



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: The Honorable John Corona
Chairman of the Senate Committee on Business and Commerce

From: Charles G. Cooper, Banking Commissioner

Date: October 9, 2012

Subject: Quarterly Update on Texas Department of Banking

I. Status of the implementation of last session's key legislation.

SB 1165 – related to enforcement powers of the banking commissioner
SB 1166 and HB 3004– related to prepaid funeral benefits contracts and the prepaid funeral contract guaranty fund
SB 1167 and HB 2495– related to cemeteries and perpetual care cemetery corporations

All actions to enforce these statutes have been fully implemented, including:

- Notices regarding statutory changes have been sent to the industry; and,
- Examination procedures, related forms and contracts, internal memorandums, and rules have been updated.

II. Issues of interest to the committee members that have occurred since the end of special session.

A. Texas State-Chartered Bank Information:

	June 30, 2011	June 30, 2012
Number of Insured Depository Institutions	309	300
Assets (<i>billions</i>)*	\$164.6	\$196.3
Net Loan Volume (<i>billions</i>)*	\$96.2	\$109.5
Problem Banks**	54	46

*FDIC financial data for insured institutions.

**The Department defines problem banks as any financial institution with a composite rating of "3", "4" or "5".

- Troubled Asset Relief Program (TARP) – Eighty of our banks applied to participate in the Capital Purchase Program under TARP. However, after significant withdrawals, only 21 banks received funds totaling \$2.8 billion, with one bank receiving about 80% of this total. As of September 18, 2012, nine banks have not repaid any of their TARP funds. The total outstanding amount is approximately \$311 million.
- Small Business Lending Fund (SBLF) – Twenty-three Texas state-chartered banks applied for funds under this program. Twelve banks received funds totaling \$255.7 million. One approved bank decided not to accept the funds (\$40 million). The remaining banks either withdrew their applications or their applications were denied. As of May 7, 2012, all funds remain outstanding.
- Texas had one bank failure in 2011. First International Bank, Plano, Texas failed on September 30, 2011.

- The Department of Treasury released final regulations on April 17, 2012, which require reporting deposit interest paid to nonresident individuals. The new reporting rules apply to interest paid on or after January 1, 2013.

B. Federal Law Changes Effective July 21, 2011:

Certain provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)¹ were not immediately effective when Dodd-Frank was enacted in July 2010. Among those provisions that affect state law and became effective on the “Transfer Date” (July 21, 2011) include the following:

1. Ability of State to Enforce

- If a majority of the states enact a resolution in support of a consumer protection standard, the Consumer Financial Protection Bureau (CFPB) must issue a notice of proposed rulemaking to implement that standard. [§1041]
- A state Attorney General may sue to enforce the consumer protection provisions of Title X, including regulations issued by the CFPB, subject to certain limits if the defendant is a national bank or federal savings association. A state Attorney General may sue a national bank or federal savings association to enforce the CFPB’s regulations (but not the underlying statute) or any other applicable state or federal law. [§§1042(a); 1047]
- A state regulator (other than an Attorney General) with appropriate jurisdiction and authority may sue a state-chartered, incorporated or licensed entity, or another entity doing business under state law (other than a national bank or federal savings association), to enforce Title X and the CFPB’s regulations. [§1042(a)]

2. Change in Preemption of State Laws

- Title X provides that a state consumer protection law is preempted if:
 - (i) application of the law would have a discriminatory effect on national banks or federal savings associations;
 - (ii) the law is preempted by a provision of Federal law other than the National Bank Act; or
 - (iii) in accordance with *Barnett Bank v. Nelson*, the State law “prevents or significantly interferes” with the exercise of a national bank or its powers.
- If asked to make a preemption determination, the Office of the Comptroller of the Currency (OCC) must act on a “case by case” basis, meaning the OCC determination must relate to a particular state law, but can also relate to the laws of another state with substantively equivalent terms (after consulting with the CFPB). [§§1044; 1046]
- A preemption determination by the OCC is subject to judicial review. The court may not uphold a determination to preempt a state law unless it finds the determination is supported by substantial evidence. The court is directed to assess the validity of the preemption determination, depending upon:
 - The thoroughness evident in the agency’s consideration,
 - The reasoning of the agency,
 - The consistency of the decision with other determinations, and
 - Other factors the court may find persuasive. [§1044]
- State consumer financial laws (including licensing statutes) apply to national bank subsidiaries, affiliates and agents. [§§1044(e); 1045]

III. Issues of interest to the committee members.

- Implementation of Dodd-Frank Continues
 - CFPB regulations and rules will affect not only depository institutions, but non-depository institutions as well.

¹ Unless otherwise indicated, citations in brackets are references to the Dodd-Frank Wall Street Reform and Consumer Protection Act.

- On March 13, 2012, the Department received a visit from the CFPB. The purpose of the meeting was to gain an understanding of the agency's complaint process for non-depository complaints.
- By January 21, 2013, state legal lending limit must take into consideration credit exposure of derivative transactions for banks to retain authority to invest in derivative transactions (typically done for hedging purposes). The Office of the Comptroller of the Currency has issued its interim final rules addressing the application of legal lending limits to credit exposures arising from derivative and securities financing transactions, see 77 FR 37265 (June 21, 2012). This rule will be used as a model for state rulemaking to address the requirement imposed by §611 of the Dodd-Frank. On August 17, 2012, the Finance Commission proposed a rule to take these transactions into account. The public comment period ends on November 2, 2012.
- Implementation of a proposal to include money services businesses in national database registration and license renewal system will require changes to Texas statutes to enable a third-party to act as a fingerprint channeling agent for national criminal background checks.

IV. Impact on State-Chartered Banks

- Debit interchange fees (also known as swipe fees) were capped for large financial institutions (those with assets greater than \$10 billion), as mandated by the Durbin Amendment, see new 12 CFR part 235, effective October 1, 2011. [§1075]
- CFPB has direct supervision over all depository institutions with assets over \$10 billion. As of December 31, 2011, one state-chartered bank falls within this category.
- Rulemaking authority over numerous consumer protection laws has been given to CFPB, which will apply to all financial institutions regardless of size, including Regulation C - Home Mortgage Disclosure (HMDA), Regulation E - Electronic Funds Transfers, Regulation G and H related to S.A.F.E. Mortgage Licensing Act, and Regulation V - Fair Credit Reporting.
- Stress Testing [§165]:
 - The Federal Reserve Board is required to conduct annual stress test of (1) bank holding companies with total consolidated assets of \$50 billion or more and (2) significant nonbank financial companies as determined by the Financial Stability Oversight Council. These institutions must also conduct their own stress test semiannually.
 - State banks, state-chartered savings associations and national banks with total consolidated assets of more than \$10 billion will be required to conduct their own annual capital-adequacy stress tests.
 - Proposed regulations that would implement the enhanced prudential standards required to be established under §165 of the Dodd-Frank were published for comment at 77 FR 594 (January 5, 2012), and the extended comment period expired April 30, 2012. Final regulations have not been released as of June 30, 2012.

V. Possible Future Legislation

The Department is working on provisions for clean-up bills that would clarify and update current statutes, as well as provide consistency with federal law, in the areas of banking, money services businesses, perpetual care cemeteries, and prepaid funeral contracts. Discussions with the industries are on-going.