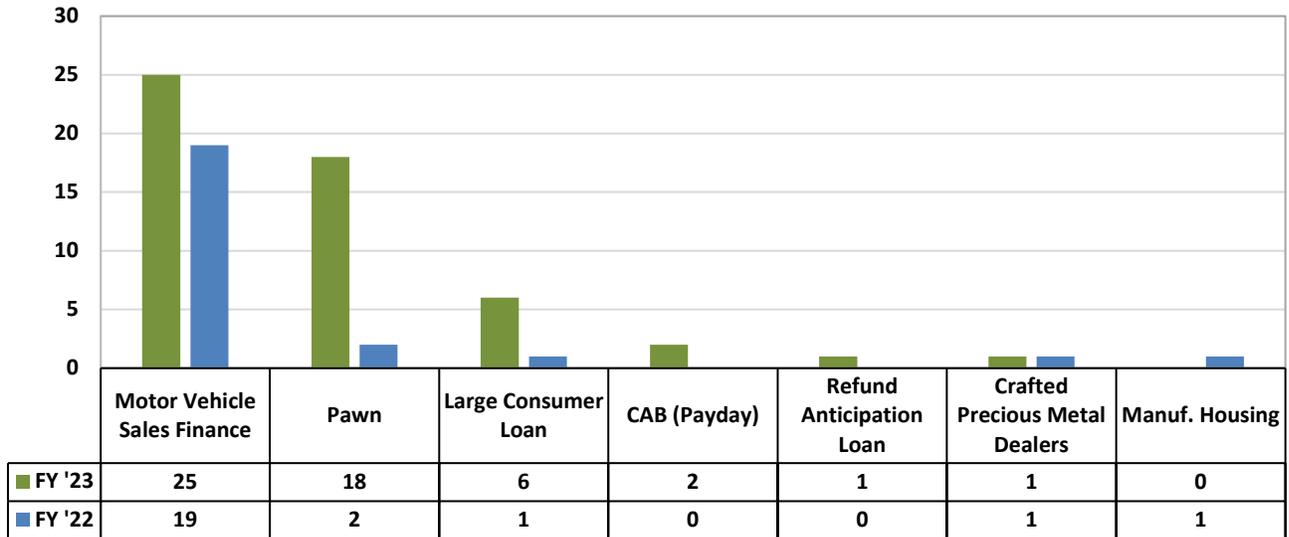
The following chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of April 2023. We anticipate compliance levels in the Property Tax category to move above 80% by the end of May.



Investigations

For FY 2023 through April, the OCC completed 53 investigations out of the annual goal of 75. Motor Vehicle Sales Finance issues comprise 47% of the overall number of completed investigations.

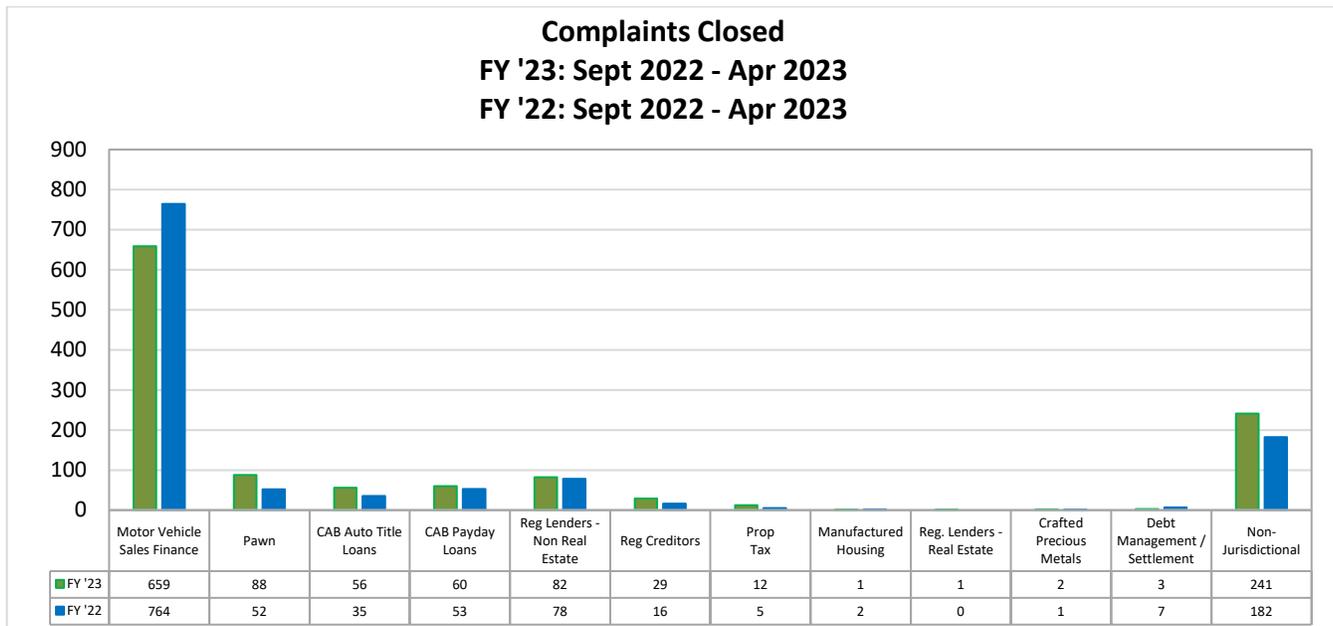
Investigations Completed
FY '23: Sept 2022 - Apr 2023 Total: 53
FY '22: Sept 2021 - Apr 2022 Total: 24



Consumer Assistance

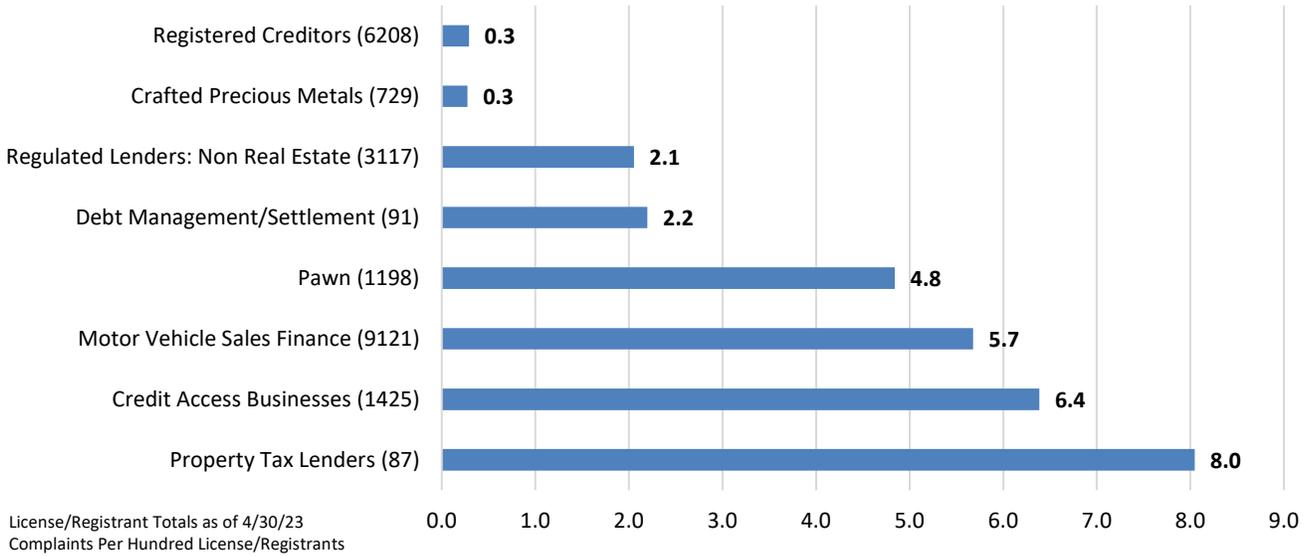
During this reporting period, 1,234 complaints were closed, of which 241 were classified as non-jurisdictional. The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Businesses (CAB), (3) Pawn, and (4) Regulated Lenders – Non-Real Estate. MVSF complaints were the largest complaint category at 53.4%. The second largest category was CAB complaints at 9.4% collectively, separately these are 4.9% for payday loans and 4.5% for title loans. The third largest was Pawnshops at 7.1%, and the fourth largest was Regulated Lenders Non-Real Estate at 6.6%.

Complaints Closed
FY '23: Sept 2022 - Apr 2023
FY '22: Sept 2022 - Apr 2023

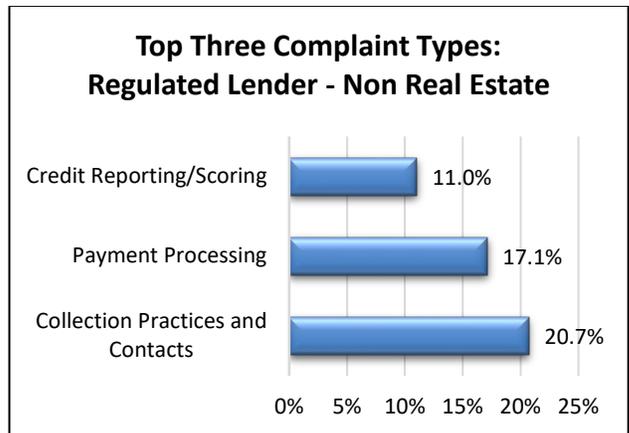
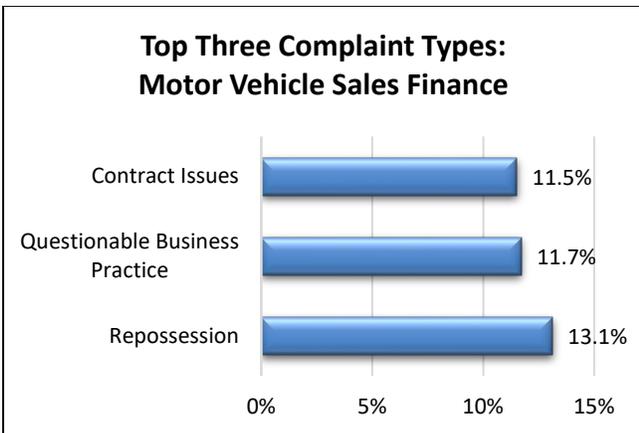


Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. For this reporting period, the highest ratio of complaints to active license/registrants is Property Tax Lenders, followed by Credit Access Businesses, Motor Vehicle Sales Finance,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

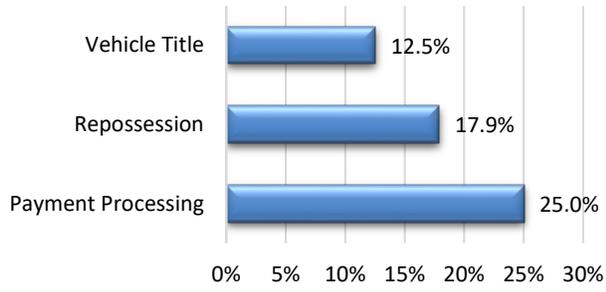
**Ratio of Complaints Closed to Total Active License & Registrants
FY '23: Sept 2022 - Apr 2023**



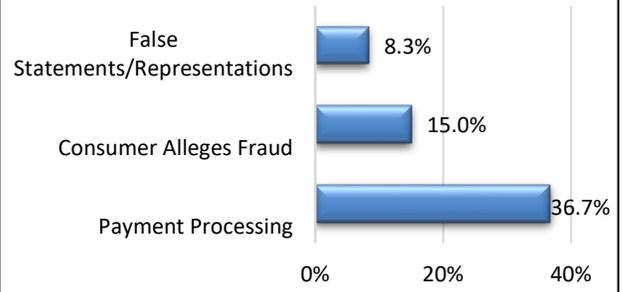
The following charts represent the top three complaint areas per license type. In the MVSF chart, approximately 36% in the Questionable Business Practice category relate to allegations that dealers will not accept outside financing. Complaints related to allegations of questionable business practices related to consumers wishing to utilize outside financing continue to decline year over year.



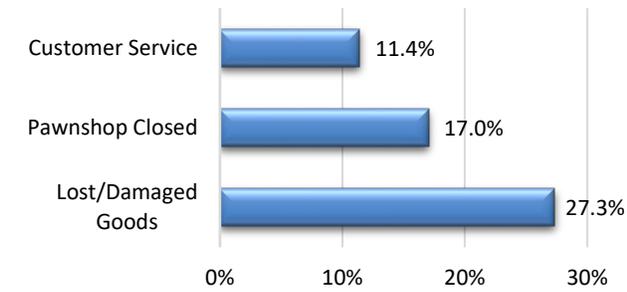
Top Three Complaint Types: CAB Title Lending



Top Three Complaint Types: CAB Payday Lending



Top Three Complaint Types: Pawnshops



CAB Reporting Update

Summaries of CAB reports through the first quarter of 2023 are available on the OCCC website. Presented are selected statistics of January through March totals from the Quarterly reports compared with previous years. In 2023, the number of new CAB loans is up 2.3% from the previous year but is still below pre-pandemic levels. Total repossessions decreased 4.3% from the previous year. Lengthier installment loans now make up 90% of the payday loan market. More information on repossessions and the decline in short-term payday loans is provided on additional graphs.

Data Highlights (All Loan Types) Q1 Comparison	2023	2022	2021	2020	2019	2018
Number of new payday loans	369,693	363,840	328,989	461,052	426,745	453,457
Number of new auto title loans	50,321	46,468	36,363	57,608	67,594	65,167
Percentage of payday loans due in multiple installments	90%	81%	69%	60%	54%	45%
Percentage of auto title loans due in multiple installments	42%	45%	46%	53%	53%	55%
Number of vehicles repossessed under all auto title loans	11,186	11,689	10,846	13,113	11,438	8,256
Total number of locations reporting activity	1,649	1,756	1,473	1,637	1,745	1,841

Payday Loans Q1	Single Installment			Multiple Installment		
	2023	2022	2021	2023	2022	2021
Number of consumers obtaining loans	25,333	47,720	69,512	286,426	262,198	200,390
Number of new loans	37,775	69,101	102,621	331,918	295,659	226,368
Number of total refinances ¹	44,042	79,730	104,292	73,024	69,990	47,883
Average loan amount	\$516	\$508	\$486	\$646	\$584	\$547
Average fee per \$100 borrowed	\$27	\$26	\$24	\$118	\$126	\$127
Average original term (in days)	19	20	21	135	145	140
Average Fee Converted to a Daily Rate ²	1.45%	1.30%	1.14%	0.88%	0.87%	0.91%

Title Loans Q1	Single Installment			Multiple Installment		
	2023	2022	2021	2023	2022	2021
Number of consumers obtaining loans	22,353	20,545	15,937	19,709	19,785	15,621
Number of new loans	29,162	25,468	19,701	21,159	21,000	16,662
Number of total refinances ¹	129,731	100,738	105,713	22,972	22,023	23,072
Average loan amount	\$1,588	\$1,843	\$1,828	\$1,711	\$1,676	\$1,595
Average fee per \$100 borrowed	\$16	\$15	\$15	\$104	\$103	\$108
Average original term (in days)	30	31	31	163	162	162
Average Fee Converted to a Daily Rate ²	0.54%	0.50%	0.50%	0.64%	0.63%	0.67%

¹Number of loans and refinances are the sum of quarterly report #10F.

²Customers are reported on the annual report item #5. They are unique to each product type and to each location. Depending on customer borrowing habits they may be counted more than once.

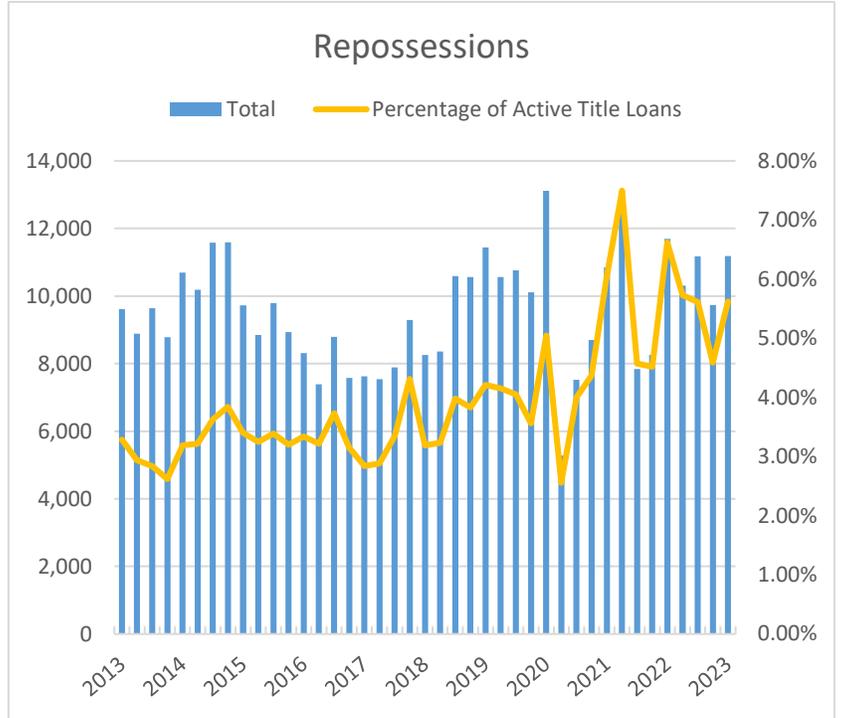
³Based on averages, per dollar borrowed a consumer would pay this percentage per day. The APR could be approximated by multiplying this rate by 365; however, it could be significantly higher if the multiple installment loans reduce principal with each payment and the total fees remain the same.

⁴Equation: \sum Quarterly 10F / Annual Report #5. Effects on the estimation include (1) Single store reporting can count customers more than once if obtaining loans at different stores (2) Total transactions in 10F could be made to some customers who aren't counted in this year's customer count. e.g. They are refinancing loans made in the prior year.

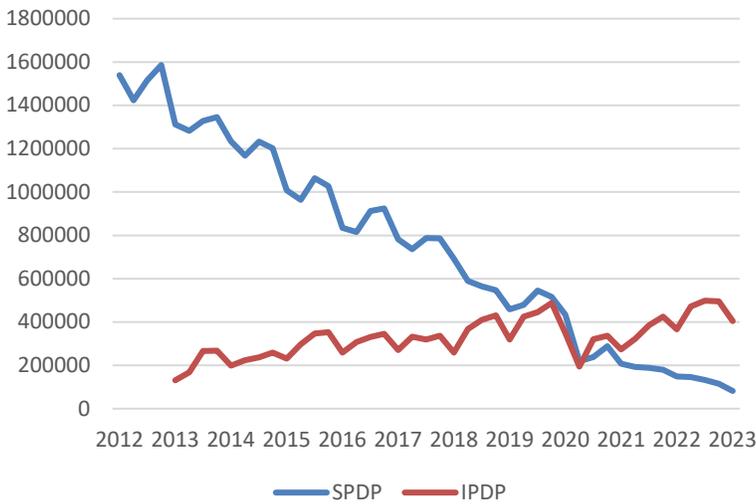
Additional Repossession Information

Quarterly report CAB data capturing repossessions began Jan 1, 2012. The first quarter of 2023 showed an increase in both the number of repossessions and rate of repossessions. In Q1 2023, 11,186 vehicles were repossessed. The historical average number of repossessions is 9,552 per quarter.

The Q1 repossession rate of 5.62% (as defined by the number of repossessions per loans outstanding) is the third-highest quarterly value recorded. The historical rate is 3.97%.



Number of Transactions By Loan Type



Additional Single-Payment Deferred Presentment Information

Single-Payment Deferred Presentment Transactions (SPDP) originally represented the overwhelming majority of CAB transactions. However, the total reported number of SPDP transactions has been steadily declining for a decade now. Many cities have passed their own ordinances to regulate them, causing a drop in the number of loans made. CABs are also opting to make similar (non-CAB) loans that avoid these ordinances and that are not reported to the OCC.



Licensing Report-June 2023

Mirand Diamond, Director of Licensing & Finance
Kaneshia Daniels, Licensing Department Team Lead

Renewals

The department opened renewal online in ALECS for pawnshops and pawn employees in mid-May. Paper renewal notices have been mailed out, as well as email reminders. All active pawnshops have received a 30% discount on the assessment amount. The department anticipates that 97% of pawnshops will renew.

Applications Processing

The volume of incoming business licensing applications averaged 97 monthly for the period September – May. The volume is below the projection of 108 applications received monthly. The department anticipates the volume of incoming business license applications will increase throughout the remainder of FY 23.

Incoming pawn employee applications averaged 25 monthly for the period of September – May.

The department is 8% under the goal for pawnshop employee application processing so far in FY 23 and will likely not reach the goal set forth at the beginning of the fiscal year due to fewer applications being submitted than anticipated.

Other Updates

The department has completed the latest phase of the records management project to consolidate remaining historical paper files and is now working on outsourcing the remaining files to be imaged. The licensing staff is actively working on verifying other paper files.



ADMINISTRATION REPORT

FINANCIAL EDUCATION AND TFEE

Financial Education staff made presentations in late April at the Buda Public Library on “Avoiding Financial Exploitation & Credit 101” and via webinar to Texas County and District Retirement (TCDRS) members on “Borrowing Basics”. Based on feedback, TCDRS has scheduled a repeat of an earlier presentation on “Financial Fitness” for this coming fall. Additionally, staff traveled to Georgetown in May to participate in the Sun City Anti-Fraud Program by presenting to approximately 300 older adults on “Avoiding Financial Exploitation in Sun City” and serving as a panelist during the Q&A portion of the event. Staff also hosted an informational booth, where they had opportunities to meet with attendees and distribute financial education materials.

The 3rd semi-annual reporting period will end on June 30, 2023. The 4th semi-annual reporting period runs from July 1st to December 31st, which will conclude the 2022-2023 grant cycle. TFEE materials have been reviewed by the Grant Advisory Committee and are being updated in preparation for the 2024-2025 grant cycle, which is scheduled to open in July. The application process has been updated to include submissions through a secure online portal.

COMMUNICATION

OCCC leadership hosted the agency’s fourth quarter Virtual Town Hall on June 2, 2023. Staff continue to develop and refine the agency intranet site (OPUS) and during this period it has been updated with information regarding HR policies, IT resources, and relevant legislative bill tracking. Additionally, the OCCC continues to communicate with stakeholders, and staff have provided presentations to regulated entities and other groups as follows:

- On April 6, 2023, Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On May 4, 2023, Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On May 23-25, 2023, Commissioner Pettijohn, Director Diamond, and General Counsel Nance attended the annual meeting of the National Association of Consumer Credit Administrators (NACCA). General Counsel Nance was elected as the secretary-treasurer of NACCA for 2023-2024.
- On May 31, 2023, Commissioner Pettijohn, Director Diamond, General Counsel Nance, and Paralegal Fisher hosted a stakeholder webinar regarding registered creditor fee rules.

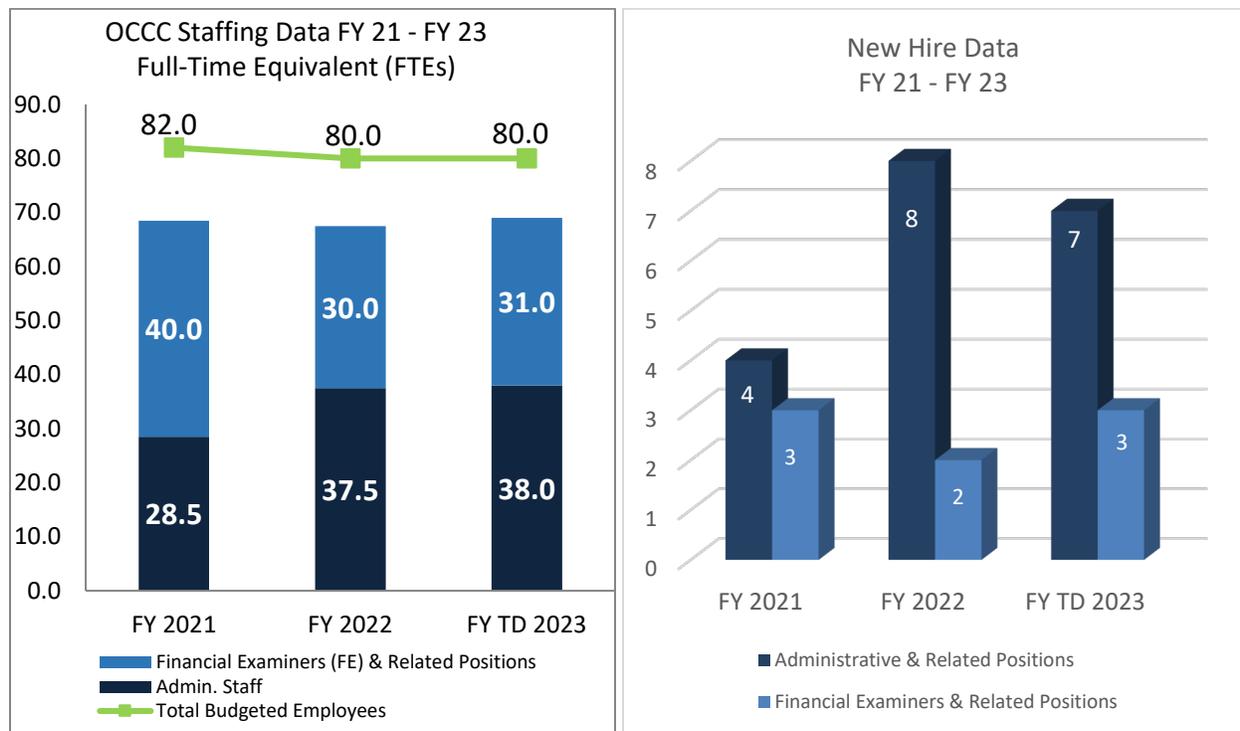
HUMAN RESOURCES

During the reporting period March 31, 2023, through May 31, 2023, the OCCC was staffed with a total of 69 FTEs. Matthew Nance was appointed General Counsel effective June 1, 2023, to replace Michael Rigby upon his retirement.

Currently the OCCC has the following open position:

Vacancy	Status
Executive Assistant	Open - 1

The following charts represent staffing data for Fiscal Years 2021 - 2023.



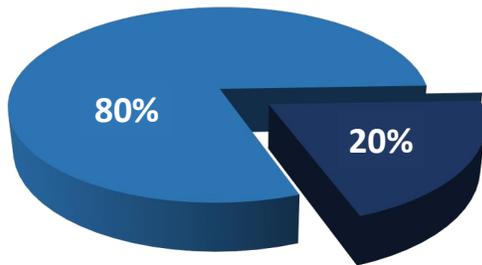
The turnover rate as of May 31, 2023, is 7.50%, and the following charts represent FY23 data through May 31, 2023.

OCCC Turnover Categories

FY 23 - All Employees

(09/01/2022 - 05/31/2023)

5 total: 4 - Voluntary Resignations and 1- Interagency Transfer



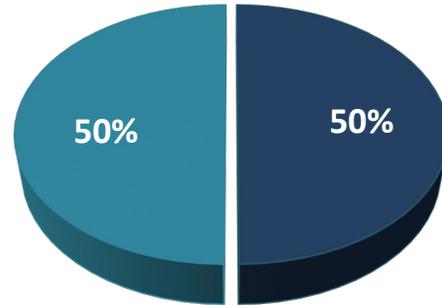
■ Voluntary Resignation ■ Interagency Transfer

OCCC Turnover Categories

FY 23 - FE Series

(09/01/2022 - 05/31/2023)

2 total: 1 Voluntary Resignation, 1 Interagency Transfer



■ Voluntary Resignation ■ Interagency transfer

INFORMATION TECHNOLOGY

Technology modernization and deployment

Security enhancements related to Microsoft 365 logins have been implemented for all members of agency staff. Updating the agency's endpoint fleet to fully Windows 11-compatible (a migration penciled in for FY'24) has been advanced by deploying nine of the 15 most recently acquired Dell computers. The remaining four oldest laptops have specific, dedicated purposes and do not impact everyday production by individuals.

IT relocated the last front-end asset that was hosted on OCCC04, our oldest server (running MS Windows 2008 R2). There is one remaining networking path that needs to be shunted away, and "04" can be powered down.

The OCCC network stack received new power supplies, replacing end-of-life devices, to support reliable uptime continuity and power conditioning.



Accounting Report- June 2023

Mirand Diamond, Director of Licensing & Finance

Financial Reporting

The third quarter of fiscal year 2023 ended on May 31, 2023. The third quarter financial statements are in process and will be presented at a later date.

Budget

Accounting staff is compiling financial data and working with other departments on financial estimates in preparation for the FY 2024 budget.

Other Items

The internal auditor has completed work on the audit of the Texas Financial Education Endowment Fund Investment Portfolio Administration and will begin an internal audit of HR/Payroll this month.

Quarterly reports due to other agencies are scheduled to be completed over the next 60 days.

The accounting team has completed submission of fiscal notes related to filed legislation to the Legislative Budget Board. If legislation had a potential fiscal impact for the OCCC, then the fiscal impact was estimated.



Legal Department Report

Matthew Nance, General Counsel

June 2023

Enforcement Report

Contested Cases

The OCCC does not currently have any contested cases pending before the State Office of Administrative Hearings (SOAH).

Enforcement Orders on Reporting Violations

In April 2023, the OCCC issued seven enforcement orders against credit access businesses that did not timely and accurately file their 2022 fourth quarter and annual reports by the deadline of January 31, 2023. Of these orders, six were injunctions requiring the licensee to file timely and accurate reports, and one imposed an administrative penalty for violating a previous injunction.

In May 2023, the OCCC issued five enforcement orders against debt management providers that did not timely and accurately file their 2022 annual reports and required documents by the deadline of January 31, 2023. Of these orders, three were injunctions requiring the registrant to file timely and accurate reports, and two imposed an administrative penalty for violating a previous injunction.

Performance Report on Enforcement Actions

The following table summarizes enforcement actions closed by the OCCC during the last three fiscal years. These figures reflect enforcement actions that have been fully resolved by formal order, informal resolution, or dismissal. Actions that are still pending are not included in the table.

Enforcement Actions Closed as of May 31, 2023			
	FYTD 2023	FY 2022	FY 2021
Injunction Actions			
Crafted Precious Metal Dealer	0	0	0
Credit Access Business	4	23	33
Debt Management Provider	2	2	10
Manufactured Housing	0	0	0
Motor Vehicle Sales Finance	16	7	11
Motor Vehicle Sales Finance Commercial	0	0	1
Pawnshop	16	5	48
Pawnshop Employee	0	0	0
Property Tax Lender	0	5	2
Registered Creditor	0	0	0
Regulated Lender	25	39	28
Residential Mortgage Loan Originator	0	0	0
Total Injunction Actions	63	81	133
Administrative Penalty Actions			
Crafted Precious Metal Dealer	0	0	0
Credit Access Business	1	7	12
Debt Management Provider	0	3	2
Motor Vehicle Sales Finance	3	4	8
Pawnshop	10	6	15
Pawnshop Employee	0	0	0
Property Tax Lender	0	1	1
Regulated Lender	19	27	18
Residential Mortgage Loan Originator	0	0	0
Total Administrative Penalty Actions	33	48	56
Revocation / Suspension Actions			
Crafted Precious Metal Dealer	0	0	0
Credit Access Business	2	0	1
Motor Vehicle Sales Finance	2	2	1
Pawnshop	0	1	4
Pawnshop Employee	0	0	0
Property Tax Lender	0	0	0
Regulated Lender	3	5	0
Residential Mortgage Loan Originator	0	0	0
Total Revocation / Suspension Actions	7	8	6
Application Denial and Protest Actions			
Credit Access Business	0	0	0
Motor Vehicle Sales Finance	1	1	2
Pawnshop	0	0	0
Pawnshop Employee	0	0	0
Property Tax Lender	0	0	0
Regulated Lender	0	0	0
Residential Mortgage Loan Originator	0	0	0
Total App. Denial and Protest Actions	1	1	2
Total Actions Closed	104	138	197

The following table includes enforcement-related measures that the legal department is tracking.

September 1, 2022 through May 31, 2023	
Cases Opened	65
Cases Closed	104
Average Number of Days to Close an Enforcement Action	159
Contested Cases Docketed at SOAH	2
Enforcement Actions Taken and Closed by Final Order	99

As of May 31, 2023, the OCCC has no upcoming SOAH hearings scheduled.

Rulemaking

The OCCC is presenting one rule action at the June Finance Commission meeting. The rule action is a proposal to set annual registration fees for registered creditors under Chapters 345 and 347 of the Texas Finance Code, implementing SB 1371 (2023).

Before the August Finance Commission meeting, the OCCC intends to begin stakeholder outreach regarding potential rule proposals for motor vehicle documentary fees and regulated loan fees.

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). In February 2022, the OCCC filed a second plea to the jurisdiction, arguing that the plaintiff's claims are barred by sovereign immunity and challenging the sufficiency of the plaintiff's evidence. In September 2022, the district court granted the OCCC's plea to the jurisdiction and dismissed the plaintiff's case. The plaintiff appealed the case to the court of appeals, arguing that the district court should not have dismissed his case. The OCCC filed a response brief with the court of appeals, arguing that the district court correctly dismissed the plaintiff's case. The plaintiff filed a reply brief on February 21, 2023. The appeal is currently pending.

Advisory Bulletins

From April 1, 2023 to May 31, 2023, the OCCC did not issue any advisory bulletins.

Official Interpretation Requests

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

Public Information Requests

April 1, 2023 through May 31, 2023	
Requests Received	33
Requests Closed	28
Requests Withdrawn	1
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	2.5

Gifts Received by the OCCC

From April 1, 2023 to May 31, 2023, the OCCC received three gifts, all of which were scholarships to attend the 2023 NMLS Annual Conference & Training. Of these three scholarships, one was a full scholarship (for registration, airfare, and lodging) worth \$2,789.40, one was a full scholarship worth \$2,525, and one was a partial scholarship (for registration) worth \$995.



Summary of 2023 Legislation

Matthew Nance, General Counsel

June 2023

This is a summary of the Texas Legislature’s recently passed legislation that affects the OCCC and its regulated industries. Most of the bills are awaiting the governor’s approval as of June 1 and are scheduled to go into effect on September 1, 2023. Bills that have already been approved or that have a different effective date are noted below.

Bills affecting credit transactions and the OCCC’s authority

SB 1371—OCCC technical corrections and modernization bill

This bill modernizes, clarifies, and corrects provisions of the Texas Finance Code administered by the OCCC. The bill includes issues that the OCCC identified in its 2023-2027 Strategic Plan.

- **License surrender:** The Finance Code currently allows businesses to surrender a license by delivering the physical paper license to the OCCC. The bill amends the Finance Code to specify that a licensee may surrender a license by complying with OCCC instructions.
- **Hearing requests:** The bill amends Section 371.255 of the Finance Code to specify that the agency may take action regarding pawnshop employees after “notice and an opportunity for a hearing.”
- **Statutory agent:** The bill amends these provisions to specify that each licensee must disclose a registered agent to the OCCC and removes provisions regarding service on the commissioner for licensees that fail to designate an agent.
- **Registration fee authority:** The bill authorizes the Finance Commission to set annual registration fees for registered creditors and manufactured home creditors.
- **TFEE investment standard and grantmaking authority:** The bill specifies that the investment standard for the Texas Financial Education Endowment (TFEE) is the prudent investor standard and specifies the authority to award grants through TFEE.
- **RMLO recovery fund investment standard:** The bill specifies that the investment standard for the OCCC’s Residential Mortgage Loan Originator Recovery Fund is the prudent investor standard.
- **Citation updates:** The Finance Code currently contains outdated citations to state and federal law. The bill amends these provisions to include current and accurate citations.

The governor has approved SB 1371, and it will go into effect on September 1, 2023.

HB 207—Homestead sales for noncontiguous property

Currently, the Texas Constitution prohibits pretended sales of the homestead. This bill provides that a conveyance of rural homestead property is not considered a “sham or pretended sale” if certain conditions are met, including the following: (1) the individual must not reside on the parcel at the time of conveyance, (2) the parcel must not be contiguous to property on which the individual resides, and (3) the individual must record an affidavit acknowledging that the individual is estopped from claiming that the conveyance is a sham or pretended sale (among other items required in the affidavit).

HB 219—Mortgage lien release after payoff

This bill requires a mortgage servicer or lender, within 60 days after receiving the correct payoff amount for a home loan, to deliver a lien release to the borrower or file a lien release with the county clerk’s office. The bill requires the servicer or lender to provide the lien release within 30 days if the borrower requests delivery or filing before the date of payoff.

HB 446—Statutory terminology for intellectual disabilities

This bill updates various statutes to revise terminology referring to intellectual disabilities. In particular, the bill amends Chapter 393 of the Finance Code to revise the terminology used in a provision prohibiting credit access businesses from advertising in intermediate care facilities for persons with intellectual disabilities.

The governor has approved this bill, and it will go into effect on September 1, 2023.

HB 718—Requiring metal license plates and eliminating paper temporary tags

This bill repeals statutory provisions allowing the use of paper temporary tags for motor vehicles. The bill generally requires motor vehicle dealers to issue a metal license plate to each buyer. Dealers will be required to obtain license plates from the Texas Department of Motor Vehicles (TxDMV) in the manner provided by TxDMV’s rules. These dealer-issued license plates will be valid for 30 days (or for a single trip to transport the vehicle). The bill replaces current provisions regarding the buyer’s temporary tag database with provisions requiring TxDMV to maintain a database of dealer-issued license plates.

The bill is scheduled to go into effect on July 1, 2025, and requires TxDMV to adopt implementing rules by December 1, 2024.

HB 2706—Manufactured home lien perfection

This bill specifies that a lien on a manufactured home is perfected by filing a financing statement in accordance with Chapter 9 of the Texas Business and Commerce Code. This replaces current language that describes filing the lien with the Texas Department of Housing and Community Affairs.

HB 2127—Preemption of local ordinances

This bill provides that various Texas statutes (including the Texas Finance Code and the Texas Occupations Code) prohibit municipalities and counties from adopting or enforcing ordinances in the fields occupied by the statutes. The bill provides that ordinances violating these requirements are void and unenforceable. The bill allows a municipality or county to enforce or maintain an ordinance

regulating conduct of a credit services organization or credit access business under Chapter 393 of the Finance Code if: (1) the ordinance was adopted before January 1, 2023, and (2) the ordinance would have been valid under the law as it existed before the bill was enacted.

HB 2746—Debt cancellation agreement refunds

Currently, when a motor vehicle debt cancellation agreement terminates due to early termination of a retail installment contract, the Finance Code requires the holder to refund an appropriate amount of the fee for the agreement (or cause the refund by providing appropriate written instructions to an appropriate person) no later than 60 days after the date of termination. This bill amends this provision to apply only to retail sellers that have not assigned or transferred the contract, and changes the deadline to 30 days for a retail seller notifying another person. The bill adds a new provision specifying that holders other than retail sellers must either: (1) make the refund within 60 days, or (2) cause the refund to be made by providing written instruction to the administrator or retail seller within 30 days. The bill amends a provision currently specifying a holder's responsibility to make refunds, to state that the administrator and retail seller shall refund an amount proportional to the amount received by the administrator and seller under the agreement. The bill amends a provision currently specifying a holder's responsibility to keep refunding records, to state that the administrator and retail seller must maintain refunding records.

HB 3297—Inspection exemption for noncommercial vehicles

This bill repeals statutory provisions requiring vehicle safety inspections for noncommercial vehicles. The bill establishes an inspection program replacement fee of \$7.50, which a person applying for an initial registration or renewal must pay in addition to other registration fees.

This bill is scheduled to go into effect on January 1, 2025.

HB 4123—DPS and FBI criminal history information

This bill amends several statutes governing state agencies' access to criminal history information, including the OCCC's access to criminal history from the Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI). Currently, the OCCC is authorized to access criminal history from DPS and the FBI for license applicants, licensees, and applicants for employment. This bill specifies that the OCCC may access criminal history maintained by DPS or the FBI for an officer, director, owner, or employee of an applicant or licensee under the Finance Code. The bill updates current language on the OCCC's authority to release DPS criminal history to include a hearing where the OCCC is a party. The bill specifies that the OCCC may not release FBI criminal history. The bill requires the OCCC to destroy criminal history after it is used for its authorized purpose.

This bill is scheduled to go into effect immediately upon the governor's approval.

HB 4219—Federal funds rate for regulated loans using three-tiered interest rate

Currently, regulated lenders are authorized to charge a three-tiered interest rate under Chapter 342, Subchapter E of the Texas Finance Code: (1) 30% on the amount of the initial cash advance up to \$4,000, (2) 24% on the amount of the cash advance over \$4,000 up to \$8,400, and (3) 18% on the amount of the

cash advance over \$8,400 up to \$20,000. This bill amends the three-tiered rate provision to add the phrase “plus the federal funds rate” after each of the 30%, 24%, and 18% rates. The bill adds a new section providing that the OCCC will compute and publish the federal funds rate twice each year, based on averaging the rates published by the Federal Reserve during the preceding six months.

Based on the bill’s effective date of September 1, 2023, the OCCC anticipates that it will begin publishing the federal funds rate in September 2023 which will apply beginning November 2023.

HB 4635—Racketeering and unlawful debt collection

This bill provides the attorney general and local prosecutors with enforcement authority and remedies relating to racketeering and unlawful debt collection. The bill explains that “racketeering” includes kidnapping, perjury, resisting arrest, and organized criminal activity, as well as attempt, conspiracy, or solicitation to commit these offenses. The bill explains that “unlawful debt” includes debt that is legally unenforceable under Title 4, Subtitle A of the Finance Code, if the usurious rate is at least twice the enforceable rate. In connection with authorized actions, the bill allows the attorney general or a local prosecutor to file a RICO lien notice against real property on a showing of probable cause that the property was used for certain criminal offenses.

SB 505—Electric vehicle registration fee

This bill amends the Texas Transportation Code to provide an additional fee for the initial registration or renewal for an electric vehicle. The additional fee is \$200 for registration or renewal of electric vehicles subject to a one-year inspection period, and the additional fee is \$400 for new electric vehicles subject to a two-year inspection period.

The governor has approved this bill, and it will go into effect on September 1, 2023.

SB 761—Photo identification for credit and debit card transactions

Texas law allows a merchant to require an individual using a credit or debit card to provide photo identification. A merchant may choose not to accept a card for payment if the individual fails to provide photo identification. This bill removes the previous September 1, 2023 expiration date for this law, so merchants will continue to be able to require photo identification for cardholders.

This bill went into effect immediately upon the governor’s approval on May 19, 2023.

SB 768—Business’s notification of security breach to attorney general

Currently, Texas law generally requires businesses to notify the attorney general of a breach of system security within 60 days after the date the business determines the breach occurred, if the breach involves at least 250 residents of Texas. This bill amends this requirement to require the notification as soon as practicable and within 30 days of the business’s determination. The bill also requires the notification to be submitted electronically using a form on the attorney general’s website.

The governor has approved this bill, and it will go into effect on September 1, 2023.

Bills affecting state agency administration

HB 1 & SB 30—Salary increases for state employees

HB 1 is the General Appropriations Act for the State of Texas. HB 1 includes two salary increases for state employees: (1) an initial 5% salary increase with a minimum of \$3,000 per year to begin in 2023, and (2) a second 5% salary increase with a minimum of \$3,000 per year to begin on September 1, 2024.

SB 30 is a supplemental appropriations bill specifying that the first 5% salary increase will be effective July 1, 2023.

HB 139—Notices for agency rule proposals

This bill amends the requirements for notice of a proposed rule under the Administrative Procedure Act. The bill requires an agency, within three days after the agency files the notice of a proposed rule with the Secretary of State, to send the notice to the primary author and primary sponsor of legislation authorizing the rule (if the authorizing legislation became law during the preceding four-year period). The bill requires the notice of a proposed rule to include the bill number for the legislation authorizing the rule, if the legislation was enacted during the four-year period preceding the date of the notice. The bill provides that a state agency's failure to publish a summary of a proposed rule on the agency's website in English and Spanish does not invalidate the rule.

This bill is generally scheduled to go into effect immediately upon the governor's approval (except for the provision regarding website summaries, which is scheduled to go into effect on September 1, 2023). The bill applies to any proposed rules that are filed with the Secretary of State on or after the bill's effective date.

HB 2453—Digital licenses

This bill specifies that a state licensing agency may issue a digital license to a license holder. The bill requires digital licenses to be: (1) in a secure format, (2) readily accessible by the license holder on a website and on a wireless communication device, and (3) able to be viewed by the public on a website or with a QR code. If the agency and a vendor establish a relationship for the issuance of a digital license, then both parties must be able to verify the validity of the license.

HB 3033—Public Information Act amendments

This bill makes various amendments to the Texas Public Information Act. The bill adds a definition of "business day," specifying that business days do not include Saturdays, Sundays, national holidays, state holidays, certain optional holidays, certain Fridays before holidays, and certain Mondays after holidays. The bill specifies that requestors whose requests have exceeded established personnel time limits may not inspect information on behalf of another requestor unless they pay charges assessed by the governmental body. The bill allows a governmental body to request photo identification from a requestor to establish that a requestor has not exceeded personnel time limits or concealed the requestor's identity. The bill generally requires state agencies to submit requests for attorney general public information decisions through a designated electronic filing system. The bill establishes requirements for providing information to a requestor after the attorney general issues an opinion. The bill requires the attorney general to make available a searchable online database identifying requests for

attorney general decisions and the attorney general's opinion for each request.

The bill is scheduled to go into effect on September 1, 2023, and requires the attorney general to make the online database available as soon as practicable, but no later than January 1, 2024.

HB 3485—Stopping work under a public work contract

This bill applies to public work contracts with governmental entities. The bill allows vendors and subcontractors to elect not to proceed with additional work if they have not received a fully executed change order for the additional work, or if the actual or anticipated value of the additional work exceeds 10% of the original contract amount.

SB 29—Prohibiting COVID-19 face covering and vaccine mandates

This bill generally prohibits governmental entities from implementing face-covering or vaccine mandates because of COVID-19 and prohibits governmental entities from requiring the closure of a business or school because of COVID-19.

SB 222—Paid leave for state employees after birth or adoption of a child

This bill provides state agency employees with 40 days of paid leave for the birth of a child. The bill provides state agency employees with 20 days of paid leave for the birth of a child by the employee's spouse, the birth of a child by a gestational surrogate, or the adoption of a child. The bill exempts employees who use this leave from the current requirement under Texas law to use all available vacation and sick leave before using leave under the federal Family and Medical Leave Act (FMLA).

SB 271—State agency security incidents

Currently, Texas law requires state agencies to notify the Department of Information Resources of a breach or suspected breach of system security. This bill amends this requirement to replace the term "breach or suspected breach" with "security incident," and specifies that a security incident includes a breach, a suspected breach, and the introduction of ransomware into a network or system.

The governor has approved this bill, and it will go into effect on September 1, 2023.

SB 422—Military service member licensing

Currently, Texas law provides that a military spouse may engage in a licensed occupation in Texas if the spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements. This bill extends this authority to military service members. The bill also specifies that agencies will determine whether a covered applicant is in good standing with another jurisdiction within 30 days after the applicant submits required information, and that agencies will process an application within 30 days after the covered applicant files an application.

The bill is scheduled to go into effect on September 1, 2023, and requires agencies to adopt implementing rules by December 1, 2023. The OCCC anticipates that it will present rules to implement this bill for residential mortgage loan originators and pawnshop employees.

SB 510—Confidentiality of state agency licensing information

This bill amends the Public Information Act to require state agencies to keep confidential certain identifying information about current and former licensees and license applicants. The bill applies to licenses that an individual must obtain to engage in a business. The confidential information includes the license application, as well as the individual's home address, email address, Social Security number, date of birth, driver's license number, and payment information.

The governor has approved this bill, and it will go into effect on September 1, 2023.

SB 1246—State agency investment authority

This bill amends the Public Funds Investment Act to specify that investing entities may authorize an investment management firm to invest public funds in repurchase agreements using a joint account. The bill authorizes the Employees Retirement System of Texas to form a title-holding entity for the purpose of investing the retirement system's assets in real property.

This bill is scheduled to go into effect immediately upon the governor's approval.

SB 1376—State employment preference for military spouses

Currently, Texas law provides state employment preferences for veterans, veterans with disabilities, and certain surviving spouses of veterans. This bill adds employment preferences for spouses of military service members and certain spouses of veterans with service-connected disabilities. The bill amends references to veterans' employment preferences to refer to military employment preferences.

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors

PURPOSE: The purposes of the proposed rule changes to 7 TAC Chapter 86 are to specify annual registration fees for registered creditors and manufactured home creditors, and to implement recent legislative amendments to Texas Finance Code, Chapters 345 and 347.

RECOMMENDED ACTION: The OCCC requests that the Finance Commission approve the amendments to 7 TAC Chapter 86 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 86.

Title 7, Texas Administrative Code
Part 5. Office of Consumer Credit Commissioner
Chapter 86. Retail Creditors
Subchapter A. Registration of Retail Creditors

The Finance Commission of Texas (commission) proposes amendments to §86.102 (relating to Fees) and §86.103 (relating to Registration Term, Renewal, and Expiration) in 7 TAC Chapter 86, concerning Retail Creditors.

The rules in 7 TAC Chapter 86 govern registrations with the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapters 345 and 347. In general, the purposes of the proposed rule changes to 7 TAC Chapter 86 are to specify annual registration fees for registered creditors and manufactured home creditors, and to implement recent legislative amendments to Chapters 345 and 347.

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

The Texas Legislature passed SB 1371 in the 2023 legislative session. SB 1371 modernizes, clarifies, and corrects provisions of the Texas Finance Code administered by the OCCC. In particular, SB 1371 amends provisions relating to registration fees. Currently, Texas Finance Code, §345.351 provides a \$10 annual fee for a registered creditor registration under Chapter 345, and Texas Finance Code, §347.451 provides a \$15 annual fee for a manufactured home creditor registration under Chapter 347. SB 1371 amends these sections to authorize the Finance Commission to set annual

registration fees under Chapters 345 and 347. SB 1371 has been signed by the governor and will be effective September 1, 2023.

Proposed amendments to §86.102 would specify that the annual registration fee is \$10 for a Chapter 345 registration and \$15 for a Chapter 347 registration. These are the same amounts currently included in the Finance Code, so the rule amendments would not change the fees that registrants currently pay. The OCCC is responsible for the costs of its operations. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency, and may set fees in amounts necessary for the purpose of carrying out its functions. The OCCC has reviewed its costs and determined that the \$10 and \$15 registration fee amounts are currently appropriate to cover the costs of carrying out the OCCC's responsibilities and functions under Texas Finance Code, Chapters 345 and 347. Other proposed amendments throughout §86.102(b) would ensure consistent use of the term "annual fee."

Proposed amendments to §86.103 would include updated cross-references to §86.102, to ensure that a reader can easily locate the fee provisions in §86.102.

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

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by registered creditors and will ensure that the OCCC can effectively administer and enforce Texas Finance Code, Chapters 345 and 347.

The OCCC does not anticipate economic costs to persons who are required to comply with the rule changes as proposed.

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

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §86.102

by specifying registration fee amounts. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

The rule amendments are proposed under Texas Finance Code, §345.351 and §347.451 (as amended by SB 1371 (2023)), which authorize the commission to set fees for registrations under Texas Finance Code, Chapters 345 and 347. The rule amendments are also proposed under Texas Finance Code, §14.107 and §16.003, which authorize the Finance Commission and the OCCC to set fees in amounts necessary to carry out the functions of the OCCC. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 345 and 347.

§86.102. Fees

(a) Locations requiring registration. An annual registration fee is required for each location operated by a retail seller, creditor, holder or assignee.

(b) Annual fee. An annual fee is required under the provisions of Texas Finance Code, §345.351 or §347.451 and will be payable as follows:

(1) The annual fee is \$10 for a registration under Texas Finance Code, Chapter 345.

(2) The annual fee is \$15 for a registration under Texas Finance Code, Chapter 347.

(3) [(1)] A retail seller, creditor, holder, or assignee must pay an annual [~~a registration~~] fee for every chapter under which business is conducted.

(4) [(2)] The registration is not transferable between locations. A retail seller, creditor, holder, or assignee must obtain a registration for each new location.

(5) [(3)] No annual fee is required for a location operated by a retail seller, creditor, holder, or assignee operating under the provisions of Texas Finance Code, Chapter 345 or 347, provided the personnel at the location are not conducting regulated business with the consumer (e.g., storage, web-hosting, or data processing facility).

(c) Late filing fee. As provided by Texas Finance Code, §349.302(b), a person must pay a \$250 late filing fee for each registered location if the person:

(1) obtains a new registration after the person has begun engaging in business under Texas Finance Code, Chapter 345 or 347; or

(2) obtains a renewal more than 30 days after expiration.

(d) Evidence of registration. The Office of Consumer Credit Commissioner (OCCC) will issue a certificate evidencing registration under the provisions of Texas Finance Code, Chapter 345 or 347, and this section. A registrant may print a copy of its registration certificate through the OCCC's online licensing portal.

(e) Registration duplicates sent by mail. If a registrant does not print its registration certificate online, the registrant may request that the OCCC mail a registration duplicate for a fee of \$10 per certificate mailed.

§86.103. Registration Term, Renewal, and Expiration

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until November 30. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from December 1 of a calendar year to November 30 of the next calendar year.

(b) Due date for annual fee. The annual fee described by §86.102(b) of this title (relating to Fees) is due by November 30 of each year.

(c) Expiration. If a registrant does not pay the annual fee, the registration will expire on November 30.

(d) Late renewal. A person may renew an expired registration by December 30 by

paying the annual fee. In order to renew an expired registration after December 30, a person must pay any registration fee for a prior year and the late filing fee described by §86.102 of this title [~~(relating to Fees)~~].

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 16, 2023.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner

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