

## II. Key Functions and Performance

<b>A. Provide an overview of your agency's mission, objectives, and key functions.</b>
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### MISSION

The Texas Department of Insurance (TDI) is primarily a regulatory agency whose mission is to regulate the marketplace firmly and fairly by enforcing and implementing the law. TDI strives to enhance internal and external communication for efficient and effective regulation and to promote outreach to educate the public.

### OBJECTIVES

Agency objectives are outlined in TDI's Agency Strategic Plan for the Fiscal Years 2007-2011 Period. Funded objectives are summarized below.

- 1.1 Encourage fair competition in the insurance industry by reducing impediments to competition and improving insurance availability.
- 1.2 Encourage fair competition in the insurance industry by reducing unfair and illegal practices.
- 2.1 Encourage financial health of insurance industry through monitoring and regulation of industry solvency.
- 3.1 Decrease insurance industry loss costs by assuring companies provide loss control services.
- 4.1 Reduce loss of life and property due to fire by increasing public awareness, and by enforcing statutes relating to fire investigations, fire safety inspections, and fire protection and fireworks industries.
- 5.1 Promote safe workplaces through incentives, education, and other actions.
- 5.2 Promote safe workplaces by encouraging the safe and timely return to work.
- 6.1 Encourage appropriate delivery of workers' compensation benefits by ensuring payment for employees' medical care and reimbursement to providers.
- 6.2 Encourage appropriate delivery of workers' compensation benefits by promoting compliance through performance based incentives.
- 6.3 Encourage appropriate delivery of workers' compensation benefits by optimizing use of technology to educate participants of rights & responsibilities.
- 6.4 Encourage appropriate delivery of workers' compensation benefits by certifying and regulating employers for workers' compensation self-insurance.
- 6.5 Encourage appropriate delivery of workers' compensation benefits by reducing disputes and resolving disputes promptly.
- 6.6 Encourage appropriate delivery of workers' compensation benefits by proper administration of Subsequent Injury Fund.

**KEY FUNCTIONS**

Federal law delegates many of the functions for the regulation of insurance to the states. The McCarran-Ferguson Act and the Gramm-Leach-Bliley Act are two significant federal laws that delegate the authority to regulate insurance to the states. As reported in 2006 annual statements, premiums from insurance companies, HMOs, and related entities licensed or otherwise eligible to operate in Texas, total \$88 billion. Insurance is a complex business and laws governing insurance are not standard across product types, lines and services. The agency structure optimizes customer service by staffing regulatory activities with subject matter experts. TDI organizes activities based on subject matter expertise, rather than functions, resulting in several key functions crossing program lines. TDI performs nine key functions, which are described below.

<b>Function</b>	<b>Objectives</b>
Licensing, Certification and Registration	1.1, 4.1, 6.4
Form, Rate and Advertising Review	1.1, 1.2
Examination, Monitoring and Solvency Intervention	1.2, 2.1
Research and Analysis	1.1, 6.2
Education, Outreach and Customer Assistance	1.1, 4.1, 5.1, 5.2, 6.1, 6.3, 6.6
Complaint and Dispute Resolution	1.2, 6.5
Enforcement, Fraud and Investigations	1.2, 3.1, 4.1, 6.2
Inspections and Consultations	3.1, 4.1, 5.1
Support Services	Indirectly Supports All

**Licensing, Certification, and Registration**

The licensing, certification and registration function follows a process whereby applicants submit information, TDI staff review the information against established criteria and consider applicants for license, certification and registration approval. TDI’s process for licensing, certifying and registering individuals and entities regulates the Texas market by limiting participation to qualified, trustworthy and reliable individuals and financially healthy, well-managed, and trustworthy entities. Several TDI business units perform licensing, certification and registration functions that cover a wide array of occupational designations, requiring subject matter expertise. Some examples of the individuals and entities applying for licensure, certification, or registration include agents, doctors, fire alarm technicians, employers wishing to self-insure, health maintenance organizations, and insurance companies. Currently, TDI has licensed, certified or registered approximately 2,200 insurance entities and more than 250,000 agents, as well as 11,786 fire alarm, extinguisher, sprinkler, and fireworks entities and individuals.

A recent example of the Legislature’s expanding TDI’s licensing, certification and registration function is House Bill 7 (HB 7), 79th Legislature, Regular Session, which authorized the establishment of workers’ compensation health care networks and provided standards under which TDI certifies network applicants.

**Form, Rate and Advertising Filing Review**

Once licensed to sell insurance in Texas, an insurance company must submit product information to TDI for informational purposes, review and/or approval. Based on subject matter expertise, various TDI business units review rate, form and advertising filings for various lines of insurance. The process includes reviewing filings for compliance with applicable laws and regulations, ensuring that filings are not misleading or deceptive, and analyzing rates and calculation methodologies to ensure that the rates are not excessive, inadequate or unfairly discriminatory. Additionally, TDI participates in rate hearings for statutorily created entities that provide coverage in underserved areas. TDI reviewed or completed approximately 54,000 filings in FY 2006, which included filings for HMO forms, life/health forms, property and casualty rates and forms, and advertising.

### Examination, Monitoring and Solvency Intervention

The examination, monitoring, and solvency intervention function protects the insurance buying public by ensuring that carriers remain financially sound and comply with applicable federal and state law. TDI performs both statutory and complaint-driven examinations to review market conduct, company operations, and financial stability. TDI works with troubled companies by requiring development and implementation of corrective action plans that ensure compliance with applicable laws and regulations. TDI also seeks to rehabilitate financially troubled insurance companies, but when a company cannot be rehabilitated, TDI manages the liquidation of insolvent insurers by appointing special deputy receivers. In the last five years, TDI has examined, rehabilitated, and managed the insolvency of insurance companies and related entities, as evidenced by the chart below.

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
On-site examinations conducted	167	167	159	160	156
Actuarial examinations completed	80	81	81	84	79
Companies rehabilitated	13	19	6	11	9
Receiverships managed	24	22	23	21	22

### Research and Analysis

TDI regularly collects and analyzes underwriting, claim, and premium data to better understand the marketplace, monitor market trends and ultimately promote competition. TDI also gathers other types of data when market trends, such as the increased use of credit scoring, are identified. The research and analysis function assists TDI with preparing market analysis reports, responding to inquiries related to the marketplace, and identifying trends in and evaluating the effectiveness of the workers' compensation system. The function involves in-depth analyses of the Texas insurance market and conducts special studies to assist the agency, policy makers, and the public.

For example, TDI conducted a four-year health care study aimed at increasing the affordability and availability of health insurance. The *Insure Houston* pilot project is a direct result of TDI's research and planning activities. Though not implemented, the intended goal is to provide a new, more affordable coverage alternative for nearly one million Houston workers and their families.

Another example of the research and analysis function involves TDI's actuarial analysis of homeowner rates. For instance, TDI recently found a carrier's rates to be excessive, unreasonable and unfairly discriminatory. The Commissioner of Insurance ordered the company to reduce the rates by five percent and refund policyholders the amount overcharged since December 2004. A court upheld TDI's determination and TDI estimates that refunds to Texas policyholders will exceed \$56 million (<http://www.tdi.state.tx.us/news/2007/news20078.html>). Not all reviews result in formal actions and court orders, as many carriers seek to work out differences with TDI.

### Education, Outreach and Customer Assistance

An important component of TDI's mission is to enhance internal and external communication for efficient and effective regulation and promote public outreach to educate consumers. Education, outreach and consumer assistance are essential to achieving TDI's mission. While all TDI areas perform information-sharing activities, education, outreach and customer assistance is the primary function of certain areas within the agency. TDI offers a variety of education, outreach and customer assistance activities, such as toll free telephone lines, e-mail resource mailboxes, educational publications, newsletters and brochures, presentations to various interests groups, training of local authorities to participate in fire prevention efforts, fire prevention and safety training to the public, and compliance and educational workshops for industry representatives and system participants.

Another educational tool for customers and the industry is TDI's website. The website is a convenient source of information for the public, accessible 24 hours a day, 7 days a week. TDI customers demand instant access to insurance and fire safety and prevention information and services. Currently, the website receives more than three million visitors per month. TDI continually explores opportunities to enhance website services. For example, TDI's website was a valuable tool for consumers impacted by Hurricanes Katrina and Rita in 2005. Following the hurricanes, TDI created Internet resource pages to assist consumers by providing information on:

- insurance carrier contacts
- claim submission process, and
- emergency food, clothing and shelter resources.

Following a catastrophic event, TDI extends toll free telephone hours to better assist customers. During hurricanes Katrina and Rita in 2005, staff worked 8 a.m. to 7 p.m., 7 days a week. These hours corresponded with the Federal Emergency Management Agency's hours of operation at its Disaster Recovery Centers (DRCs). TDI staff also frequently volunteer to assist consumers in the field at DRCs.

In addition to traditional outreach to the public, the Commissioner has founded the TDI Academy to influence the future industry workforce and prepare today's youth for future insurance decisions. The TDI Academy is a program established on the foundational goals of improving insurance awareness and literacy and improving the quality and diversity of insurance enterprise leadership and management. The pillars of the Academy are Insurance Leadership, Employment, Academics, Research and Networks and the motto is I-LEARN. The Academy will develop initiatives to educate high school and college students about insurance principles, careers and regulatory issues as well as develop professional training for insurance company management personnel designed to help them incorporate different cultural, economic and social perspectives into their decision-making processes.

### **Complaint and Dispute Resolution**

TDI facilitates the resolution of policyholder, health care providers, and workers' compensation system participant complaints and disputes. The paperless complaint process allows TDI to efficiently process, track and access complaint information, which enabled resolution of approximately 26,000 insurance complaints in FY 2006. The complaint resolution process includes receipt of the complaint, investigation of the issue in question, identification of the complaint as frivolous, justified, or unjustified, resolution or closure of the complaint, and advice to the complainant of rights to further pursue the issue. When warranted, due to possible statutory or rule violations, a complaint may be referred to TDI's Enforcement Program or Fraud Unit for review. For workers' compensation disputes, TDI offers an informal and formal dispute resolution process that begins with a benefit review conference and can result in a contested case hearing and ultimately an appeal panel review.

### **Enforcement, Fraud, and Investigation**

TDI's enforcement, fraud and investigation function handles allegations of illegal activities by insurance agents, companies, HMOs, attorneys, health care providers, and other licensed entities. TDI's Enforcement Program investigates allegations and takes civil disciplinary actions, which include license denials, revocations and suspensions, administrative penalties and/or restitution.

Enforcement cases may also result in criminal prosecution. These cases are referred to TDI's Fraud Unit for investigation, preparation and referral to state and federal prosecutorial agencies. The Fraud Unit also investigates fraudulent consumer and provider claims as well as the unauthorized sale of insurance products. In addition, the Fraud Unit maintains a special prosecutor that prosecutes approximately 100 insurance fraud cases a year, including referred cases from other agencies such as the Federal Bureau of Investigations (FBI), US Postal Service and local law enforcement agencies, and provides technical

advice to district attorney offices around the state. Because of the overlap between civil and criminal enforcement actions, the Fraud Unit and Enforcement program coordinate efforts and share information where possible, which includes assisting outside prosecutors, such as the Texas Office of Attorney General (OAG), in criminal prosecutions.

TDI's enforcement, fraud, and investigation function also includes fire and arson investigations upon request by local communities. The State Fire Marshal serves as the chief arson investigator for the state. The State Fire Marshal's Office (SFMO) assists local communities in prosecuting arson cases. SFMO also provides canine services and arson lab support.

### **Inspections and Consultations**

TDI's inspection and consultation function promotes loss mitigation to improve insurance availability and affordability. To this end, TDI performs a variety of loss control and accident prevention services that support the function, including physical inspections of property and businesses as well as reviews of company programs, services and rates.

TDI inspects property in the Texas Gulf Coast region and certifies compliance with windstorm building codes so consumers may obtain wind and hail coverage through the Texas Windstorm Insurance Association (TWIA). By ensuring compliance with building codes, TDI helps mitigate losses due to high wind events. TDI also provides free safety and health consultations to private Texas employers in high-hazard industries to identify and correct workplace hazards. Employers benefiting from these consultations commit to eliminating serious hazards identified during the visit. Lastly, TDI conducts fire and life safety inspections of private and public facilities across the state to prevent loss of life due to fire.

A component of TDI's inspection and consultation function includes the review and evaluation of insurers' loss control and accident prevention services. TDI verifies that licensed insurance companies provide these services for policyholders of general liability, professional liability, medical professional liability for hospitals, commercial automobile and workers' compensation lines of insurance.

TDI mitigates fire losses through evaluation of building codes, classification of building materials and construction techniques and commercial property rating schedules. Through random statewide spot-check inspections, this process ensures consumers receive fair and equitable commercial property rates.

### **Support Services**

TDI has an administrative program that supports agency operations, including payroll, purchasing, facilities management, human resource management, professional development, information technology services, legal support, planning and quality control. Pursuant to HB 7 (79th Texas Legislature) TDI effectively consolidated the administrative support functions of TDI and the Texas Workers' Compensation Commission (TWCC), now the Division of Workers' Compensation (DWC) within TDI. Additionally, HB 7 administratively attached the Office of Injured Employee Counsel (OIEC) to TDI, even though OIEC is a separate state agency. Accordingly, TDI successfully began providing facilities and administrative support to the OIEC.

**B. Do each of your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?**

Yes, the agency's key functions continue to serve clear and ongoing objectives, which are specified in the Agency Strategic Plan FY 2007-2011. The strategic objectives for TDI's nine functions are described

below followed by a discussion of why the functions are still needed and the harm that would result if the functions were no longer performed.

### **Licensing, Certification, and Registration**

The licensing, certification, and registration function contributes to the objectives of encouraging fair competition in the market by reducing impediments to competition and improving insurance availability (1.1); reducing loss of life and property due to fire (4.1); and encouraging the appropriate delivery of workers' compensation benefits by certifying large private employers that qualify to self-insure (6.4).

The function is still needed to ensure that only qualified, trustworthy and reliable applicants and financially healthy, well-managed, and trustworthy entities are allowed to enter the Texas market and serve the public, thereby increasing availability of coverage and competition in the marketplace. Similarly, fire alarm, sprinkler, extinguisher, and fireworks licensing, certification, and registration is still needed to ensure properly working fire prevention and safety equipment is installed in Texas residential and commercial properties.

Without this function, the Texas public may be significantly harmed. Given the size of the market, complexity of products and services, and absence of federal oversight, unscrupulous individuals and entities may take advantage of the general public's naivety of insurance products and services to exploit them. Additionally, if financially troubled businesses enter the market place, policyholders would be vulnerable in the event that the company failed or were unable to cover its claims costs. Texas could also experience an increase in the loss of life and property due to fire, as there would likely be an increase in the sale or installation of faulty fire prevention and safety products.

### **Form, Rate and Advertising Filing Review**

The form, rate and advertising filing review function supports the objectives of encouraging fair competition in the market by reducing impediments to competition and improving insurance availability (1.1) and reducing unfair and illegal practices (1.2).

The function is still needed to ensure that insurance advertisements, policy provisions, and related materials comply with applicable laws and are not deceptive or misleading, thus reducing unfair and illegal practices. Rate filing reviews are also necessary to ensure rates are not excessive, inadequate, or unfairly discriminatory, which promotes fair competition in the marketplace. Additionally, form, rate and advertising review is a mechanism for identifying underserved markets, and is necessary in order to improve the availability of coverage through incentives and requirements for insurers to write coverage in underserved markets. Several statutory entities have been created to alleviate lack of coverage in underserved areas, such as the TWIA, the Texas Fair Access to Insurance Requirements Plan Association (TFPA), and the Texas Automobile Insurance Plan Association (TAIPA). TDI and the public actively participate in the rate hearings for TWIA and TAIPA to ensure the availability and affordability of coverage. TFPA rates are subject to prior approval and are reviewed in a manner similar to other insurers.

Without this function, Texans could see an increase in deceptive, misleading, and unauthorized insurance. Unscrupulous individuals and entities could use advertising to sell fraudulent or inappropriate products to the most vulnerable Texans. Without TDI review of forms, legitimate companies may include overly complex or non-compliant provisions in their policies. Another potential harm of not performing this function is companies using inadequate rates, which is financially risky because insurers may not collect enough premiums to cover actual claim costs, potentially reducing the availability of coverage in the market and increasing costs to consumers left with unpaid claims. Additionally, without this function, insurers may charge excessive rates, causing consumers to pay more for the insurance coverage than is actuarially justified. Lastly, without this function there would also be inadequate insurance coverage in

the state's underserved areas, causing financial hardship to consumers in those areas due to losses that could have been covered through insurance.

### **Examination, Monitoring and Solvency Intervention**

The examination, monitoring, and solvency intervention function furthers the objectives of reducing unfair and illegal practices (1.2), and regulating insurance industry solvency (2.1).

The function is still needed to ensure a financially strong, competitive marketplace, protect the public from unfair or discriminatory market conduct, and initiate action through early detection of insurance companies operating in a financially hazardous condition or in a manner harmful to the public. Solvency intervention activities are needed to rehabilitate financially unstable companies by directing them to develop and implement corrective action plans to cure hazardous conditions and comply with applicable laws and regulations. In the few instances when an insurance company cannot be rehabilitated, TDI manages the liquidation of insolvent insurers to ensure rightful compensation to claimants of the insolvent estate. In addition to financial and solvency monitoring, the function is also needed to conduct complaint-driven examinations and detect unfair or illegal market practices that would adversely harm the public.

Without this function, the financial health of companies would not be monitored and companies may put profits before policyholder interests, thus weakening the companies' ability to meet claim payment obligations. Furthermore, unfair and illegal practices would go undetected, which ultimately reduces competition and availability of coverage.

### **Research and Analysis**

The research and analysis function supports the objectives of encouraging fair competition in the market by reducing impediments to competition and improving insurance availability (1.1) and encouraging the appropriate delivery of workers' compensation benefits by promoting compliance through performance based incentives (6.2).

The function is still needed because it allows TDI to collect and analyze underwriting, claim and premium data, and to identify potentially unfair or illegal practices or rating schemes. The data analysis function provides critical evidence for challenging unfairly discriminatory rating schemes, resulting in restitution to policyholders affected by the excessive or unfairly discriminatory rates.

Additionally, the function is still needed to conduct professional studies and objective research related to issues such as the delivery of benefits to injured employees, the rehabilitation and reemployment of injured employees, the impact of certified workers' compensation health care networks and employer participation trends in the workers' compensation system. No single private or public entity on a state or national level collects, analyzes, and reports on the Texas workers' compensation system data on the scale and depth conducted by TDI.

Without this function, company underwriting practices would go unchecked and consumers may experience unfairly discriminatory or excessive rates or difficulty obtaining coverage. Additionally, without this function, the Legislature would not have access to comprehensive and unbiased workers' compensation market information, which could adversely impact key regulatory and legislative decisions.

### **Education, Outreach and Customer Assistance**

The education, outreach, and customer assistance function contributes to the objectives of encouraging fair competition by reducing impediments to competition and improving insurance availability (1.1); reducing loss of life and property due to fire by increasing public awareness (4.1); promoting safe workplaces through incentives and education to promote safe and healthy workplaces and by encouraging

return to work (5.1, 5.2); and encouraging appropriate delivery of workers' compensation benefits by optimizing the use of technology to educate participants of rights and responsibilities (6.3).

The function is still needed to provide the public with tools and information to better make informed decisions about insurance purchases and coverage needs. The function also increases availability of coverage by informing consumers about state-sponsored programs aimed at assisting Texans who are unable to obtain insurance from licensed private insurers, such as TDI's HelpInsure.com and Texas Health Options. Education is a proactive approach to mitigating losses on the broadest scale possible. This function educates industry and businesses about safety issues, allowing implementation of solutions that reduce injuries, loss of life and property. The function further assists industry through workshops, checklists, and filing manuals, which improve industry understanding of regulatory requirements.

Without this function, consumers would not have access to an unbiased source for insurance information. Given the complexity of insurance, consumers would be at a disadvantage when making product selections and could purchase inappropriate or insufficient coverage, exposing them to financial harm. For example, TDI has provided seminars for senior citizens to educate them on the dangers of purchasing unsuitable life insurance products. Without this service, seniors would be less informed, making them more vulnerable to unscrupulous agents. Not performing this function would also result in an increase in the incidence of work-related injuries, illnesses, and fatalities, causing increased workers' compensation claims and costs to all system participants. The function involves multiple TDI activities and serves millions of consumers annually, including nearly 1 million requests for assistance and approximately 43 million website visitors in FY 2006.

### **Complaint and Dispute Resolution**

The complaint and dispute resolution function advances the objectives of encouraging fair competition in the insurance industry by reducing unfair and illegal practices (1.2) and encouraging the appropriate delivery of workers' compensation benefits by minimizing and resolving disputes promptly (6.5).

Complaint resolution provides a system of accountability for claims handling and is needed to ensure that Texans receive the benefits of their insurance coverage. In FY 2006 TDI returned \$56 million to Texas consumers as a result of complaint resolution. Additionally, dispute resolution promotes timely resolution to workers' compensation claims by providing informal and formal processes.

Without this function, consumers would be harmed as companies would have little incentive to resolve consumer complaints. The workers' compensation participants would be harmed because there would be less opportunity for timely resolution of workers' compensation disputes through mechanisms associated with this function. Not performing the function would be particularly harmful to injured employees who may have experienced economic and personal hardship from a workplace injury.

### **Enforcement, Fraud, and Investigation**

The enforcement, fraud, and investigation function contributes to the objectives of encouraging fair competition in the insurance industry by reducing unfair and illegal practices (1.2), decreasing insurance industry loss costs by assuring agent, adjuster, company directors, consumer, provider and workers' compensation fraud referrals to prosecutors (3.1), reducing loss of life and property due to fire (4.1), and encouraging the appropriate delivery of workers' compensation benefits by promptly detecting and appropriately addressing acts or practices of noncompliance (6.2).

The function is still needed to identify fraud schemes, prevent the unauthorized sale of insurance, and ensure appropriate administrative action to address violations of statutes or regulations by regulated entities. Insurance fraud results in higher insurance premiums paid by consumers, thus affecting the availability and affordability of coverage. Insurance fraud also affects the financial solvency of regulated

entities that pay for fraudulent claims. According to the Coalition Against Insurance Fraud, a global alliance of insurers, consumer organizations and state agencies fighting insurance fraud, approximately 10 percent of all claims have some element of fraud.

Fire and arson investigations are still needed to identify the cause of fire and assist local communities in prosecuting the crime. Some local communities do not have fire investigation services, and these communities rely on SFMO services. Additionally, the investigation process is used to collect information and identify trends. The information is provided to communities in order to create a proactive means for addressing the fire trends and preventing future fires.

Without this function, regulated entities would have no incentive to comply with the law. Consumer and provider fraud would go unchecked resulting in increased insurance premiums, which ultimately reduces the availability and affordability of coverage. Without enforcement, fraud, and investigation services, Texas would likely see an increase in insolvent insurance companies as well as increased losses of life and property due to fire. In both cases, the consumer bears the burden financially by either paying higher premiums or foregoing insurance and risking complete financial exposure for future losses.

### **Inspections and Consultations**

The inspections and consultations function advances the objectives of decreasing insurance industry loss costs by assuring companies provide loss control services (3.1), reducing loss of life and property due to fire (4.1), and promoting safe and healthy workplaces (5.1).

This function is still needed to mitigate insurance company losses and ensure effective risk control practices by reviewing loss control programs and compliance with wind resistant building codes. This function also ensures that commercial property owners' rates accurately reflect risk, providing an economic incentive for the property owners to implement policies and procedures to lower that risk. In addition, the function is still needed to reduce workplace injuries through review of accident prevention services and inspections of workplaces for compliance with state and federal workplace safety laws. Inspections of fire safety equipment, fire exit strategies, public and private properties and facilities, and retail handling of flammable liquids is still needed to reduce loss of life and property due to fire.

Without this function, Texas coastal residents may experience problems obtaining wind and hail coverage. The Texas coastal area is an underserved area and some residents' opportunity for purchasing wind and hail coverage is dependent upon certification of compliance with Texas wind resistant building codes. TWIA requires these certificates prior to issuing wind and hail coverage along the Texas coast. Inspections can only be made by TDI employees or Texas licensed professional engineers who have been appointed by the Commissioner of Insurance. TDI has included a policy issue in the Self-Evaluation Report that proposes the transfer of wind and hail inspections to TWIA.

### **Support Services**

The support services function continues to indirectly support the strategic objectives of the agency through the performance, management, and coordination of administrative tasks, such as payroll, accounting, human resources, and legal services, which enables TDI programs to focus on regulating the business of insurance in this state. This function is primarily funded under central administration, which indirectly supports all strategic objectives. Additionally, the strategic objectives for this function associated with legal support include encouraging fair competition in the insurance industry by reducing impediments to competition and improving insurance availability (1.1) and reducing unfair & illegal practices (1.2), and encouraging financial health of insurance industry through monitoring and regulation of industry solvency (2.1).

The support services function is still needed to operate the infrastructure of the agency. If TDI regulatory

staff also had to process travel vouchers, reconcile payroll, and ensure information technology support, regulating the business of insurance would be compromised.

Without this function, TDI programs would have to manage and coordinate all administrative tasks, which is inefficient and detracts from the program's ability to perform key regulatory functions. If programs performed support services, it would be difficult to ensure consistency and accountability across the programs as each area may implement a different process for the support services.

**C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?**

In addition to the Legislative Budget Board approved performance measures, TDI uses various means to determine how effective and efficient the agency is at meeting its strategic objectives. The information below describes evidence that illustrates the agency's overall effectiveness and efficiency. Documents discussed below are available for review.

*Surveys*

Stakeholder and employee feedback provide TDI with a measure of effectiveness. Examples of surveys used to assess agency performance include customer service assessments, the Survey of Organizational Excellence (SOE), and a recent employee input survey. Stakeholders responding to the *Fiscal Year 2006 Customer Service Report* indicated high levels of satisfaction with TDI overall and rated TDI highest in the areas of staff professionalism and courtesy (78 percent), information and services available on TDI's Web site (78 percent), and TDI efforts to protect citizens from loss of life and property due to fire (80 percent). Additionally, the biennial SOE illustrates that employees view TDI as effective in the areas of customer service, continuous improvement, and delivery of quality services. In the March 2007 staff survey, TDI employees rated their programs favorably on customer communication (84 percent), access to program services (79 percent), and complaint handling (77 percent).

*Comparison Studies*

To assess performance, TDI benchmarks against other states' departments of insurance and other Texas state agencies. The National Association of Insurance Commissioners (NAIC) conducts an annual comparison study of states' insurance departments and TDI continually ranks in the top tier in the areas of premium volume, domiciled insurers, licensed producers/agents, budget, revenue, and staff. The NAIC study underscores the influence TDI has on the Texas and national insurance markets. Additionally, TDI programs consult and survey other state insurance departments when implementing new systems, processes, and/or policy solutions. For instance, the SFMO conducted a comparison of fire prevention programs to study Insurer Services Office programs, Fire Incident Reporting Systems, Fire Safety House Programs, and Juvenile Firesetter Intervention Programs among a sample group of states.

*Legislative Actions*

The Texas Legislature has recently enacted or, at a minimum, proposed legislation based on TDI's biennial reports to the Legislature as well as charging TDI with increased responsibility as evidenced by creating DWC, formerly TWCC, within TDI. Additionally, the 79th Legislature entrusted TDI with the responsibility of providing administrative support to the newly established OIEC.

*Restitution and Enforcement Actions*

TDI enforcement actions and Commissioner Orders facilitate achieving the strategic objective of reducing unfair and illegal practices, and have resulted in fines and penalties, monetary restitution, premium refunds and rate reductions, as well as greater consumer protections. Over the past five years, TDI has assessed more than \$70 million in penalties for unfair and illegal practices and returned nearly \$140

million in restitution to consumers. Noteworthy examples include prompt pay penalties, provider restitution, and emergency orders to assist consumers affected by Hurricanes Katrina and Rita. Additionally, TDI routinely takes the appropriate administrative and criminal enforcement actions to reduce unfair and illegal practices within the State of Texas. Monthly enforcement action reports are available for review.

#### *Independent Audit Findings*

Other state agencies and some national organizations review TDI functions to either ensure compliance with various statutory requirements or for accreditation purposes. Audits include those conducted by TDI's Internal Audit Section and State Office of Risk Management regarding *TDI's Disaster Recovery Plan*, the Comptroller of Public Accounts regarding recovery and post-payment audits, and the State Auditor's Office for TDI's performance measure relating to the number of complaints resolved.

In February 2006, Human Resources policies and procedures were audited by the Civil Rights Division of the Texas Workforce Commission. Human Resources was in compliance with policies and procedures related to hiring and promotions; performance evaluations, disciplinary actions, work place accommodations and equal employment opportunity policy including sexual harassment.

Additionally, TDI has been NAIC accredited since 1992. The NAIC Accreditation Program sets minimum standards for laws and regulations, processes and procedures, staffing and communications in financial regulation. The objective of the accreditation program is to provide a process whereby solvency regulation of multi-state insurance companies can be enhanced and adequately monitored with emphasis on the following:

- adequate solvency laws and regulations in each accredited state to protect insurance consumers
- effective and efficient financial analysis and examination processes in each accredited state, and
- appropriate organizational and personnel practices in each accredited state.

As of March 2005, fifty state insurance departments are accredited.

#### *TDI as Agency Management Resource*

Other state agencies regularly seek TDI's guidance when implementing new processes. For instance, the International Association of Industrial Accident Boards and Commissions and the Governor's Office reviewed TDI's disaster recovery planning documents when developing their recovery plans. Additionally, the Department of Information Resources (DIR) used TDI's Project Analysis Model process as groundwork for the current DIR project framework. TDI also oversees the implementation of Senate Bill (SB) 1670, the motor vehicle financial responsibility verification program established by the 79th Legislature, Regular Session. SB 1670 required TDI to lead an inter-agency team comprised of the Texas Department of Public Safety (DPS), the Texas Department of Transportation (TxDOT) and DIR. Other states have indicated interest in the results of the SB 1670 project as Texas adopted a unique approach to combating the prevalent issue of uninsured motorists. The Sunset Advisory Commission has requested assistance from TDI's Workers' Compensation Research and Evaluation Group (REG) staff for analyses of Sunset reviews related to workers' compensation agencies. The decision of other state agencies to model processes on TDI processes is an indicator of effectiveness and efficiency.

Moreover, TDI participates in selected NAIC events. The Commissioner co-chaired the NAIC Military Sales Working Group with Georgia's Insurance Commissioner to draft a model regulation protecting military members from abusive and misleading insurance sales practices. The Military Sales Working Group worked closely with the Department of Defense when developing this model regulation. In June 2007, the NAIC adopted the Military Sales Practices Model Regulation drafted by the Military Sales Working Group, and this model regulation is currently being formally adopted by the majority of states.

TDI's Licensing Division received an award as the Regulatory Unit of the Year 2005. The Licensing Division was the first licensing division to be awarded this recognition by the Securities and Insurance Licensing Association (SILA). Furthermore, Licensing's Deputy Commissioner, Matt Ray, was selected as the Outstanding Regulator of the Year for 2006, receiving the Warren E. Spruill Regulator Recognition from SILA as well. National recognition bestowed on TDI programs exemplifies TDI's effectiveness at meeting objectives.

### *Planning Activities*

As required by the Texas Government Code, all state agencies conduct some level of planning activities through an agency strategic plan. While TDI's Strategic Plan sets the groundwork for each upcoming biennium's legislative appropriations request, TDI has embraced additional planning activities in order to be effective and efficient at meeting strategic objectives while working within the confines of the agency's available resources. TDI recognizes the importance of planning and has implemented many processes to facilitate appropriate use of its resources. Current planning activities include biennial business planning, information technology planning, disaster recovery planning, and succession planning.

- *Business Planning*

Business planning ensures a cyclical process for reviewing and improving program and agency operations as well as providing an opportunity to focus on customer services. Each biennium, TDI develops program and agency business plans, which consider programs' strengths and weaknesses, and anticipate market and industry trends. TDI uses the business plans to communicate management directives through the identification of projects and initiatives that enhance performance and support agency strategic plan goals and objectives. This process promotes accountability and assists with limiting ad hoc requests for shared agency resources.

Some examples of operational efficiencies resulting from business planning include paperless complaint handling, call monitoring system, centralized forms management, online availability of windstorm certificates, paperless agency leave accounting, interactive voice response system to handle agent calls, and purchase of digital cameras to facilitate arson investigations.

- *Information Technology Planning*

TDI's technology planning is based on the business requirements identified in the program and agency business plans and includes infrastructure maintenance, planned obsolescence, scheduled upgrades, agency projects, and ITS feasibility studies. Information technology planning is documented in the agency's Information Resources Strategic Plan, Information Technology Detail, Information Technology Roadmap, and Technology Architecture Overview.

- *Disaster Recovery Planning*

TDI recognizes the importance of disaster recovery planning and implemented its disaster recovery process in 1999. Through the planning process, the agency and the program create disaster recovery plans. The purpose of the agency disaster recovery plan is to establish policies and procedures and provide essential information to ensure the efficient and effective recovery of critical agency functions in the event of a disaster. Program recovery plans identify critical functions and alternate ways to perform those functions with fewer staff and using manual processes rather than processes dependent on technology. Agency-wide and program disaster recovery tests are conducted annually on an alternating basis to assess the effectiveness of the respective disaster recovery plans.

- *Succession Planning*

As part of the strategic planning processes, TDI develops a workforce plan, which is based in part on programs' staffing assessments gathered through the business planning process. Additionally, the Commissioner of Insurance has identified workforce/leadership development and succession planning as important agency priorities and asked programs to submit program-level leadership development plans. These plans identified strategies to enhance professional development opportunities and to ensure continued operations when critical positions become vacant. Moreover, Human Resources, through preparation of the *Agency Workforce Summary*, identified agency-wide opportunities for improving the workforce, including the development of internal procedures to complete work tasks, formal and informal methods to transfer knowledge and skill, and listing recruitment sources for identification of qualified applicants.

#### *Agency Workgroups*

Through the use of agency workgroups, TDI facilitates internal communication and helps the agency operate more effectively.

The Agency Planning and Technology Team (APTT) is an agency workgroup whose primary function is to plan agency-wide projects and processes. The APTT is comprised of representatives from each TDI program area. APTT members are appointed by the program directors based on an assessment of program staff, member responsibilities and input from the Chief of Staff. Specific activities that APTT perform include coordinating the development of TDI's program business plans, and monitoring, evaluating and reporting status of business plan projects.

The TDI Complaints Workgroup meets periodically to discuss complaint handling issues. Most recently, the group developed agency standards for all areas processing complaints. Additionally, the group is working to consolidate the multiple complaint forms into a single, agency complaint form.

The Recommendation Committee (RECO) meetings are coordinated by the Financial Program, but may be scheduled by any program area needing to discuss issues related to company supervision. The RECO team initiates regulatory intervention, including supervision or conservation, after consideration of any regulatory concerns. The purpose of the intervention is to confirm the causes of the problems, assist the company in developing a business plan to address the problems, and then to monitor the company's action steps to implement the plan. Additionally, these meetings provide a forum for sharing information regarding the marketplace and ensuring consistent regulation across agency programs.

The Phone Transfer Policy Team includes call center staff from all TDI divisions who meet quarterly to coordinate call transfer procedures and to share customer service improvement tips and resources.

The Data Encryption Excellence Project convened to optimize agency processes for data security. The group is comprised of subject matter experts, agency counsel, and information technology staff. The goals of the project are to clarify requirements for secure transmission of data, identify the most secure data transmission methods, and implement "best practices" for transmitting specific types of data.

The Reality Check Committee facilitates management and employee discussions on agency issues. The meetings are informal and allow employees to express viewpoints on agency policies and initiatives, including facilities and parking, safety, and quality of work life. As a result of committee suggestions, cafeteria services were improved and the Hobby Building fountain was restored. The State Auditor's Office identified this model as a State of Texas best practice.

### *Consolidation of Functions*

As part of the HB 7 integration, TDI eliminated 61 positions that performed duplicative administrative or program functions, which allowed TDI to comply with a Governor's veto proclamation funding reduction of approximately \$8.8 million over the biennium. The consolidation also helped the agency reduce non-salary expenses, such as IT maintenance costs.

TDI sought not only to achieve administrative consolidation but to improve customer service and leverage its resources by examining similar program functions. As a result of this process, all criminal fraud activities for the two entities are now performed under a single Fraud Unit at TDI. The agency adopted rules to consolidate assignment of independent review organization (IRO) requests and oversight of IRO review activities.

### *Statistics and Performance Measures*

TDI analyzes data and performance measures to evaluate the effectiveness and efficiency of its processes. For example, the number of regulatory interventions decreased from 37 in 1997 to only 15 in 2006, which is influenced by the effectiveness of TDI solvency activities. Likewise, industry receiverships have also decreased from a high of 40 new receiverships in 1989 to less than 10 per year since 1993. TDI's programs that receive insurance industry filings also assess process efficiency. For instance, the Licensing division's processing time for more than 700,000 filings per year has moved from 5.2 days per filing in fiscal year 2002 to 2.2 days per filing in fiscal year 2004 through the present. Additionally, with staff reductions of more than 10 percent within a three year period and volume up by 35 percent for the same time period, the Property and Casualty Program improved form processing timeliness from fewer than 71 percent completed filings within 90 days in fiscal year 2000 to over 87 percent completed filings within 90 days in fiscal year 2003. Finally, in fiscal year 2006, TDI returned more than \$56 million to Texans as a result of complaint resolution, which exceeds the target for this performance measure and includes \$25.4 million to Hurricane Rita victims.

The General Appropriations Act indicates a high-performing agency is one which achieves 80 percent of the agency's annual performance measure targets, and TDI, excluding DWC performance measures, achieved 87 percent of its non-explanatory key performance measures, as reflected in TDI's *Fiscal Year 2006 Annual Performance Measure Report*.

### *Use of Technology*

Technology has increased TDI's ability to effectively and efficiently meet its objectives. Through technology, TDI has streamlined internal and external processes, facilitated public access to non-confidential information, equipped staff with innovative tools to perform job duties, and enabled more efficient use of agency resources. Some examples of internal process improvements include: streamlining Human Resources' hiring process to reduce the number of days to hire a new employee; implementing an automated leave accounting system to eliminate paper time cards; and integrating hardware and software versions between Metro and Hobby to make technical compatibility possible.

TDI supports public access to insurance information. Throughout the agency, public workstations have been established to facilitate access to information in lieu of submitting open records requests. Additionally, non-confidential industry information is posted to the agency's Internet website as well as educational information. Technology allows TDI to give the public the power to learn about insurance options, understand how insurance affects their lives, and use the knowledge on TDI's website to manage their insurance needs. An advantage of maintaining insurance information on the website is 24 hour access. Moreover, TDI has resource email addresses for customers to contact if additional assistance is required. Multiple employees manage email resource addresses, which enables prompt response to customers Monday through Friday every week.

TDI uses its website to inform the public about internal activities. The agency's strategic plans, biennial reports to the Legislature, and annual reports are posted to the Internet. Monthly enforcement reports, rule updates, Commissioner bulletins and orders, and media releases are posted to the website as well.

For calendar year 2006, TDI's website incurred 41,722,019 hits, which is an average of 3,476,835 hits per month. Furthermore, in TDI's *Fiscal Year 2006 Customer Service Report*, 78 percent of external customers agree that the agency's website provides useful information and services.

Innovations in technology have also allowed TDI to use resources more effectively and efficiently. For example, web applications that collect data reduce staff time spent on data entry. Currently, the quarterly and annual SB 418 data, the annual utilization review data, and independent review organization requests are collected via web applications. Other examples of resource efficiencies achieved through technological advancements include electronic storage solutions, and paperless processes including complaints, NAIC's System for Electronic Rate and Form Filing, and interstate compact review I-files, and desktop faxing capabilities.

In 2004, TDI implemented an in-house developed leave accounting system. This automated system replaced paper time cards and allowed full-time employees and managers to electronically submit, approve and track leave requests. All leave information is submitted by electronic transfer to the Comptroller of Public Accounts.

**D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?**

Yes, the agency's enabling law continues to reflect TDI's mission, objectives, and approach to performing agency functions. The agency's enabling statute is found in Texas Insurance Code, Section 31.002. This section provides that the agency regulates the business of insurance in this state and administers the workers' compensation system of this state as provided by Title 5 of the Labor Code. Additionally, the laws regulating each line of insurance or insurance-related activity and their relationship to TDI's strategic plan objectives are also available for review.

TDI has not recommended changes to its general grant of authority to "regulate the business of insurance." However, Texas Insurance Code, Section 32.022 requires TDI to submit to the appropriate committees of each house of the Legislature, a written report that indicates needed changes in laws relating to regulation of the insurance industry or any other industry or occupation under the agency's jurisdiction and that states the reasons for those needed changes. These reports summarize the changes in the laws that the Commissioner of Insurance believes are needed for TDI to continue to effectively regulate the industry. Recommendations included in these reports are designed to increase the agency's ability to:

- improve financial solvency monitoring of industry
- foster industry competition
- modernize Texas law to support the national insurance regulatory framework
- strengthen reporting and prosecution of insurance fraud
- streamline the agency's review processes
- improve availability and coverage options for consumers
- maintain adequate consumer protections.

The information below lists some of TDI's legislative recommendations that were adopted by the 78th, 79th, or 80th Texas Legislatures. Detailed information regarding all legislative recommendations is available in the respective agency reports.

#### *Public Adjuster License*

From January 2000 through December 2001, insurers estimated that losses and expenses for mold damage claims exceeded \$1 billion. To better understand the excessive claims related to mold damage, TDI conducted public hearings and two data calls, which revealed a lack of standards, accountability, and licensing of public adjusters and persons in the mold testing and remediation industry.

Accordingly, in its report to the 78th Legislature, TDI recommended licensure of public adjusters and persons engaged in mold testing and remediation. The 78th Legislature enacted SB 127 during the regular session, and TDI now licenses public adjusters. Likewise, HB 329 requires all companies and individuals who perform mold assessment or remediation to be licensed by the Department of State Health Services.

#### *Rate Regulation*

TDI's report to the 78th Legislature recommended major changes to rate regulation for multiple lines of property and casualty insurance. At the time, a dual system of rate regulation existed in which some insurers were subject to a file and use/prior approval form of rate regulation, while other insurers were exempt from any rate regulation. This dual system created a trend where an increasing number of insurers not subject to rate regulation began writing the larger percentage of property and casualty insurance available in the market and charging higher premiums for the coverage. For example, in 2001 and 2002, residential property consumers experienced dramatic increases in their insurance rates. Complaints to TDI regarding rate increases for residential property insurance increased from 283 in calendar year 2001 to 2,415 through November 2002. However, the insurer exemptions from rate regulation severely limited TDI's ability to ensure the rates were just, adequate, reasonable, not excessive and not unfairly discriminatory.

To level the playing field among insurers writing property and casualty insurance and to protect consumers from the increasing costs of coverage, TDI proposed a common system of rate regulation that would give TDI the authority to ensure rates are fair and not excessive or unfairly discriminatory. Consequently, the 78th Legislature passed SB 14, which substantially reformed property and casualty insurance rate regulation in Texas, resulting in more affordable rates for consumers.

#### *Funding SFMO Outreach and Education*

The State Fire Marshal's Office enabling law indicates that it is the responsibility of the SFMO to not only perform investigations, inspections, and licensing, but also to "use pertinent and timely facts relating to fires to develop educational programs and disseminate materials necessary to educate the public effectively regarding methods of fire prevention and safety." To further support this proactive approach to addressing fire loss, the SFMO requested and obtained statutory authority from the 78th Legislature to accept gifts, grants, and donations to help fund outreach and education efforts in Section 417.0051 (2) of the Texas Government Code.

#### *Interstate Compact*

TDI recommended adopting the Interstate Insurance Product Regulation Compact (Compact) in its report to the 79th Legislature. The Compact is the result of a NAIC project aimed at developing a system that would provide for uniform product filings standards for insurers and efficient and expeditious approval of filings submitted in accordance with those standards. Enacting the Compact would streamline the regulation of insurance and create a mechanism that eliminates the need for insurers to obtain approvals in

every state before they can begin to offer new products countrywide as well as preserve consumer protections. Having a uniform set of standards and an efficient approval process would also help insurers compete with sectors of the financial services industry that sell insurance products. Accordingly, the 79th Legislature enacted HB 2613 during the regular session and Texas is now one of 30 compacting states.

#### *Motor Vehicle Fraud Reporting Requirements*

To streamline fraud reporting requirements for all insurers in the State of Texas and align conflicting statutory requirements related specifically to motor vehicle theft and fraud, TDI recommended in its report to the 80th Legislature that Texas Insurance Code, Chapter 702 be repealed. Repealing Chapter 702 would clarify which statute governs fraud reporting requirements for motor vehicle fraud. Additionally, the repeal would enable uniformity for fraud reporting and investigations, thus ensuring the most accurate data and results to the Legislature and the public. Accordingly, HB 2569 was enacted by the 80th Legislature to abolish the Chapter 702 fraud reporting requirements.

#### *Life-Only License*

In its report to the 80th Legislature, TDI recommended adding a new “life-only” agents’ license. At the time, the only way to sell life insurance in Texas was to obtain an accident and health license. TDI’s recommendation was based on recent life insurance industry studies that showed a persistent decline in the number of career life insurance agents available to serve the public. In fact, the industry reported that since 1975 there has been a 46 percent decline in the number of new recruits selling life insurance. Additionally, the average age of a life insurance agent reportedly exceeds 55 years. Adding a “life-only” license would help increase the number of new recruits into the life insurance marketing profession and facilitate greater uniformity in producer licensing among the states (other states issue “life-only” licenses) as sought by the federal Gramm-Leach-Bliley Act of 1999. Based on TDI’s recommendation, the 80th Legislature enacted SB 1263, which adds a “life-only” license in Texas.

#### *Non-Insurance Benefits for Certain Insurance Types*

In the last two years, insurers have been including non-insurance benefits and features in insurance product filings. These non-insurance benefits are not part of the insurance contract terms or provisions, and include things such as airline mileage bonuses, identity theft protection services, monetary deposits to particular account types on behalf of the prospective insured, will and testament preparation services, and funeral advisory services.

At the time, TDI disapproved these filings because Texas law did not authorize non-insurance benefits in insurance policies. Furthermore, Texas law governing health care coverage explicitly prohibits offering an inducement (rebate) to purchase or maintain coverage that is not included in the insurance contract or evidence of coverage terms. Some insurers urged that despite regulatory prohibitions, non-insurance benefits and features should be permitted in instances in which the item offered bears a reasonable relationship to the filed product. Insurers also voiced concerns about a perceived conflict between regulatory oversight of anti-rebating statutes and insurer ability to provide prospective insureds disclosure about available health care related services and information that is not part of the terms of an insurance contract or evidence of coverage.

TDI recommended in its report to the 80th Legislature that if non-insurance benefits are permissible features in insurance policies and products, then any standards developed should require that the benefits be reasonably related to the risk, beneficial to prospective insureds, and fair and equitable to all insurers offering life, annuity, and accident and health products. The Legislature enacted HB 1847 which permits the industry trend, protects consumers, and grants TDI the authority to regulate such filings.

**E. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?**

The functions performed by TDI are similar to those performed by other agencies; however, they are specific to insurance and do not duplicate the functions of other state and federal agencies. TDI recognizes that other state and federal agencies contribute to the agency's ability to effectively regulate the business of insurance. Therefore, TDI actively promotes communication, coordination and cooperation with these agencies. In cases where there is the potential for overlap or duplication, TDI has worked with other agencies to define roles and responsibilities and establish a protocol to minimize duplication. Supporting detail by function is described below.

**Licensing, Certification, and Registration**

Certain aspects of the licensing, certification, and registration function require coordination with other state agencies. For instance, criminal background checks are a standard part of this function, and TDI has coordinated this activity with DPS and the FBI. Likewise, TDI participates in projects to make licensing, certification, and renewal processes available through TexasOnline. TDI works with DIR to initiate TexasOnline access; however, the fee for using TexasOnline is administered by the Texas Comptroller of Public Accounts. Accordingly, TDI coordinates the fee collection process with the Comptroller's office.

Other agencies perform licensing, certification, and registration. For example, the Texas Department of Licensing and Regulation (TDLR) is the state's umbrella occupational regulatory agency, responsible for the regulation of 22 occupations and industries, ranging from boxing to auctioneers. While TDLR and other agencies perform licensing functions, licensing of insurance professionals is most appropriately placed within TDI because TDI also regulates the business of insurance. TDI's comprehensive knowledge of the Texas insurance industry and of laws and regulations applicable to each type of insurance and insurance-related product or service, place TDI in the best position to license insurance professionals. Another reason this function is appropriately placed is TDI's impartiality. TDI serves both the consumer and the industry, thus balancing fair competition in the insurance market with ensuring adequate consumer protections.

In cases where TDI has coordinated with other agencies to administer the licensing, certification, and registration function, TDI has entered memorandums of understandings and/or contracts to clearly articulate respective responsibilities and avoid duplication of functions.

**Form, Rate and Advertising Filing Review**

The agency's rate, form and advertising functions do not overlap or duplicate the functions performed by any other Texas state agency. There may be some duplication of regulatory activity regarding similar or identical products offered in other states or for federal programs, such as Medicare Advantage or Medicare Part D Plans. The duplication that exists relates to the process and procedures but not the charge given by the Legislature to ensure products offered in Texas comply with the requirements of Texas law. The form, rate and advertising review is appropriately placed within TDI because the agency is charged with regulating the business of insurance, which includes the companies as well as the products they offer.

For purposes of consumer protection, Office of Public Insurance Council (OPIC) has certain functions which overlap those of the agency, including reviewing selected form and rate filings for property and casualty insurers. OPIC's statutory authority is found in the Texas Insurance Code, Chapter 501. Additionally, OPIC represents the interests of consumers as a class on matters involving rates, rules and policy forms affecting various personal lines of insurance such as auto, homeowners, title, and credit

insurance, and in rulemaking for life, accident, and health insurance. OPIC reviews and provides comments to the agency on selected form and rate filings for property and casualty insurance, while TDI reviews form and rate filings and makes recommendations for approval or disapproval. OPIC's involvement is limited to review and comment; TDI retains decision making authority with regard to form and rate filings.

### **Examination, Monitoring, and Solvency Intervention**

The examination, monitoring and solvency intervention function is generally unique to insurance regulation and is not being performed by other Texas state or federal agencies. However, there are certain circumstances where another state or federal agency may regulate an entity for purposes other than insurance regulation such as Medicare and Medicaid; prepaid funeral merchandise or services; and continuing care retirement communities' quality of care issues.

The function is appropriately placed within TDI as the agency has the necessary level of experience to comprehend the special accounting requirements for insurance entities. Statutory insurance accounting is a unique subset within general accounting procedures, and has its own uniform accounting treatments that are applied by all state regulators. These requirements ensure that companies operating in Texas meet minimum financial standards, which provides the public a level of assurance that when they buy an insurance product, the company they purchased from meets established financial standards and will stand behind the product. Furthermore, examinations of the industry require special skill sets related to the multitude of insurance products available to consumers. TDI has developed the skills needed to examine, monitor, and intervene, as necessary, in the operations of companies engaged in the business of insurance in Texas.

Intervening in troubled companies is a function appropriately placed at TDI because it provides regulators the ability to attempt to fix conditions that are hazardous to the public before there is no recourse but to liquidate the company. Successful rehabilitations ultimately protect the policyholders and the general public by avoiding market and personal disruptions caused when companies are unable to meet obligations and must be liquidated.

TDI manages the liquidation of insolvent insurers, either directly or by contracting with special deputy receivers. TDI also oversees insurance guaranty associations, which provide a safety net for policyholders by paying claims of impaired carriers. The Commissioner of Insurance as receiver marshals the assets of receivership estates and minimizes expenses to reduce the burden ultimately borne by the general public.

TDI works with other regulators as needed, coordinating efforts to avoid duplication and share necessary information. For example, TDI coordinates with other state insurance regulators regarding mergers and acquisitions of insurance companies and regarding examinations of multi-state insurer groups. Additionally, TDI cooperates with the Texas Department of Banking and United States Securities and Exchange Commission to regulate holding company transactions. TDI and the Health and Human Services Commission (HHSC) have a memorandum of understanding regarding examinations of Medicaid managed care entities.

### **Research and Analysis**

Generally, there is not any overlap or duplication of research efforts by other state or federal agencies. While there are some non-governmental entities that provide certain research studies and findings, these activities are not tailored to the needs of the Texas insurance industry and/or do not provide the state-specific and detailed information that is crucial to determine system impacts from a process, operational, financial or regulatory standpoint. Workplace safety data collection and research efforts (Survey of

Occupational Injuries and Illnesses/Census of Fatal Occupational Injuries) performed by DWC are funded by the Bureau of Labor Statistics (BLS), but do not duplicate the activities of that agency.

Each key research function is appropriately placed in TDI. The market analysis functions conduct in-depth analysis of the Texas insurance market and perform special studies to assist in policy decisions. This function is critical to the oversight of the insurance industry, which is licensed and regulated by TDI. REG also provides a structured analysis of critical policy issues associated with the workers' compensation system, which is regulated by TDI. Finally, workplace safety data collection and research functions align with the goal of providing safe workplaces and serve to tailor the agency's education efforts to address Texas specific industry hazards or needs.

Data exchange efforts and communications with state agencies, such as the Texas Workforce Commission, Department of Assistive and Rehabilitative Services (DARS), and private research entities, such as the Workers' Compensation Research Institute and the National Council on Compensation Insurance, ensure that duplication of research efforts does not occur. Additionally, the grant application and administration processes related to data collection or analysis for BLS purposes prevents duplication of efforts and activities.

The State Fire Marshal's Office collects fire information in its Texas Fire Incident Reporting System (TEXFIRS), which reports data to the National Fire Incident Reporting System (NFIRS). Participation by Texas fire departments in the TEXFIRS system is voluntary, and the Texas Commission on Fire Protection (TCFP) assists the SFMO with collecting this information by requiring fire departments who wish to apply for emergency grants and loans to report to the system.

### **Education, Outreach, and Customer Assistance**

While the agency's education, outreach and customer assistance function does not duplicate the functions of other state and federal agencies, other state agencies do provide information about services that may be covered by an insurance product or policy. For instance, the Department of Aging and Disability Services (DADS) provides long-term care education, outreach and customer assistance services to Texas residents. TDI also educates the public about long-term care; however, TDI's focus is on insurance, while DAD's focus is on long-term care services.

The Health Insurance Counseling and Advocacy Program (HICAP) is the federally-funded State Health Insurance Assistance Program (SHIP) for Texas. DADS receives SHIP funding from the Centers for Medicare & Medicaid Services (CMS) then delegates administration of the SHIP via an interagency contract to fund one position at TDI to coordinate HICAP. TDI partners with DADS and the Texas Legal Services Center to provide information about public benefits and private health insurance to seniors and persons with disabilities. The TDI HICAP coordinator trains Area Agency on Aging (AAA) volunteer benefits counselors, located in 28 AAA offices statewide, on Medicare supplement insurance policy benefits, exclusions, and coverage language, and on long-term care options, including long-term care insurance. Also TDI publishes and distributes Medicare Supplement and Long Term Care Insurance handbooks and rate guides to help consumers shop for these coverages.

TDI often coordinates with other state agencies to provide educational seminars and health fairs. By coordinating this effort, consumers benefit from a single point of contact to learn about the services of multiple agencies.

The State Fire Marshal's Office is statutorily charged with educating the public on fire prevention and safety practices. To meet this goal, SFMO develops and distributes fire prevention and education materials to communities who do not have their own programs. Activities that support SFMO's outreach efforts include the Juvenile Fire Setter Intervention Program, TEXFIRS, Insurer Services Office (ISO),

public outreach and safety education and the SFMO Fire Safety House. The Texas Commission on Fire Prevention (TCFP) may be perceived as a fire prevention regulatory agency; however, their education efforts focus on firefighters and are limited to providing research materials and setting minimum training standards for firefighter health and safety.

The activities performed under this function are most appropriately placed within TDI because of the agency's experience and knowledge of insurance products and services and fire prevention programs. Additionally, fire prevention and safety outreach promotes the agency's goals of reducing the loss of life and property due to fire and decreasing insurance industry loss costs.

### **Complaint and Dispute Resolution**

Other state and federal agencies may accept and resolve certain insurance-related consumer complaints. However, their complaint resolution activities do not duplicate those of TDI. Agencies that receive complaints about insurance forward them to TDI or refer consumers to TDI's web page and toll-free Help Line. Likewise, TDI may refer consumers to another agency as appropriate for assistance with specific types of complaints. In some instances, TDI may receive a complaint for which TDI has authority to review certain aspects while another agency has jurisdiction over other aspects. To ensure that policyholders' complaints are addressed promptly by the agency that can assist them, communication and coordination between TDI and other agencies regarding complaint resolution is a priority. Some examples are listed below.

- The Office of Public Insurance Counsel represents consumers as a class on matters involving rates, rules, and forms for property and casualty, title, and credit insurance, and on matters involving rules and forms for life, accident, and health insurance. OPIC does not have statutory authority to handle individual consumer complaints regarding insurance issues and forwards such complaints to TDI.
- The Office of Injured Employee Counsel educates and provides general assistance to injured employees regarding the workers' compensation system and refers complaints regarding workers' compensation to the appropriate agency or licensing board. OIEC refers complaints regarding workers' compensation claims, benefits, and fee payment disputes to TDI.
- The Office of the Attorney General enforces consumer protection laws. The OAG refers consumers who have insurance complaints to TDI. Also the OAG and TDI may work together to address an insurance-related issue. A recent example is advertising that promotes a "low cost health insurance plan." The product being marketed is not insurance but rather a discount card for health services. TDI provided copies of complaints regarding such advertising to the OAG and served as a resource during the OAG's investigation.
- The Texas Health & Human Services Commission regulates the Children's Health Insurance Program (CHIP) and TDI refers complaints other than claim-related complaints to HHSC. TDI handles CHIP claim complaints and HHSC refer claim-related complaints to TDI.
- The U.S. Department of Labor (DOL) resolves complaints about certain employer-based health plans, also called self-funded plans, in accordance with the Employee Retirement and Income Security Act (ERISA). When TDI receives complaints from medical providers, TDI writes to the carrier to determine what type of plan is involved. If a self-funded plan is involved, TDI refers the provider to DOL's Employee Benefits Security Administration. DOL also oversees employer compliance with the Consolidated Omnibus Budget Reconciliation Act (COBRA), which is a federal law regarding the continuation of health coverage. If a group plan is subject to COBRA, the employer is required to notify all covered employees and their dependents of their rights under COBRA. If an employer fails to provide the required COBRA notice to a former employee, TDI refers the consumer to DOL's Pension and Welfare Benefits Administration.

- Medicare Advantage health plans are regulated by CMS. However, TDI has authority over the marketing practices of agents who sell these plans. Recently a consumer complained about printed marketing materials involving both Medicare supplement insurance (over which TDI has jurisdiction) and Medicare Advantage coverage. TDI sent a copy of the complaint to CMS. CMS and TDI reviewed the content over which each had authority.

Additionally, TDI licenses and regulates IROs and assigns IRO requests to resolve prospective medical necessity disputes in HMO cases. DWC also assigns IROs to resolve prospective and retrospective medical necessity disputes of workers' compensation cases. Following the passage of HB 7 (79<sup>th</sup> Legislature), TDI modified the medical necessity dispute process to eliminate these dual systems for making IRO assignments for both group health HMOs and workers' compensation. Effective January 2006, the two functions were combined into one IRO process.

### **Enforcement, Fraud and Investigations**

Certain state and federal entities perform functions similar to those of TDI's Enforcement Program, Fraud Unit, and SFMO.

The Enforcement Program and the OAG both have the authority to pursue deceptive trade practice cases against insurers. However, since insurance regulation falls within this agency, this function is appropriately located at TDI.

TDI's Enforcement Program also shares regulation of certain types of health plans with the federal DOL. In particular both agencies regulate multiple employer self-funded welfare arrangements ("MEWAs"). However, DOL focus is upon breaches of fiduciary duty, while TDI focuses upon licensure and the regulation on MEWAs.

The Fraud Unit is the only state or federal entity in Texas specializing in the investigation of insurance fraud for criminal prosecution. Those reporting insurance fraud are asked to record whether or not another law enforcement agency was notified of the same event or may be actively investigating the same incident. Additionally, staff routinely communicates with state and federal prosecutors during investigations to minimize the potential for duplication of efforts by other law enforcement agencies.

Fire/arson investigations are conducted upon request from local officials, frequently in communities that do not have the resources. On occasion, certain communities may request assistance from TDI's investigation's personnel to augment their own capabilities. Services such as canines and/or the arson lab are requested if they are not available in certain jurisdictions.

As of September 1, 2001, SFMO became responsible for investigating all line-of-duty deaths involving fire-service personnel in Texas. TCFP assists the SFMO with these investigations. When requested, the TCFP provides expertise while TDI conducts the investigation.

### **Inspections and Consultations**

When a request for an inspection is received, SFMO staff first check to see if the affected city/county has a fire marshal. If so, the requester is asked to contact that individual. If the inspection focuses on a state-owned facility, the SFMO conducts the inspection, as local fire marshals lack jurisdiction.

Other state agencies, such as DADS, have staff that conduct fire safety inspections as part of that agency's licensing procedures. Additionally, each DADS facility is required to have a fire inspection by either a local fire marshal or by the SFMO when no local fire safety inspection program is present.

While not identical or overlapping services, functions of the Windstorm Inspections Section of the Property & Casualty Program are sometimes confused with those of TWIA. While TDI windstorm inspectors and appointed engineers inspect a structure to determine compliance with windstorm building codes, TWIA employs contract inspectors to determine if a structure meets TWIA underwriting guidelines.

The Occupational Safety and Health Administration (OSHA) provides compliance assistance to help employers understand safety regulations and general safety issues, similar to the activities performed by the Division of Workers' Compensation OSHCON consultants. However, OSHA does not provide consultative services on-site to employers in the same manner as the OSHCON program. The OSHCON program is partially funded by a grant from OSHA to perform these services and to supplement the OSHA efforts related to workplace safety.

### **Support Services**

The support function includes administrative and legal support services, which are similar to those in other state agencies. TDI's support function specifically serves TDI staff and does not generally duplicate the functions of another state or federal agency in terms of scope and customers served. The advantage of TDI administering its own support services functions is that it allows the agency to effectively allocate resources according to agency-specific priorities.

To reduce duplication of function and achieve economies of scale, the 79th Legislature consolidated certain support services affecting TDI operations. HB 1516 established a state data center, which required TDI and other state agencies to transfer IT staff and activities to the vendor responsible for administering the project. Additionally, HB 7 abolished TWCC and created DWC as a division within TDI. HB 7 also created OIEC as a separate agency administratively attached to TDI. The bill required consolidation of administrative functions of DWC and TDI. In addition, a Governor's veto proclamation created funding reductions for TDI of approximately \$8.8 million over the biennium. As a result, TDI consolidated support services activities, eliminating 61 positions that performed duplicative administrative or program functions.

In cases where TDI has coordinated with other agencies to administer support services, TDI has entered memoranda of understandings and/or contracts to clearly articulate respective responsibilities and avoid duplication of functions. For example, DIR and the Texas Building and Procurement Commission enter into contracts with vendors on behalf of all state agencies and TDI contracts with those vendors through the statewide contracts when appropriate. Additionally, TDI calculates and sets the rates to be charged insurance entities for maintenance taxes; the Texas Comptroller of Public Accounts bills and collects the taxes. TDI and the Comptroller entered a memorandum of agreement to delineate responsibilities of both parties relating to the sharing of tax information.

### **F. In general, how do other states carry out similar functions?**

TDI's functions are similar to those performed by other state insurance departments. The following paragraphs describe how, in general, other states carry out TDI's nine key functions.

#### **Licensing, Certification, and Registration**

Each state insurance department or other financial regulatory agency licenses, certifies and registers persons engaged in the business of insurance. Additionally, all states have a fire marshal's office. Most large state fire marshal offices perform similar functions, including licensing, certification and registration.

### **Form, Rate and Advertising Filing Review**

In general, states vary in their approach to form, rate and advertising review ranging from states that review and approve all forms, rates and advertising to states that require filings but do not review forms and rates. The Interstate Compact, which is a collaborative effort of compacting states, is taking the approach of reviewing and approving all forms for life and annuity; form, rates and advertising for long-term care; and form and rates for disability. Texas is one of a few states that proactively review insurance advertising appearing on the Internet.

### **Examination, Monitoring, and Solvency Intervention**

Each state and territory of the United States, as well as the District of Columbia, regulates the business of insurance in a manner similar to Texas. The functions performed by TDI are typically performed by each state insurance department or by another financial regulatory agency with roughly equivalent powers and duties.

### **Research and Analysis**

For market analysis, most other states use national advisory organizations such as ISO or Independent Statistical Services, Inc. to access statistical experience. In contrast, Texas designates statistical agents and promulgates statistical plans and data calls in order to customize research to Texas specific information needs. For workers' compensation research, several large states retain research functions as a component of the agency in charge of administering the system (California, Florida, Minnesota, Oregon and New York). For workplace safety information, most states follow a similar model as the one implemented in Texas.

### **Education, Outreach, and Customer Assistance**

According to the NAIC *2005 Insurance Department Resources Report* (issued in 2007), most state insurance regulatory agencies have a consumer toll-free hotline, and many provide consumer information in print, or via a website to help consumers understand the large number of insurance options available to them. This report further notes that some states, including Texas, publish rate guides that help consumers get the best value when purchasing insurance.

### **Complaint and Dispute Resolution**

#### *Complaint Resolution*

The NAIC's *2005 Insurance Department Resources Report* addresses state insurance departments' processes for complaint resolution. Each state's insurance regulatory agency has a procedure to receive and resolve consumer complaints. Complaint resolution typically includes procedures for:

- receiving complaints and recording them in a database
- coding key data about each complaint, making summary data available to the public, and reporting data to oversight agencies
- contacting the insurance carrier, agent, or other entity being complained about then reviewing this information against applicable statutes and rules
- providing complainants with information about the final resolution of the complaint.

#### *Dispute Resolution*

All states have some form of workers' compensation law that includes an administrative dispute resolution function. However, each state's dispute resolution process is tailored to the manner in which workers' compensation claims are administered and adjudicated in each individual jurisdiction.

### **Enforcement, Fraud, and Investigations**

The majority of states utilize an agency devoted primarily to insurance issues to carry out the enforcement, fraud and investigations function. However, certain states combine these activities with

other regulatory agencies such as the banking, securities or commerce departments. Furthermore, some states are more reliant than Texas on their attorney general for insurance regulation.

### **Inspections and Consultations**

TDI has explored how other states perform insurance-related inspections and consultations. The scope and laws governing the function vary considerably; therefore, the findings are listed by TDI activity below.

#### *Windstorm Inspection Program/Engineering Section*

Most hurricane prone states have state agencies involved in the adoption and inspection of statewide building codes. North Carolina, South Carolina and Florida specifically require plan review of structures and certification of inspectors, and are involved in various activities to mitigate damages as a result of high wind events. Florida also requires licensing of builders and roofers, which Texas does not.

#### *Loss Control Inspection*

Most states have a specific review of loss control services for workers' compensation insurance; however, Texas, in addition to workers' compensation, has statutorily required loss control requirements for commercial auto, professional liability for hospitals, professional liability for insureds other than hospitals, general liability and medical professional liability insurance. Most large insurers, as a result of Texas requirements, provide these services to all of their policyholders in other states.

#### *Commercial Property Oversight*

Approximately 17 percent of state insurance departments continue to conduct commercial property inspections, utilizing state inspectors to develop commercial loss costs. This inspection function was privatized in Texas in 1994, with the provision for oversight by TDI. ISO conducts commercial property inspections in all other states.

#### *Amusement Ride Compliance*

Most other states have regulatory requirements for amusement rides; however, there is no consistent nationwide approach to amusement ride regulation. Examples agencies in other states that may regulate amusement rides are: agriculture departments, public safety departments, state fire marshal offices, treasury departments, labor departments, and commerce departments. Most state regulations are very similar to TDI amusement ride regulations.

#### *Voluntary Inspection Program*

TDI is not aware of any other program in the nation that certifies or provides a license to an individual to inspect the condition of a structure for residential property insurance.

#### *State Fire Marshal's Office*

All states have a state fire marshal's office. Most large state fire marshal offices perform similar functions to those of the Texas SFMO, as evidenced by an eleven state comparison study conducted in FY 2004. The results of this study are available for review.

#### *Safety Inspections and Consultations*

Other states have similar approaches to addressing the need to conduct inspections, but the approaches are tailored to the individual state's regulatory authority for imposing and enforcing safety regulations based on their relationship with OSHA. Twenty-four states have passed legislation to create state plans, which combines the ability to enforce safety violations and perform the consultations or inspections. In contrast, Texas conducts consultations but must refer potential safety violations to OSHA for enforcement purposes. For comparison purposes, Florida's program is structured similar to Texas, California's

program is a state plan (with enforcement and consultations), and New York is a state plan but is limited to public sector employers.

### **Support Services**

Other states carry out the support services function in a manner similar TDI and Texas agencies. Some states (e.g. Pennsylvania) have opted to consolidate technology services, similar to the Texas data consolidation project, mandated by HB 1516, 79th Legislature, Regular Session; others have consolidated and centralized aspects of human resource management and payroll at the state level (e.g. Wisconsin).

## **G. What key obstacles impair your agency's ability to achieve its objectives?**

TDI is able to achieve its strategic objectives; however, some obstacles that impair the agency's ability to *effectively or efficiently* achieve its strategic objectives fall under four broad categories: agency integration, technology, resource management, and statutory authority. The paragraphs below explain why these areas are obstacles and how the agency strives to make such obstacles opportunities for future improvements.

### **Agency Integration**

HB 7 was passed during the regular session of the 79<sup>th</sup> Legislature. This sweeping legislation abolished TWCC, established DWC as a TDI program, and created a new state agency administratively supported by TDI, the OIEC. Such drastic changes required extensive consolidation of functions, particularly support functions, such as human resource, financial, and information technology services. While TDI successfully completed the majority of the HB 7 integration requirements, nearly two years later, the agency is still involved in certain aspects of the integration. The most pressing issues involve the two separate headquarter locations of TDI and DWC, DWC's TXCOMP system integration, staff familiarity with the operations and responsibilities of both entities, and further consolidation of similar functions or processes.

### **Technology**

Another significant bill passed during the regular session of the 79th Legislature was HB 1516, which relates to the consolidation of state data centers. TDI's Information Technology Services worked with DIR and the various private vendors to transition many technology-based services to the state data center as of April 1, 2007. The new arrangement, which guaranteed the same level or quality of service, should have been transparent to TDI. However, TDI's dependency upon the vendor has created a new obstacle for the agency when addressing system operability issues. In June 2007, TDI incurred a limited disaster involving the simultaneous failure of three servers. These servers store agency data and enable many of the agency's automated processes. The vendor was not able to respond to the disaster in a timely fashion, and services to customers were impacted for more than one week. While TDI's disaster recovery plans included manual procedures to mitigate the impact on customers, TDI identified a need to further explore alternate procedures or activities in order to effectively respond to future disruptions in services.

TDI maintains multiple, in-house developed and purchased systems and databases related to the regulation of the insurance industry and workers' compensation. TDI systems and databases are not integrated, making it difficult to assemble comprehensive data about a company, network, third party administrator, or trading partner. Staff may manually enter the same data from different programs into multiple systems, resulting in duplicate data. Additionally, to maintain these systems and ensure agency compliance with NAIC state and federal reporting requirements, TDI must dedicate significant IT resources.

With the additional support and integration requirements of HB 7, TDI's ITS Division has had to shift its

resources away from existing application maintenance and enhancements, thus magnifying the need for a more efficient and integrated computing environment that meets customer needs. Implementation of such a system could represent a significant cost savings to the agency, and ITS staff could devote more time to automation needs that are unique to TDI.

### **Managing with Resources**

As a state agency, TDI's budget and staffing-levels are determined by the Legislature. Consequently, TDI must operate with the resources allocated. TDI has decreased staffing levels and reduced management layers to meet mandated budget reductions and staffing ratios. Additionally, TDI has identified opportunities to operate more efficiently and meet increased statutory responsibilities.

In addition to finding new ways to manage workload, TDI must prepare for retiring employees. With 42 percent of managers and 33 percent of all employees eligible for retirement in the next four years, the agency is faced with a large potential for loss of experience and institutional knowledge. To ensure the knowledge base of the agency's future workforce, HR has worked with agency programs to begin developing succession plans in order to ensure minimal disruption to program operations in the event of separation by managers or other key staff. Additionally, TDI identified strategies for addressing this obstacle in its agency workforce plan for FY 2007-2011.

Another obstacle facing the agency relates to the specialized and technical nature of certain TDI positions. TDI has experienced difficulty filling such positions due to lack of competitive salaries and labor market competition. Hard-to-fill positions include actuaries, attorneys, information technology staff, financial examiners, fraud investigators, engineers, nurses, safety professionals, and budget analysts. TDI has established a recruitment plan, which includes partnerships with local universities and colleges as well as identification of recruitment resources for targeting potential applicants.

### **Statutory Authority**

As previously mentioned, TDI makes statutory recommendations to the Legislature biennially. The majority of TDI's suggestions are enacted. However, there are statutory issues that impair the agency's ability to effectively and efficiently achieve its strategic objectives. One problem is the lack of authority for the Commissioner of Insurance to issue directives and orders in catastrophe situations, which impedes protection of the public and delays response time to address both industry and consumers needs in catastrophe situations. Another obstacle that impairs the agency's ability to meet its strategic objectives is the lack of uniform, mandated building codes in the designated catastrophe area. At this time, the windstorm building code and certification process is voluntary, and building codes in the coastal regions vary. Mandatory building codes would help ensure that buildings or structures are built to a recognized model building code, and would improve eligibility for windstorm and hail insurance through TWIA.

<p><b>H. Discuss any changes that could impact your agency's key functions in the future (e.g., changes in federal law or outstanding court cases).</b></p>
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A number of external changes may impact TDI's key functions including changes in federal or state law, court cases, etc. This section addresses these areas, with emphasis on possible changes related to federal legislation.

### **Federal Legislation & Regulations**

The federal government delegated the regulation of insurance to the states under the McCarran Ferguson Act and more recently the Gramm-Bleach-Bliley Act. This delegation to the states is subject to change through the enactment of subsequent federal law. TDI monitors pending federal legislation because changes in federal law may preempt state law. As one example, certain insurance trade associations have

been calling for federal reform through the creation of an optional federal charter for insurance companies. The states have generally responded that state-level regulation is more appropriate. The 80<sup>th</sup> Texas Legislature passed SCR 60 opposing federal regulation of insurance, which may be considered by the 110<sup>th</sup> U.S. Congress.

Federal legislation monitored by TDI includes the following:

- The National Insurance Act would form an optional federal charter where insurers could select whether they are regulated at the state or federal level. It is modeled after the regulation of the banking industry and creates an Office of National Insurance within the Treasury Department. It provides for the appointment of a national insurance commissioner that is charged with chartering insurers and insurance producers, exclusively regulating and supervising the operations and solvency of federally chartered or licensed insurers and producers on a uniform, nationwide basis, including the conduct of such insurers and producers with policyholders; and protecting the interests of policyholders by establishing a comprehensive scheme for the receivership of federally chartered insurers that requires federally chartered insurers to participate in qualified state guaranty funds.
- State Modernization and Regulatory Transparency Act (SMART) would generally set certain floors for the regulation of insurance and pre-empt state actions in other areas. State regulators, through the NAIC, have expressed three primary concerns with the draft legislation:
  - federal preemption of state consumer protection laws
  - federal supervision of state regulation
  - mandatory federal rate de-regulation.
- Terrorism Risk Insurance Act of 2005 (TRIA) requires that commercial property and casualty insurers make terrorism insurance coverage available to their policyholders. The Property and Casualty Program has been reviewing policy form, endorsement, and rate filings in relation to terrorism coverage under the federal Terrorism Risk Insurance Act of 2005.
- Changes in Medicare, CHIP and Medicaid can impact TDI monitoring and enforcement against regulated entities that perform services for these programs. For example, when CMS created Medicare Advantage and Prescription Drug Programs, they preempted all the quality of care functions that are normally regulated by the Health and Workers' Compensation Network and Quality Assurance Division. Regulation and oversight of Medicaid and CHIP contracting HMOs are coordinated with HHSC to lessen redundancy of oversight. TDI recently entered into an MOU regarding the examination functions for Medicaid and CHIP HMOs.
- The federal Health Insurance Portability and Accountability Act (HIPAA) enacted by Congress in 1996, establishes numerous requirements for regulated benefit plans and created national standards for a variety of electronic healthcare transactions. The law also addresses security and privacy requirements for entities that have access to private health information. CMS and the Office for Civil Rights (OCR) periodically issue new regulations, bulletins, and updates regarding various HIPAA provisions. In some cases, these changes require revisions in state insurance laws or TDI regulations. Most recently, CMS announced delays in implementation of the National Provider Identifier (NPI) compliance requirements, which immediately impacted TDI rules related to prompt payment of claims. Future regulations are expected that will affect electronic claim transactions, electronic health records and health ID cards.

- Insurance Industry Anti-Trust Enforcement Act (S 4025). This legislation is an attempt to revise McCarran Ferguson, along with all of the McCarran Ferguson amendments. This bill would change the way the states interact with the Federal Trade Commission (FTC), in that it would change state authority to regulate antitrust activities of insurers. Currently Congress has reserved the regulation of insurers to the states and only lets the FTC intervene if states fail to actively supervise insurers. The proposal would allow the FTC to oversee insurer antitrust activities except in a couple of areas where the state authority is maintained in a safe harbor.
- Non-admitted Insurance and Reinsurance Reform. This bill would federally preempt how the business of surplus lines insurance is regulated and how related taxes are collected and allocated. The bill would also provide that only the domestic regulator of an insurer could review reinsurance transactions (which reduce the amount of funded reserves); and, such determination would be required to be accepted by all other states in which the insurer does business.
- Fairness in Asbestos Injury Resolution Act. The intent of this draft bill is to create a more rational asbestos claims system. The NAIC has expressed support for a solution that provides benefits for injured employees but would not excessively harm the industry in the process.
- Small Business Health Fairness Act (H.R. 525 and companion bill S. 406). This bill, generally referred to as the Association Health Plans (AHP) Act, would allow small businesses to band together across state lines to negotiate lower health insurance costs for participants. The legislation would preempt certain state laws. The industry is worried that the AHPs would “cherry-pick” the healthiest individuals.
- Military Personnel Financial Services Protection Act. This bill appears to relate to the recent inappropriate activities concerning sale of life insurance products on military installations. The bill requires NAIC to work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices. The bill affirms that any state law or regulation regarding the business of insurance shall apply to insurance activities conducted on federal land or facilities, including military installations.
- Bundling of Real Estate Services. The federal Department of Housing and Urban Development is considering rules to allow the ‘bundling’ of real estate services, including title insurance, to achieve volume discounts. This action may impact TDI’s ratemaking ability, as rates in Texas are currently set by the Commissioner of Insurance, and not subject to discounts.
- Changes in the federal budget could impact the ability of the agency to fulfill the OSHA and BLS grant requirements, especially if appropriations are diminished. Changes in federal and state safety laws could impact how DWC interacts with employers and what information TDI provides to them.

### **State Legislation**

Laws adopted by the Texas Legislature obviously can impact TDI’s key functions. TDI implements any number of new statutes enacted each session. As one example, HB 3430, as passed by the 80th Legislature, changes how small businesses must be addressed in the administrative rule-making process. Specifically, the definition of small businesses was broadened and revisions were made to the requirements for considering possible alternatives for those businesses (rather than the proposed rules). Many TDI rules would impact the small-businesses as defined in this bill, which could lengthen time needed for TDI to adopt rules and/or require additional staff resources. TDI is working with the OAG in the development of guidelines to assist state agencies in the implementation of this legislation.

Laws that specify how state agencies administer support services could impact the support services function. Requiring TDI to provide support services for other agencies affects resources currently devoted to TDI priorities. TDI would have to reallocate resources to address the additional workload from such laws. Additionally, state and federal laws regarding the handling of public and confidential information would impact how TDI administers its open records program. TDI is committed to protecting personal and confidential information as required by law. Achieving this goal can require special procedural, policy and technical solutions.

## **Litigation**

### *Workers' Compensation*

The outcome of litigation may similarly impact TDI's key functions. Litigation of a routine nature is typically on going at any point. At this time, however, no litigation of a substantial nature was identified that may have a material impact on how TDI functions. This can and may change, and TDI monitors this area for potential impacts. For example, this self-evaluation report generally describes TDI exclusive of the DWC, since DWC's sunset review was deferred. However, the DWC is directly or indirectly involved in a number of litigation cases whose outcome may impact how other parts of TDI function. For example, cases are pending related to DWC's interpretation of its "Stop-Loss Method" that may impact carriers subject to regulation by TDI's Financial Program. As another example, the outcome of other DWC cases may impact the assignment of requests for IROs, which is administered by TDI's Life, Health & Licensing Program.

### *Rebating*

Pending enforcement actions at TDI concerning rebating may ultimately result in court cases to determine the scope and extent of TDI's authority to prohibit them. At present, there are no pending court cases. Pending enforcement actions concern a wide array of rebating activities, from outright gifts to trade association sponsorships. Licensees argue that these are legitimate promotional activities, rather than kickbacks. TDI has taken the position that these activities constitute prohibited rebates. If TDI is successful in these enforcement actions, the losing licensee may appeal to obtain a court ruling to clarify the law.

### *Residential Mortgage Fraud*

Fraudulent land flips, a type of residential mortgage fraud, artificially inflate land values with bogus appraisals, resulting in under-collateralized loans which often go into default. This activity not only hurts lenders, it also leaves vacant houses which have a negative impact on the legitimate values of properties in the surrounding neighborhood. The FBI is taking an interest in fraudulent land flips in Texas and elsewhere. Staff in the Title Division recently assisted the FBI in developing investigations and serving as expert witnesses. HB 716, effective on September 1, 2007, requires that each applicant for a home loan be notified of penalties for making false or misleading written statements. The bill requires the reporting of suspected fraudulent activity, establishes a residential mortgage fraud task force, and makes other statutory changes to combat mortgage fraud. Beginning FY 2008, TDI has funding for three additional full time equivalent positions to implement HB 716 provisions.

<b>I. What are your agency's biggest opportunities for improvement in the future?</b>
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TDI strives to provide excellent customer service and, thus, the agency chooses to focus its opportunities for improvement on activities that benefit TDI's diverse customer base. TDI's biggest opportunities for improvement center on enhancing customer services and include: empowering consumers, embracing technology, and optimizing the workforce.

### **Empowering Consumers**

TDI is exploring educational opportunities to expand consumers' insurance decision-making power. Ideas to improve educational and outreach activities include enabling e-quotes, establishing partnerships with schools, increasing field presence, broadening video streaming/conferencing capabilities, initiating website redesign, and adding new website services.

A short-term customer service enhancement includes consolidating multiple complaint forms into a single agency complaint form to eliminate customer confusion on which form to use for a particular insurance-related concern. A cross-agency workgroup is defining and evaluating complaint form content and presentation to remove any customer-perceived barriers to filing a complaint with TDI.

### **Technology Innovation**

One technology improvement includes implementing a more efficient rate and form review and approval process that maintains consumer protections, gives consumers more timely access to competitive, approved product options, and streamlines industry filing requirements by adhering to national uniformity standards. TDI currently accepts certain filings through the NAIC's System for Electronic Rate and Form Filing and the Multi-State Review. Expanding the lines of insurance submitted electronically could achieve a more efficient regulatory review process.

Feasibility studies to consolidate agency databases are underway for the biennium. The anticipated benefits of database consolidation are eliminating duplicate data entry, reducing the number of TDI-maintained applications, facilitating access to information, and improving TDI disaster recovery planning. Additionally, a comprehensive centralized database would allow staff to review a company's history of regulatory actions and any pending significant issues. Having access to this information prior to initiating a communication or enforcement action would reduce the potential for inconsistent regulatory direction among agency programs.

TDI has automated some of its paper-intensive processes and, in so doing, has created efficiencies that have inspired agency interest in further automation opportunities. Automation projects enhance customer services by reducing the time it takes to complete processes. They also improve access to information, which facilitates the agency's ability to process open records requests. Additional technology-based customer service enhancements include viewing complaint status online, implementing imaging storage solutions, and increasing web-based or other electronic applications for complex financial filings, industry data calls, consumer and industry surveys, and consumer complaints.

An innovative approach to providing enhanced customer services considers telecommuting as an alternative solution to the typical eight to five, Monday through Friday work environment. Customers require service availability at times other than routine hours of operation. TDI has initiated a pilot telecommuting project in its Consumer Protection Program. Because of the success of the pilot program, TDI will consider telecommuting opportunities for other employees throughout the agency. A well-planned telecommuting program could allow TDI to offer customers expanded hours of operation, while galvanizing employee morale and loyalty.

### **Optimizing Workforce**

In addition to its funded goals, TDI has an indirectly funded goal to "value the contribution of each employee to TDI's mission and to the diversity of the agency." Access to appropriate professional development and communicating to employees their value in the organization through meaningful feedback are essential objectives that support achieving this goal.

TDI programs consider workforce planning opportunities as part of the business planning process. This assessment has led to professional development measures agency wide, such as cross-training, succession

planning, leadership development, and recruiting activities. In light of increasing expectations to provide 24 hour services with reduced staffing levels, TDI has an opportunity to optimize its workforce. Combining technological innovations for routine functions with a highly-skilled, but smaller workforce would allow TDI to more effectively and efficiently serve the public.

Recent surveys of TDI staff identified internal communication as an area for improvement. The employee involvement survey conducted in March 2007 revealed that employees indicate that their performance could improve with increased communication about division goals, priorities and cross-divisional issues. Additionally, TDI employees responding to the 2006 Survey of Organizational Excellence rated internal communication as an area for improvement. To advance internal communication, TDI has identified the following opportunities: optimizing use of agency Intranet; consolidating regulatory databases; circulating all-employee emails regarding important agency issues, incorporating additional frequently asked questions into the agency newsletter, increasing distribution of program bi-weekly reports to the Commissioner of Insurance.

While TDI recognizes that DWC will undergo its own Sunset review in 2011, workers' compensation improvements will be completed prior to 2011. Opportunities for improvements include promoting performance based oversight in the workers' compensation system, further business process improvements to the TXCOMP system, streamlining dispute resolution, further consideration of consolidating similar functions, and centralizing additional field office functions as appropriate.

**J. In the following chart, provide information regarding your agency's key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures.**

<b>Texas Department of Insurance</b>				
<b>Exhibit 2: Key Performance Measures – Fiscal Year 2006</b>				
<b>Measure Code</b>	<b>Key Performance Measures</b>	<b>Target</b>	<b>Actual Performance</b>	<b>Annual Target Percentage</b>
1.1.1 op 1	Number of Inquiries Answered	1,000,000	995,108	99.51%
1.1.1 op 2	Number of Rate Guides Distributed	652,743	941,074	144.1%
1.1.2 oc 2	Percent of Agent License Filings Completed within 15 Days	96%	96%	100%
1.1.2 oc 3	Percent of Statutory Rate & Form Filings Completed within 90 Days	87%	88%	101.15%
1.1.3 oc 4	Number of Automobiles Covered by Voluntary Policies as a Percent of Total Passenger Automobiles in Underserved Markets	69%	75%	108.70%
1.1.3 oc 6	Percent of Personal Auto & Residential Property Form Filings Completed in 60 Days	95%	95%	100%
1.2.1 op 1	Number of Complaints Resolved	32,200	26,255	81.54%

<b>Texas Department of Insurance</b>				
<b>Exhibit 2: Key Performance Measures - Fiscal Year 2006</b>				
<b>Measure Code</b>	<b>Key Performance Measures</b>	<b>Target</b>	<b>Actual Performance</b>	<b>Annual Target Percentage</b>
1.2.1 ef 1	Average Response Time (in Days) to Complaints	38	33	86.84%
1.2.3 op 1	Number of Referrals of Alleged Insurer Fraud to State & Federal Prosecutors	70	71	101.43%
1.2.4 oc 1	Percent of Licensees Who Renew Online	34%	56%	164.71%
2.1.1 oc 1	Percentage of Statutorily Mandated On-Site Examinations Conducted During the Fiscal Year	100%	100%	100%
2.1.1 oc 3	Special Deputy Receiver receivership Asset Recovery Expenses as a Percent of the Total Dollars Collected by Special Deputy Receivers	15%	16%	106.67%
2.1.1 oc 4	Average Number of Days from Company "At Risk" Identification to the Date of Solvency-Related Intervention	31	23	74.19%
2.1.1 oc 6	Percent of Companies Rehabilitated after TDI Solvency-Related Intervention	18%	25%	138.89%
2.1.1 op 2	Number of Entities Receiving Solvency-Related Intervention	13	9	69.23%
2.1.1 op 4	Number of Holding Companies Transactions Reviewed	751	804	107.06%
2.1.1 op 5	Number of actuarial Examinations Completed	80	79	98.75%
2.1.1 op 6	Number of On-Site Examinations Conducted	160	156	97.50%
2.1.1 ef 1	Average State Cost per Examination	\$29,482	\$29,271	99.28%
2.1.1 ex 1	Dollar Amount (in Millions) of Insurance Company Insolvencies	\$20	\$100.67	503.34%
2.1.1 ex 2	Number of Estates Placed in Receivership	4	7	175%
3.1.1 oc 2	Percent of Commercial Property Inspections that Meet Filed Rating Schedule Requirements	85%	89%	104.71%
3.1.1 oc 3	Percent of Windstorm Inspections that Result in an "Approved" Status Code	35%	32%	91.43%
3.1.1 op 1	Number of Windstorm Inspections Completed	11,500	18,923	164.55%
3.1.1 op 2	Number of Inspections of Insurer Loss Control Programs Completed	200	200	100%

<b>Texas Department of Insurance</b>				
<b>Exhibit 2: Key Performance Measures - Fiscal Year 2006</b>				
<b>Measure Code</b>	<b>Key Performance Measures</b>	<b>Target</b>	<b>Actual Performance</b>	<b>Annual Target Percentage</b>
3.1.1 op 3	Number of Commercial Property Oversight Inspections Completed	1,160	1,170	100.86%
3.1.1 ef 1	Average Cost per Windstorm Inspection	\$50	\$44	88%
3.1.2 op 1	Number of Referrals of Alleged Consumer & Provider Fraud to State & Federal Prosecutors	110	106	96.36%
4.1.1 oc 1	Percent of SFMO Criminal Referrals Resulting in Enforcement/Legal Action	79%	74%	93.63%
4.1.1 oc 2	Percent of Registrations, Licenses, & Permits issued, after Receipt of a Completed Application within 20 Days to Fire Alarm, Fire Extinguisher, Fire Sprinkler & Fireworks Firms, Individuals & Other Regulated Entities	99%	100%	101.01%
4.1.1 op 2	Number of Fire Investigations Completed	507	650	128.21%
4.1.1 op 5	Number of Registrations, Licenses, and Permits Issued to Fire Alarm, Fire Extinguisher, Fire Sprinkler & Fireworks Firms, Individuals & Other Regulated Entities	11,250	11,787	104.77%
6.1.1 oc 2	Average Number of Days for the Required Initial Benefit Payment to be Issued after Benefits Begin to Accrue	8.4	10.03	119.40%
6.1.1 oc 5	Percentage of Documents Received & Maintained Electronically by the Commission	74%	71.13%	96.12%
6.1.1 oc 8	Percentage of Benefit Dispute Cases Resolved by the Commission's Informal Dispute Resolution System	86%	74.59%	86.73%
6.1.1 oc 9	Percentage of Medical Benefit Dispute Cases Resolved by Initial Administrative Decision	87%	100%	114.94%
6.1.1 oc 11	Average Number of Days to Resolve Benefit Disputes	46	63	136.96%
6.1.1 oc 12	Percent of Appealed Medical Fee Disputes Resolved Prior to a Formal Hearing at SOAH	75%	98%	130.67%
6.1.1 oc 13	Statewide Incidence Rate of Injuries & Illnesses per 100 Full-time Employees	4.8	3.7	77.08%
6.1.1 op 1	Number of Quality Care Audits of Health care Providers Completed	72	61	84.72%
6.1.1 op 2	Number of Quality of Care Audits of Insurance Carriers Completed	10	10	100%

<b>Texas Department of Insurance</b>				
<b>Exhibit 2: Key Performance Measures - Fiscal Year 2006</b>				
<b>Measure Code</b>	<b>Key Performance Measures</b>	<b>Target</b>	<b>Actual Performance</b>	<b>Annual Target Percentage</b>
6.1.1 op 5	Number of Persons Receiving Return-to-Work Training Products & Services	20,000	29,444	147.22%
6.1.1 op 6	Number of Fraud Investigations Completed	630	550	87.30%
6.1.1 op 11	Number of Injury Records Created	170,000	98,424	57.90%
6.1.1 op 12	Number of Injury Records Created for Income/Indemnity Injuries	85,000	53,768	63.26%
6.1.1 op 14	Number of Self-Insurance Applicants or Renewals Certified	50	49	98%
6.1.1 op 16	Number of Compensation Benefit Dispute Cases Concluded in Benefit Review Conference	20,000	14,077	70.39%
6.1.1 op 17	Number of Medical Benefit Dispute Cases Resolved by Administrative Decision	13,200	14,194	107.53%
6.1.1 op 18	Number of Compensation Benefit Dispute Cases Concluded in Contested Case Hearing	7,200	6,233	86.57%
6.1.1 op 20	Number of Inspections, Consultations, & Investigations Provided to Employers	3,750	3,307	89.86%
6.1.1 ef 2	Average Number of Participants per Return-to-Work Seminar	65	88.69	136.45%
6.1.1 ef 8	Average Number of Days from the Request for Benefit Review Conference to the Conclusion of the Benefit Review Conference	80	67	83.57%
6.1.1 ef 10	Average Number of Days From the Request for a Contested Case Hearing to the Distribution of the Decision	80	78	97.50%
6.1.1 ef 12	Average Cost per Consultation/Inspection/Investigation	\$895	\$830.62	92.81%
6.1.1 ex 4	Estimated Percentage of Employers Reported Participating in the Workers' Compensation System	76%	59.88%	78.79%
6.1.1 ex 7	Number of Workers' Compensation Medical Dispute Cases Received	26,400	15,739	59.62%