



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:** January 4, 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:**

	<b>June 30, 2011</b>	<b>September 30, 2011</b>
Number of Insured Depository Institutions	309	306
Assets ( <i>billions</i> )	\$164.6*	\$168.5*
Net Loan Volume( <i>billions</i> )	\$96.2*	\$95.8*
Problem Banks**	54	49

\*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): 22 state-chartered banks participated in the program. Of these, 12 have repaid the TARP funds and 10 have outstanding TARP balances totaling \$312.3 million.
- Small Business Lending Fund: 23 state-chartered banks applied for funds under the program. Of these, 13 were approved for funds totaling \$295 million. The remaining 10 banks either withdrew their application or were denied.
- Texas had one bank failure in 2011. First International Bank, Plano, Texas failed on September 30, 2011.
- Financial institutions, primarily border banks, continue to oppose the Internal Revenue Service and Department of Treasury's proposal to require reporting deposit interest paid to nonresident aliens [REG 146097-09]. A subcommittee of the House Financial Services Committee held a hearing on the proposed regulation in October.

**B. Federal Law Changes Effective July 21, 2011:**

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

**1. Debit Fees**

- Debit interchange fees were capped for large financial institutions, as mandated by the Durbin Amendment.

**2. 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 bring an action in federal district court or state court to enforce the consumer protection provisions of Title X, including regulations issued by the CFPB. With respect to national banks and federal savings associations, a state attorney general may bring an action to enforce the CFPB’s regulations, but not the underlying statute. A state attorney general may also bring an action to enforce any other applicable state or federal law against a national bank or federal savings association.[§§1042(a); 1047]
- A state regulator (other than an attorney general) may also enforce Title X and the CFPB’s regulations against a state-chartered, incorporated or licensed entity, or against any entity that is authorized to do business under state law.[§1042(a)]

**3. 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 association;
  - (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 of 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 that 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 that 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. Upcoming 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.
  - By January 21, 2013, state legal lending limit must take into consideration credit exposure of derivative transactions (this can be accomplished by rule).
- Implementation of a proposal to include money services businesses in national database registration and license renewal system will require changes to Texas statutes.