

VII. Guide to Agency Programs

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Enforcement Program
Location/Division	William P. Hobby Building, Tower I, 10th Floor
Contact Name	Catherine Reyer
Actual Expenditures, FY 2006	\$2,347,560.98
Number of FTEs as of August 31, 2006	50

B. What is the objective of this program or function? Describe the major activities performed under this program.

Enforcement's primary objective is to encourage fair competition in the insurance industry by reducing unfair and illegal practices. To meet this objective, Enforcement investigates allegations of illegal activities by insurance agents, insurance companies, HMOs, and other licensed entities and brings disciplinary actions that may result in:

- cease-and-desist orders
- license denials
- license revocations and suspensions
- monitored agent probations
- administrative penalties
- restitution.

Enforcement refers cases to the Fraud Unit for criminal prosecution and assists appropriate prosecutors in criminal prosecutions. Enforcement works with the Office of the Attorney General (OAG) on appeals of disciplinary actions and on enforcement actions conducted by the OAG's Consumer Protection Division.

Enforcement's Compliance Intake Unit provides data and file management and public assistance telephone support to the program. The section also is responsible for analyzing and referring complaints and reports to the appropriate areas within TDI.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The Enforcement Program's effectiveness is best demonstrated by the number of enforcement actions concluded, penalties fined, and restitution assessed. The tables below demonstrate Enforcement's success at meeting annual performance measure targets for the past five fiscal years (FY).

1.2.2 output 1 – Number of enforcement actions concluded					
	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual Performance	332	352	457	417	364
Annual Target	295	295	300	300	350
Percentage of Target	112.54%	119.32%	152.33%	139%	104%
Analysis/Variance Explanation	Enforcement consistently meets the target for this measure.				

1.2.2 output 2 – Dollar amount of penalties assessed for unfair and illegal practices					
	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual Performance	\$26,256,925	\$14,709,197	\$8,344,761	\$12,744,166	\$8,690,433
Annual Target	\$1,250,000	\$1,250,000	\$1,350,000	\$1,350,000	\$2,750,000
Percentage of Target	2100.55%	1176.74%	618.13%	944.01%	316.02%
Analysis/Variance Explanation	Enforcement consistently meets the target for this measure.				

1.2.2 output 3 – Dollar amount of restitution assessed for unfair and illegal practices					
	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Actual Performance	\$55,158,846	\$18,476,341	\$29,844,650	\$18,031,974	\$18,224,109
Annual Target	\$2,500,000	\$2,500,000	\$10,500,000	\$10,500,000	\$10,500,000
Percentage of Target	2206.35%	739.05%	284.33%	171.73%	173.56%
Analysis/Variance Explanation	Enforcement consistently meets the target for this measure.				

Enforcement’s effectiveness is also reflected by the combination of explicit agreements for compliance with statutes and regulations, payment of restitution to those harmed by past behavior, and payment of monetary penalties to the general revenue fund as documented by orders issued to regulated entities. In FY 2006, Enforcement collected approximately \$5.8 million in general revenue fund penalties, which is more than the program’s fiscal year budget.

Additionally, following House Bill 7 merger, TDI’s Enforcement Program assisted the Division of Workers’ Compensation (DWC) with reducing the backlog of medical dispute resolution cases. As a result of Enforcement’s efforts, the number of cases docketed for hearings with the State Office of Administrative Hearings (SOAH) decreased from 3,919 to 1,877. DWC has continued to work on the backlog and as of August 2007, only 1,632 cases remain.

Specific enforcement actions highlighting the program’s performance for FY 2006 are presented below.

- Issued a cease and desist order and assessed a \$1 million penalty against Employers Resource Management for engaging in the business of insurance without proper authorization and engaging in deceptive acts by making misrepresentations about its health benefits plan.
- Assessed a \$4 million penalty against United Healthcare Insurance Company for violating the insurance laws relating to compliance with Texas prompt payment statutes and rules.
- Participated in a multi-state regulatory settlement agreement in and between American-Amicable Life Insurance Company of Texas that resulted in more than \$10.7 million in restitution for Texas consumers. Allegations included misrepresentation and violation of insurance or consumer protection statutes in the marketing and sale of Horizon Life to members of the United States military.
- Ordered Melvin Dean Marshall to pay restitution of approximately \$2.6 million. Mr. Marshall was found to have participated in and benefited from dishonest and deceptive practices in the business of insurance, resulting in financial losses to retired elderly people.
- Required Unum Life Insurance Company of America to pay approximately \$8.6 million in restitution for improper claims settlement practices in individual and group long-term disability income insurance policies.
- Following a contested case hearing at SOAH, the Commissioner issued an order requiring Allstate Texas Lloyd to reduce its homeowners insurance rates by 5 percent and to pay restitution to policyholders in an amount estimated to be more than \$57 million.

Other specific examples that demonstrate the impact of the Enforcement program on the market include the following. In 2000-2001, TDI experienced a sharp increase in complaints regarding unauthorized

health insurance plans. In response, Enforcement created an unauthorized insurance team to deal solely with unauthorized insurance issues. During 2003, Enforcement entered over 100 orders against agents involved in selling unauthorized insurance. By 2005, the incidents reported to TDI of agents participating in unauthorized insurance schemes fell so low that the unauthorized insurance team was disbanded. Enforcement staff have since learned that individuals involved in unauthorized insurance operations have specifically refrained from doing business in Texas due to the enforcement efforts of TDI.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1997 - The Enforcement Section of the Legal and Compliance Program of TDI was created as a result of the merger of the Agent Enforcement and Market Activities sections. Attorneys from the State Fire Marshal’s Office joined Enforcement when the Fire Marshal enforcement function was delegated to the Legal and Compliance Division.

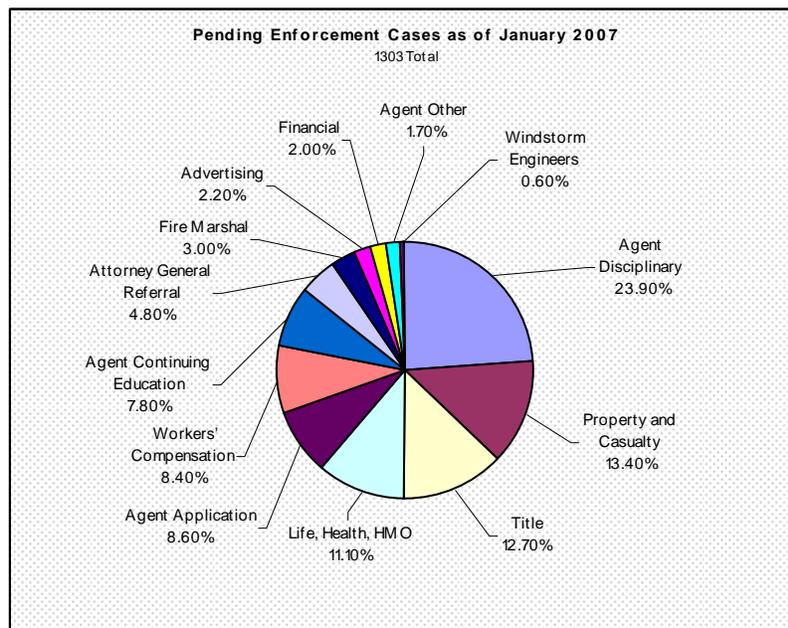
2006 - The enforcement portion of the Legal and Compliance Program was split into a separate program, which also included the Compliance Intake Unit.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Enforcement primarily impacts individuals and entities regulated by TDI. The program also affects TDI programs and the public. The statistical breakdowns are as follows:

- Companies = 2,437 insurers/various other insurance-related entities as of December 31, 2006
- Agents and adjusters = 347,830 total active licenses as of August 31, 2006
- Agency staff = 1,627.1 as of August 31, 2006
- Consumers = 23,507,783 (2006 U.S. Census estimate for Texas).

The vast majority of cases handled by Enforcement involve individuals and entities regulated by TDI, as illustrated below.



F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The Enforcement Program is administered by an Associate Commissioner and consists of investigators, attorneys, and administrative staff. Enforcement processes involve opening cases, investigating cases, pursuing orders in appropriate cases, issuing orders, and tracking compliance with orders. Enforcement's Compliance Intake Unit is responsible for setting up cases in the complaint tracking system and routing cases, complaints, and reports to the appropriate area. Flowcharts of Enforcement's processes are available for review.

Enforcement has four subject matter teams. Generally, each attorney and investigator are assigned to more than one team.

- Licensing (dealing with Agent issues)
- Property and Casualty/Windstorm/Fire Marshal
- Rates/Title/Financial
- Health/HMO/Life/Workers' Compensation Networks

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The primary funding sources are general revenue and dedicated general revenue funds, which finance over 96 percent of the agency's operations. Maintenance taxes and fees are the two main revenues that fund the agency's appropriations to regulate the insurance and workers' compensation industries.

H. Identify any programs, internal or external to your agency that provide identical or similar services or functions. Describe the similarities and differences.

Internal Programs

The Legal Services Program of TDI provides legal advice, interpretation, and non-litigation support services to the agency. Enforcement relies on Legal Services for these support services and communicates through both regularly scheduled meetings and ad hoc interaction as specific cases demand.

DWC's Legal Services Section provides legal advice, interpretation and support services to DWC. TDI's Enforcement Program and DWC's Legal Services regularly communicate regarding disciplinary actions to ensure consistency across the agency.

The General Counsel/Chief Clerk of TDI provides legal counsel to the Commissioner. It is especially important that this function remain separate and distinct from Enforcement as the Commissioner is prohibited from discussing the substance of contested cases with any party, including Enforcement staff (see Texas Government Code, Section 2001.061). Enforcement and the General Counsel work together to establish and maintain procedures in contested cases.

Many enforcement cases involve allegations of activities that, if proven, would provide the basis for criminal prosecution. TDI's Fraud Unit investigates and prepares these cases for referral to various district attorneys around the state. Due to the need to take appropriate action against regulated entities, and since the nature of the available sanctions are different, companion cases often run simultaneously in both Enforcement and the Fraud Unit. Enforcement meets and communicates regularly with

representatives of the Fraud Unit through both regularly scheduled meetings and ad hoc communications on specific cases to ensure coordination of efforts and sharing of information where possible.

External Agencies

TDI works daily with SOAH. Per Texas Insurance Code, Chapter 40 and Texas Government Code, Chapters 2001 and 2003, SOAH conducts contested case proceedings for TDI including issuance of proposals for decision which contain recommendations to the Commissioner.

Pursuant to Texas Business and Commerce Code, Section 1747, the OAG has authority to pursue deceptive trade practices cases against insurers. This overlaps with the authority of TDI under the Texas Insurance Code. Since insurance agents and entities may not do business in Texas without authorization from TDI, the function of regulating deceptive trade practices by regulated entities is appropriately given to TDI.

TDI shares regulation of certain types of health plans with the United States Department of Labor (DOL). Both agencies regulate self-funded multiple employer welfare arrangements (MEWAs). However, the DOL focuses on breaches of fiduciary duty, while TDI focuses on MEWA licensure and regulation under Texas Insurance Code, Chapter 846.

TDI regulates Qualified Inspectors (QI) who perform building inspections to determine whether buildings or structures are eligible for windstorm and hail insurance through the Texas Windstorm Insurance Association (TWIA). TDI reports actions taken against QI who are also licensed engineers regulated by the Board of Engineers (BOE). TDI also verifies the engineer's license status through the BOE.

The State Securities Board (SSB) oversees the registration of security dealers/agents and securities in Texas. The SSB and TDI's Enforcement Program share information about the inappropriate sale of securities as many Texas agents also sell investment products to clients. Although the sale of securities is not the business of insurance, Enforcement may initiate disciplinary action against a licensed agent who engages in the sale of registered or unregistered securities but fails to register as a security dealer.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

TDI meets and otherwise communicates with various other programs within the agency in order to coordinate efforts. These meetings plus the exchange of biweekly reports among programs ensure that each area remains informed about one another's activities. The programs understand the scope of their regulatory authority. When issues are incorrectly directed to a program, they are promptly routed to the appropriate area for handling.

Enforcement staff meet regularly with the Travis County District Attorney's Office to discuss pending cases involving respondents/defendants who are or who have been the subject of both criminal investigation through that office and civil administrative action through TDI Enforcement. Enforcement staff also participate in several National Association of Insurance Commissioners (NAIC) working groups that communicate regularly via national meetings and e-mail correspondence. The Department of Labor also participates in these NAIC working groups. Enforcement staff communicate regularly with the OAG about pending issues affecting both agencies. Similar contacts and communications occur with the SSB and BOE.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Enforcement regularly shares information with and receives information from the following entities regarding individuals and entities of common interest:

- Texas State Securities Board
- Texas Real Estate Commission
- Texas Education Agency
- Texas Work Force Commission
- Texas Comptroller of Public Accounts
- Texas Secretary of State
- Texas Department of Licensing and Regulation
- Texas Department of Finance
- Texas Department of Banking
- Texas Board of Chiropractic Examiners
- Texas Department of Public Safety
- Texas Department of Transportation
- Texas Windstorm Insurance Association
- Texas Fair Access to Insurance Requirements Plan Association
- Texas Automobile Insurance Plan Association
- Surplus Lines Stamping Office
- Special Deputy Receivers Appointed by TDI Commissioner.

Enforcement also provides information regarding activities by licensees that may involve violation of federal statutes to the following agencies:

- United States Securities and Exchange Commission
- United States Department of Homeland Security
- Federal Bureau of Investigation
- United States Attorney
- United States Secret Service
- United States Department of Labor
- Internal Revenue Service - Criminal Intelligence Division
- United States Postal Inspection Service.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2006;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

An attachment to TDI's Self-Evaluation Report provides agency contract expenditures by program.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

For the most part, the Texas Insurance Code does adequately reflect the agency's mission and powers. However, Enforcement believes there is room for improvement in the statutes giving the agency the power to carry out its mission. For instance:

- A recommendation included in the agency's biennial report to the 80th Legislature is to adopt the NAIC model regulation to prevent unauthorized health insurance. This model would make clear a number of issues where unauthorized plans have tried in the past to exploit the current ambiguity.
- Another recommendation included in the biennial report was to clarify the "independently procured" exemption from TDI regulation in order to prevent inappropriate circumvention of Texas insurance regulations. Specifically, Enforcement is concerned about the use of the exemption by unauthorized insurers selling to Texas domiciled individuals and businesses and does not believe that the exemption was intended to be utilized in such circumstances.
- An issue not included in the biennial report has to do with the regulation of life and health insurance. Currently, TDI's ability to require licensure of insurance companies clearly doing business in the state is very limited in cases of group policies. Specifically, §101.053 (b)(5) provides that a transaction involving a group life or health insurance policy issued outside of the state which was authorized in that other state is not considered the business of insurance in Texas. While this is appropriate in the context of single employer group health insurance, this exemption is also utilized in other, arguably inappropriate, contexts. For instance, this would appear to apply to situations where a group health insurance or annuity policy is issued to a "consumer association" in another state. While TDI might be able to order the carrier to comply with Texas law as to the content of the certificates issued here, such regulation has little force without the threat of the revocation of licensure.
- Currently, insurance companies often return unearned premium to the insurance agent when a policy cancels, to be returned to the consumer. TDI has seen a number of examples of agents misappropriating the funds in these circumstances. TDI suggests that carriers be required to return unearned premium directly to the policyholder.
- Similarly, TDI has observed misappropriation of funds when premium finance companies send premium finance agreement funds to the agent to be forwarded to the carrier. Again, TDI suggests that the premium finance company be required to forward the premium directly to the carrier so as to avoid the opportunity for fraud.
- TDI has investigated a large number of cases of consumer harm in the sale of insurance products where agent commission is paid up front and where the commission is paid one time for a product, like an annuity, which is generally a multi-year product. TDI has also revoked a number of agent licenses in circumstances where the agent received large up front commissions and then refused to return them when the policy was cancelled. In other cases, agents have created large numbers of false applications in order to benefit from the initial commissions paid. Currently, pursuant to federal law, carriers are required to pay renewal commissions on Medicare supplement products, and the first year commissions may not be more than 200 percent of the renewal commission. (28 TAC § 3.3317). Enforcement suggests revising state law regarding commissions to be more comparable to the Medicare supplement model.
- Enforcement suggests that an update to section 4005.101(b) is needed, right after section 4005.101(b)(8), in order to include guilty pleas in criminal prosecutions which result in deferred

adjudication probation orders. This is similar to how deferred adjudication orders are considered in the state bar rules which apply to licensed attorneys. The relevant conduct is identical whether the conduct results in either "conviction" or "deferred adjudication". Since license prosecution and license denial actions at TDI/SOAH are civil proceedings, the relevant conduct is the admission by a party opponent (Guilty plea, *Texas Rules of Evidence section 801(e)(2)(A)*). Guilty pleas and other admissions contained within deferred adjudication probation orders constitute civil admissions which are relevant and admissible within civil cases. The current limitation to only criminal "convictions" was passed prior to the creation of the current deferred adjudication process in criminal cases.

- Section 411.081 of the Government Code provides a lengthy list of state agencies permitted to have access to certain criminal history records but excludes TDI. Enforcement suggests that access to such records is necessary to making appropriate licensing decisions.
- Chapter 541 of the Insurance Code deals with unfair methods of competition or deceptive acts. Staff suggests that ambiguities need to be clarified in that Chapter. For instance, §541.004 provides that an action under that chapter in which TDI is a party must be brought in a district court in Travis County. This does not seem to take into account the ability of the department to bring an administrative action before the State Office of Administrative Hearings (though §541.207 provides that the remedies found in the chapter are not exclusive). Similarly, §541.110 provides for very limited administrative penalties under the Chapter and only for violations of an administrative cease and desist order. Because there are no direct penalty provisions, Enforcement must rely on the general penalty provisions of Chapters 82 and 84. Enforcement recommends deleting Subchapter C of Chapter 541.
- The Amusement Ride Safety Inspection and Insurance Act (Act), Texas Occupations Code, Chapter 2151, gives TDI regulatory authority, along with 28 TAC, §§ 5.9001-5.9014. The Act, however, failed to give TDI any enforcement authority other than to refer non-compliant operators to either local, county, state law enforcement and/or the OAG. Enforcement suggests that the act should be amended to give TDI some enforcement tools such as to revoke permits, levy fines and to issue immediate cease and desist orders to shut down illegal operators. Additionally, the safety inspectors employed by insurers are currently not certified or regulated by any governmental entity. Enforcement suggests that safety inspectors at least be registered with the Texas Department of Licensing and Regulation.
- In Attorney General Opinion No. GA-0064, the AG found that §53.021(b) of the Occupations Code provides that a license is revoked by operation of law upon incarceration for a felony. Enforcement suggests that, if this is the law, the Insurance Code should reflect it.
- Section 101.354 provides that, before an unauthorized entity can file a pleading in an administrative case, they must file cash or a bond in an amount sufficient to pay any final order that may be entered. However, the section states that this only applies "if required by statute." This appears to require another statute in order to make this provision effective, and there does not appear to be such other statute. Thus, either this section should be eliminated, or it should be amended to remove the phrase "if required by statute."

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

Not applicable.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

TDI licenses individuals and entities within the insurance industry. Enforcement handles cases once non-compliance is identified. Many cases are closed once compliance has been obtained and the violation rectified. Other cases proceed to a negotiated settlement through a consent order. Where settlement is not possible, a contested case hearing is held, which results in a proposal for decision by a SOAH judge to the Commissioner, who then issues a final order. Consent and contested case orders may contain provisions for the payment of penalties and/or restitution. They also can contain provisions for probation, suspension, and revocation of the authorization issued by TDI.

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

MEASURE DESCRIPTION	FY 2005	FY 2006
Complaints Transferred to CIU	751	1,485
Complaints Resolved by CIU	1,160	1,222
Unjustified CIU Complaints	242	170
Average Response Time to Complete CIU Complaints	9 days	12 days
Enforcement Cases Opened	809	959
Enforcement Cases Closed	804	812
Enforcement Actions Concluded	417	364
Contested Cases Closed	268	236
Contested Cases Finalized within 180 days	74%	74%
Penalties Assessed for Unfair and Illegal Practices	\$12,727,166	\$8,671,183
Restitution Assessed for Unfair and Illegal Practices	\$17,725,119	\$16,722,399
Restitution Collected Without an Order	\$345,194	\$1,812,342