

ANALYSIS

Item 67: Department of Consumer and Business Services Financial Regulation Positions

Analyst: Alex Perkins

Request: Increase Other Funds expenditure limitation by \$1,213,647 and authorize the establishment of eight positions (4.00 FTE) to address staffing needs in the Division of Financial Regulation.

Analysis: The Department of Consumer and Business Services' (DCBS) Division of Financial Regulation (DFR) protects Oregonians' access to fair insurance, as well as financial products and services through education, regulation, and consumer assistance. The Division is comprised of 12 areas organized by function or subject matter: Insurance Licensing and Retaliatory Tax; Insurance Product Regulation, Life and Health; Insurance Product Regulation, Property and Casualty and Business Analytics; Consumer Education and Advocacy; Policy; Pharmaceutical Transparency and Affordability Regulation; Non-depository Programs; Banks, Trust Companies, and Securities; Credit Unions; Insurance Institutions; Operations; and Investigations and Enforcement.

The Department is requesting these new DFR positions in order to meet increasing demand for its services, as well as to account for the additional responsibilities included in HB 2725 passed during the 2023 legislative session. The number of positions and rationale for each request are enumerated below.

Insurance Licensing and Retaliatory Tax – DCBS is requesting \$396,275 for three permanent positions (1.50 FTE) to eliminate backlog, file audits, and ensure refunds or invoices for additional payments are issued in a timely manner. The Insurance Licensing and Retaliatory Tax section ensures that insurers are paying the appropriate taxes. While this section has operated with two tax auditors since 2000, the growth of insurers and other regulated entities, along with the expansion of the required work over the past 23 years, has resulted in a significant backlog of work that continues to grow. As such, the Department is requesting the establishment of two Tax Auditor 2 positions, as well as one Public Service Representative 4.

The DFR has experienced a notable increase in tax and assessment revenue, largely due to the addition of new responsibilities. In 2017, the division took on the Health Premium Assessment work, followed by the Wet Marine tax in 2019. Despite the Wet Marine tax contributing a smaller portion of revenue, it demands considerable effort for compliance. The Health Premium Assessment, on the other hand, involves intense and frequent compliance activities, requiring insurers to make payments four times a year.

Excluding the revenue from Wet Marine and Health Premium Assessment, the total revenue managed by the team amounts to \$112,043,176. This figure serves as a benchmark for the workload prior to 2017. However, the actual revenue managed in fiscal year 2021 was \$250,572,757, a 123.6% increase. The additional responsibilities, growth in insurers, and the complexity of their operations have put a strain on the existing workforce, leading to delays and potential risks in regulatory compliance. Addition of these positions aims to address this issue directly, ensuring that insurers comply with tax obligations and contribute appropriately to state revenue.

Life and Health Insurance Product Regulation and Compliance – DCBS is requesting \$322,828 for two permanent positions (1.00 FTE) to support the additional requirements established by HB 2725 (2023). The expansion of the Pharmacy Benefit Manager (PBM) program created new responsibilities for oversight but did not include corresponding positions. An Operations and Policy Analyst 3 position is requested to review PMB compliance and complaints. Additionally, the PBM program is part of the Department's Life and Health Insurance Product Regulation and Compliance section. The manager of this section currently has a supervisory span of control of 20 to 1. An additional Compliance and Regulatory Manager 2 position is requested to balance the workload and mitigate span of control issues.

Insurance Institutions – DCBS is requesting \$171,716 for one permanent position (0.50 FTE) to regulate the financial solvency of Oregon-domiciled insurers. The Department engages in its analysis and examination work in accordance with standards set by the National Association of Insurance Commissioners (NAIC). The work is currently overseen by the Insurance Institutions Manager/Chief Examiner (IIM) position, with a supervisory span of control of 17 to 1. This section recently failed to meet accreditation standards set by the NAIC, which is key to the state's insurance regulation. To reduce supervisor to staff ratios and meet quality and timeliness standards set by Oregon law and NAIC, an additional Compliance and Regulatory Manager 2 position is requested to split examination and analysis work between two managers.

Life and Health and Property and Casualty Managers – DCBS is requesting \$171,716 for one permanent position (0.50 FTE) to continue monitoring the solvency and compliance of Oregon's domestic insurance companies. The Division has experienced an increase in market conduct regulations. Currently, the Division has a Life and Health Team of 20 and a Property and Casualty Team of 16 that each oversee both rate and forms filing compliance and market conduct compliance. A new Compliance and Regulatory Manager 2 is requested to oversee market conduct compliance, shifting 10 positions to a new team. This results in the smaller Life and Health and Property and Casualty teams of 14 and 12, respectively.

Financial Examiner – DCBS is requesting \$151,112 for one permanent position (0.50 FTE) to regulate state-chartered banks. The recent merger of Umpqua Bank and Columbia Bank increased the bank's assets from approximately \$30 million to a combined \$60 billion. This growth in assets increases the regulatory responsibilities of the Department. An existing Financial Examiner 3 position, designed for ongoing oversight, is insufficient to manage the increased complexity and scale of operations. A second Financial Examiner 3 position is requested to provide effective regulation of this major financial institution, ensuring that the Department can adequately oversee the bank's operations, a key aspect of maintaining financial stability and consumer protection in Oregon's banking sector.

Recommendation: The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means recommend including an increase of \$1,213,647 in the Other Funds expenditure limitation and authorizing the establishment of eight positions (4.00 FTE) for the Department of Consumer and Business Services in a budget reconciliation bill during the 2024 legislative session to address staffing needs in the Division of Financial Regulation.

Request: Increase Other Funds expenditure limitation by \$1,213,647 and establish eight permanent full-time positions (4.00 FTE) for the Department of Consumer and Business Services (DCBS) to address workload issues and implement legislation in the Division of Financial Regulation.

Recommendation: Approve the request during the February 2024 Legislative Session.

Discussion: DCBS is requesting \$1,213,647 Other Funds expenditure limitation and eight positions (4.00 FTE) to address a series of programmatic needs in the Division of Financial Regulation (DFR). DFR oversees Oregon chartered banks, credit unions, other financial institutions, and insurers doing business in Oregon for safety, financial soundness, and consumer protection. DFR has a 2023-25 Legislatively Approved Budget of \$173.3 million Other Funds, \$120.1 million Federal Funds, \$5.0 million in one-time General Fund and 191 positions (189.92 FTE).

Insurance Retaliatory Tax Auditing

DCBS is requesting two Tax Auditor 2 positions (1.00 FTE) and one Public Service Representative 4 position (0.50 FTE) and \$396,274 Other Funds to address a backlog of insurance retaliatory tax returns; these positions will supplement DFR's existing team of two Tax Auditor 2 positions. The insurance retaliatory tax is a tax assessed on out of state insurers based on what Oregon insurers would pay were they doing business in those states. There are approximately 1,500 taxpayers expected to provide approximately \$114.4 million to the General Fund in 2023-25. The tax auditors ensure taxpayers have paid tax correctly and either issue refunds or invoices for taxpayers who have not paid correctly. The increase in the number of insurers and other regulated entities subject to work by this team has resulted in a backlog of audits, with returns dating back to 2020 still needing to be audited. In addition to the retaliatory taxes, the team also collects state Fire Marshal fees, health care provider taxes, premium taxes for risk retention groups, ocean marine taxes, surplus lines premium taxes, and wet marine insurance taxes.

Auditing the retaliatory tax is complex and requires DCBS auditors to review the tax system in place in 49 other jurisdictions, analyze what an Oregon domestic carrier would pay in that jurisdiction, and apply that analysis to the out of state carrier's retaliatory tax filing. As a matter of policy, DCBS audits every out of state insurer doing business in Oregon due to the potential for large overpayments or underpayments. Funding to support these positions will come from the annual insurers assessment charged by DCBS.

The Department of Administrative Services – Office of Economic Analysis recently changed its forecast for retaliatory tax revenue forecast for 2023-25 for the General Fund by \$50.7 million due to a high volume of refunds for tax returns through 2020. The higher-than-normal refund activity was due to the interaction of the insurance retaliatory

tax with the Commercial Activity Tax (CAT), which took effect in tax year 2020. The CAT reduced retaliatory tax liabilities owed by insurers, but insurers did not reduce their retaliatory tax payments commensurate with this change. The result was significant overpayments by insurers. The effect of these overpayments is only now being recognized due to the backlog of returns requiring audit. It is possible as additional returns are processed for tax years 2020 and 2021 (insurers became exempt from the CAT for tax years 2022 and later) that additional refunds will be issued and result in additional reductions in retaliatory tax revenues in 2023-25 or in the future.

House Bill 2725 Implementation

DCBS is requesting one Compliance and Regulatory Manager 2 position (0.50 FTE), one Operations and Policy Analyst 3 position (0.50 FTE) and \$322,828 in Other Funds to assist with implementing House Bill 2725 (2023). House Bill 2725 prohibits pharmacy benefit managers (PBM) from retroactively decreasing reimbursements, from charging fees on pharmacists after the point of sale and requires that sufficient notice of denied claims is provided to pharmacists. Although DCBS put a fiscal impact statement on the bill, due the timing of the bill's passage at the end of the 2023 Legislative Session, DCBS did not receive a commensurate budget adjustment. Given the complexity of the work and the high ratio of staff to supervisors in the division performing the work, DCBS requested one permanent, full-time Compliance & Regulatory Manager 2 to oversee PBM regulation, assist with rulemaking, and serve as the subject-matter expert on PBMs. DCBS also requested one Operations and Policy Analyst 3 to oversee compliance and complaint review for the PBMs. Funding for the positions will come from fees assessed to PBMs registered with DCBS.

Insurance Industry Regulation

DCBS is requesting two Compliance and Regulatory Manager 2 positions (1.00 FTE) and \$343,433 Other Funds for positions to manage the workload in insurance regulation. One manager position would address a high manager to staff ratio in the section regulating insurers. Staff are grouped by insurance industry, with 20 life and health insurance regulatory staff under one manager and 16 property and casualty insurance regulatory staff under another. DFR seeks to carve out staff working on overseeing insurer's market conduct under a new manager to alleviate the workload on the existing managers. The new manager would oversee a market conduct team of 10 positions, leaving the life and health insurance manager with 14 positions and the property and casualty with 12 positions. Market conduct examinations are conducted based upon consumer complaints, recent law changes, and activities occurring in other states that would cause us to check Oregon-specific compliance. The purpose of market conduct examinations is to ensure Oregon laws are being followed and to protect Oregon consumers.

The second Compliance and Regulatory Manager 2 will serve as an additional manager for the insurance regulation team at DCBS, which oversees the finances of 41 Oregon-domiciled insurers. The Compliance and Regulatory Manager position will act as the Chief Financial Examiner and oversee a team of six, reducing the burden on the existing manager from 17 existing supervisees.

DCBS requested a related policy package in its 2023-25 Agency Request Budget, which was funded by the Legislature in the 2023 Legislative Session. House Bill 5010 (2023) added \$252,607 Other Funds expenditure limitation and one permanent full-time position (0.88 FTE) to review the work of staff who examine the numerous financial filings made annually by insurers in order to ensure the reviews are accomplished in the timeframe required by National Association of Insurance Commissioners (NAIC), which accredits DCBS to regulate insurers. While the work sounds similar, the manager requested in this letter will oversee the entire Insurance Examinations section, while the staff-level position was needed to ensure timely reviews of analyses in accordance with national standards.

State Chartered Bank Regulation

Umpqua Bank merged with Columbia Bank in February 2023, to become the largest financial institution overseen by DFR, nearly doubling in size. Before the merger, DFR had one examiner dedicated to the continuous examination of Umpqua while the Federal Deposit Insurance Corporation has several examiners dedicated to overseeing the bank. The merger has meant additional staff are needed to oversee the bank. DCBS has temporarily dedicated a position from the insurance regulation work performed by the Department to the oversight of Umpqua pending the result of this request. While smaller banks chartered by DFR go through a point-in-time review of their safety, soundness, and compliance once every 12 to 18 months, due to its' size, Umpqua is reviewed on a continuous cycle. This means the examiners select an area for review, determine the scope of the review, request documents from the bank, review the documents, assign ratings, and make findings about their review. The examination covers financial areas such as capital adequacy, asset quality, liquidity, operational areas such as management and governance, and compliance, such as loan review. Due to accreditation standards this work must be performed to certain standards within certain timeframes and cannot be contracted out. DCBS is requesting one Financial Examiner 3 position (0.50 FTE) at a cost of \$151,112 Other Funds expenditure limitation to perform this work. The position will be funded by revenues from DFR's annual assessment on state-chartered banks.

Legal Reference: Increase Other Funds expenditure limitation established by chapter 354, section 1(5), Oregon Laws 2023, for the Department of Consumer and Business Services, Division of Financial Regulation, by \$1,213,647 for the 2023-25 biennium.



Oregon

Tina Kotek, Governor



Department of
Consumer and
Business Services

REPLACEMENT LETTER

December 18, 2023

Senator Elizabeth Steiner, Co-Chair
Representative Tawna Sanchez, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs:

Nature of the Request

The Department of Consumer and Business Services, Division of Financial Regulation (DCBS) respectfully requests the following agency action items be addressed in the February 2024 legislative session.

Agency Actions

The Department of Consumer and Business Services respectfully requests that the Interim Joint Committee on Ways and Means approve an increase in Other Funds expenditure limitation to establish eight positions and a total of 4.00 FTE, effective July 1, 2024, to provide needed staffing support in the following areas:

- The Insurance Licensing and Retaliatory Tax Team is responsible for collecting and auditing millions of dollars in taxes paid by insurers. The team ensures that insurers are paying the appropriate taxes by auditing filings and ensuring refunds or invoices for additional payments are issued in a timely manner. This team has functioned with two tax auditors since 2000 and is responsible for auditing tax returns for retaliatory taxes, fire marshal fees, health insurer premiums, ocean marine, surplus lines, and risk purchasing group tax returns. The growth of insurers and other regulated entities subject to work by this team, along with the expansion of the required work, has resulted in a significant backlog of work that continues to grow. This team administers approximately \$289 million in tax and assessment revenue annually based on FY 2023, with approximately \$97 million going to the state General Fund.
- [House Bill \(HB\) 2725](#) passed in the 2023 legislative session and established new requirements of pharmacy benefit managers (PBMs). HB 2725 did not establish new positions with the expansion of the PBM program. PBMs are overseen by the manager of the division's Life/Health Insurance Product Regulation and Compliance section, who has a supervisory span of control of 20 to 1. Given the complexity of the current subject matter overseen by the manager, the current supervisory span of control, and an

anticipated increase in PBM-related complaints and work, the division sees a need to redistribute management responsibilities and add staffing to carry out the program.

- DCBS regulates the financial solvency of 41 Oregon-domiciled insurers through analysis of quarterly and annual filings and examinations conducted on at least a five-year cycle. The department engages in its analysis and examination work in accordance with standards set in the Accreditation Program Manual (APM) published by the National Association of Insurance Commissioners (NAIC). The work is overseen by the Insurance Institutions Manager/Chief Examiner (IIM) position, and the volume and complexity of work has grown beyond what one person can manage successfully. The position oversees a staff of 17 and cannot adequately supervise the staff and work, which resulted in the section failing to meet accreditation standards set by the NAIC. Maintaining accreditation is integral to the state insurance regulation system. If Oregon fails to be accredited, other states cannot rely upon the work done by Oregon. That would require other states to conduct their own analysis and examination of Oregon-domiciled insurers, causing an additional burden to Oregon insurers, and likely resulting in increased insurance rates for borrowers. Without proper oversight of analysis work and deadlines, examination work and deadlines, statutory deposits, ancillary receiverships and other key functions, the division risks losing its NAIC accreditation. The examination and analysis work should be divided and supervised by two separate managers to achieve manageable supervisor to staff ratios ensuring timely action to address quality and timeliness standards set by Oregon law and NAIC accreditation standards.
- DCBS plays a key role in monitoring the solvency and compliance of Oregon's domestic insurance companies. As a part of that compliance role, the division oversees market conduct examinations and general compliance inquiries over insurance companies operating in the state. Those examinations and inquiries are conducted based upon consumer complaints, recent law changes, and activities occurring in other states that would cause us to check Oregon-specific compliance. The current Life/Health and Property/Casualty managers oversee teams of 20 and 16, respectively, that include rate/forms filing compliance (front end) and market conduct compliance (back end). A new manager would oversee the market conduct element of this work and oversee a new, separate team of 10.00 FTE; this would leave the Life/Health manager with 14.00 FTE and the Property/Casualty manager with 12.00 FTE. The establishment of a market conduct manager is in response to a sustained need and increase in workload tied to market conduct regulation.
- DCBS regulates 12 state-chartered banks. The combined assets of the state-chartered banks totaled approximately \$40 billion at the beginning of 2023 with the banks ranging in size from just under \$300 million to over \$30 billion. In February 2023, Umpqua Bank, an Oregon chartered bank with approximately \$30 billion in assets merged with Columbia Bank, a Washington chartered bank with approximately \$20 billion in assets. Following the merger, the bank operates under the name Umpqua Bank under the Oregon charter from its headquarters in Lake Oswego, Oregon. The newly merged bank pushes the combined assets of state-charted banks the department regulates from \$40 billion to more than \$60 billion, representing about a 50 percent increase. Due to its asset size, Umpqua Bank already had a permanently assigned Financial Examiner 3 (FE3) for ongoing oversight. The merger of Umpqua and Columbia Bank requires the assignment of an additional FE3. To meet the emergent need, when a recent

recruitment for an Insurance Examiner failed, the department moved that vacant position to the banking section as an FE3 position. This allowed the department to staff the Umpqua exam with the second-needed examiner, and the department is backfilling the insurance examiner needs using a contract vendor, which is permitted for the insurance program but not the banking program. The establishment of an FE3 will allow the department to continue to have sufficient staff at Umpqua Bank and shift the insurance examiner position back to the insurance program, discontinuing the contracted vendor we currently have performing these activities.

Actions Requested

- Establish two Tax Auditor 2 (OAS C5632 AP – SR 28)
- Establish one Public Service Representative 4 (OAS C0324 AP – SR 20) – Retaliatory Tax Team
- Establish one Compliance & Regulatory Manager 2 (MMS X7144 AP – SR 33X)
- Establish one Operations & Policy Analyst 3 (OAS C0872 AP – SR 30) – PBM Regulation
- Establish one Compliance & Regulatory Manager 2 (MMS X7144 AP–SR 33X) – Chief Analyst
- Establish one Compliance & Regulatory Manager 2 (MMS X7144 AP–SR 33X)- Market Conduct Manager
- Establish one Financial Examiner 3 (OAS C5677 AP, SR 30) – Bank Examiner

Legislation Affected

Approval of this request will increase the Other Funds expenditure limitation by \$1,213,647 established by Chapter Law 354 Section 01, subsection (05) for the Division of Financial Regulation, Department of Consumer and Business Services for the 2023-25 biennium.

Sincerely,



Andrew R. Stolfi
Director
Department of Consumer and Business Services