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AGENCY REVIEW

DEPARTMENT OF REVENUE DIVISION OF BANKING

AUDIT OVERVIEW

Division of Banking Examiner Salaries Are Not Competitive With Local Federal Government Examiner Positions and Surrounding States' Examiner Salaries Which Causes the Agency Some Concern Regarding Employee Retention



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EXECUTIVE SUMMARY

Issue 1: Division of Banking Examiner Salaries Are Not Competitive With Local Federal Government Examiner Positions and Surrounding States' Examiner Salaries Which Causes the Agency Some Concern Regarding Employee Retention.

The Division of Banking regulates the state-chartered banking industry and other financial institutions to ensure the safety of the financial industry for the benefit of citizens. While the Division effectively fulfills its statutory mission, the Legislative Auditor has concerns that the Division's salaries for examiner positions may not be competitive and theoretically may cause difficulties for the Division to attract and retain qualified individuals.

The Division has two distinct programs: depository operations and non-depository operations. **Depository operations** oversees the financial condition of state-chartered banks, credit unions and bank holding companies in the state. The **non-depository operations** program oversees mortgage lenders, brokers, loan originators, regulated consumer lenders and money transmitters. Certain financial institutions must be examined for safety and soundness based on an 18-month cycle as defined in statute, and over the past two years these reviews were completed within the statutory time frame. The Division conducts an average of 123 total examinations per year.

The Division has lost 5 depository examiners over the past 3 years to other positions in the financial industry, representing a combined 41 years of experience. Also, approximately 46 percent of the total staff of the Division and 53 percent of senior-level examiners will become eligible to retire in the next 5 years. The recent turnover is attributed to low examiner salaries according to the Commissioner, and the Legislative Auditor finds that examiner salaries are not competitive with federal examiner salaries based in West Virginia or surrounding state examiner salaries.

Examiner positions are classified under the Division of Personnel, and the Legislative Auditor found that the Division of Personnel's method for determining the salaries for examiner positions does not include salary data from three (Ohio, Pennsylvania and Maryland) of the five surrounding states. Currently, the DOP is working to improve the classified compensation plan, but the project is still in the survey phase, so any possible improvements to the classification schedule resulting from

The Division has lost 5 depository examiners over the past 3 years to other positions in the financial industry, representing a combined 41 years of experience.

The Legislative Auditor found that the Division of Personnel's method for determining the salaries for examiner positions does not include salary data from three (Ohio, Pennsylvania and Maryland) of the five surrounding states.

the project may take years to complete. Given this, the Commissioner of Banking should establish a dialogue with the Division of Personnel to have it reexamine the salary of examiners in its study. However, the Commissioner also has the authority to declassify positions in the Division, so this may be another solution for the salary issue. The current fee structure would allow for the Commissioner to raise assessments to banks enough to increase salaries.

Two boards are under the authority of the Commissioner of Banking, the Board of Banking and Financial Institutions and the Lending and Credit Rate Board. The Legislative Auditor finds that the Lending and Credit Rate Board was rendered obsolete more than 10 years ago, and the Board has not met since that time.

Finally, the report finds that the Deputy Commissioner position as set out in Code may need to be reevaluated by the Legislature. Currently, the Commissioner may only delegate certain enforcement capabilities to the Deputy Commissioner, but the Division has not had a need for the position to be filled for the past 10 years.

Finally, the report finds that the Deputy Commissioner position as set out in Code may need to be reevaluated by the Legislature.

Recommendations

1. *The Legislative Auditor recommends that the Commissioner consider entering into a dialogue with the Division of Personnel to have it reexamine the current methodology it uses to determine the salaries of examiner positions.*
2. *If the manner in which examiner salaries are determined cannot be resolved by the Division of Personnel, the Commissioner of Banking may want to consider using the statutory authority to exempt examiner positions from the classified personnel system.*
3. *The Legislative Auditor recommends that the Legislature consider terminating the West Virginia Lending and Credit Rate Board established in West Virginia Code §47A-1-1.*
4. *The Legislative Auditor recommends that the Legislature consider amending the statute to allow the Commissioner to designate the Deputy Commissioner's duties to a designee of his or her choice within the Division of Banking.*

OBJECTIVE, SCOPE & METHODOLOGY

The performance review of the Division of Banking is authorized by the West Virginia Performance Review Act, specifically §4-10-8(b)3 of the West Virginia Code, as amended. This review was conducted as part of the 2010 agency review of the Department of Revenue. The Division of Banking is statutorily obligated to act as the primary regulator for state-chartered banks and other regulated financial institutions in the state.

Objective

The purpose of this performance review is to determine if the Division of Banking effectively fulfills its mission as financial regulator according to West Virginia Code.

Scope

The review focused on the operations of the Division of Banking to ensure compliance with WV Code requirements. The history and purpose of the Division was discussed to explain the Division's role in the complex regulatory financial environment. The review compared the salaries of Division examiners from FY 2005 to FY 2010 with salaries of local federal examiners, neighboring state examiners, and state examiners in the southeastern states. It should be noted that this review did not cover the financial condition of any individual financial institutions regulated by the Division.

Methodology

The information presented in the review was gathered from the Division of Banking, Conference of State Bank Supervisors, West Virginia State Auditor's Office, West Virginia Division of Personnel, United States Office of Management and Budget (OMB), Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), National Credit Union Association (NCUA) and Office of the Comptroller of Currency (OCC). Federal regulator salary information was gathered from the OMB website using Data Universe's App.com federal salary aggregator feature.

To determine the extent of the salary issue, the Legislative Auditor compared median salaries of Division examiners and federal financial regulatory examiners working in the state as well as surrounding state bank examiner salaries. For the comparison, the financial institutions'

examiner positions for the FDIC and OCC and credit union examiner positions for the NCUA were used as a benchmark for comparison with Division examiner positions.

ISSUE 1

Division of Banking Examiner Salaries Are Not Competitive With Local Federal Government Examiner Positions and Surrounding States' Examiner Salaries Which Causes the Agency Some Concern Regarding Employee Retention.

Issue Summary

The Legislative Auditor conducted a performance review of the West Virginia Division of Banking as part of the Agency Review of the Department of Revenue. The Division of Banking regulates the state-chartered banking industry and other financial institutions to ensure the safety of the industry for the benefit of citizens. The Division effectively fulfills its duties, but some personnel changes could improve the agency. The Legislative Auditor has concerns that the Division's salaries for examiner positions may not be competitive and theoretically may cause difficulties for the Division to attract and retain qualified individuals. The Division has had some recent turnover in examiner positions and several examiners are or will be eligible for retirement in a few years. Examiner positions are classified under the Division of Personnel, and the Legislative Auditor found that the Division of Personnel's method for determining the salaries for examiner positions does not include salary data from three (Ohio, Pennsylvania and Maryland) of the five surrounding states. Currently, the DOP is working to improve the classified compensation plan. The Commissioner of Banking should initiate a dialogue with the Division of Personnel to have it reexamine the salary of examiners in its study. Also, the Commissioner serves as Chair of the Board of Banking and Financial Institutions and the Lending and Credit Rate Board, but the report finds that the Lending and Credit Rate Board was rendered obsolete more than 10 years ago and has not met since that time.

The Legislative Auditor has concerns that the Division's salaries for examiner positions may not be competitive and theoretically may cause difficulties for the Division to attract and retain qualified individuals.

The Division of Banking Regulates Financial Institutions in the State

The Office of the Commissioner of Banking was formed in 1901 in order to regulate state banks, a task that is still the responsibility of the Commissioner of the Division of Banking. Prior to this, there was a single bank examiner position beginning in 1891 serving to monitor state banks. Between 1863 and 1891, state-chartered banks were not monitored by the State, and most of the other types of financial institutions regulated by

the Division today did not yet exist. Presently, the Division of Banking licenses and regulates state-chartered banks, credit unions, regulated consumer lenders, money transmitters, and residential mortgage lenders and brokers licensed pursuant to West Virginia Code §31A et seq. and §46A et seq., the West Virginia Consumer Credit and Protection Act. The Commissioner also serves as the Chair of the Board of Banking and Financial Institutions and the Chair of the Lending and Credit Rate Board, authorized by §31A-3-1(a) and 47A-1-1(c)(6), respectively.

The Division Works in a Complex Financial and Regulatory Industry

The Division of Banking serves to regulate state-chartered banks, but national banks located in West Virginia are regulated by the Office of the Comptroller of the Currency (OCC), which is the primary regulatory entity over all nationally-chartered banks. Prior to 1863, the federal government did not charter banks, so bank-chartering was left up to the states. In 1863, the National Currency Act was passed in order to create a uniform national currency and a nationally-chartered bank system, which also created the OCC. Since then, commercial banks have had the choice to be chartered by the states or the federal government, resulting in a dual-charter bank system. Later, more federal legislation changed the banking industry with the Federal Reserve Act of 1913 and the Banking Act of 1933. The Federal Reserve Act created the Federal Reserve, but it was optional for state banks to become members of the reserve system. Choosing to join the reserve system meant that banks were subject to both state and reserve regulation, so few banks chose to join. However, the Banking Act established the Federal Deposit Insurance Corporation (FDIC) to insure consumer deposits, and the majority of banks bought insurance, which also made the banks subject to FDIC regulation. As a result, most state banks became subject to both state and federal regulation. This is the case with commercial banks regulated by the West Virginia Division of Banking, because all of the state-chartered banks regulated by the Division are also regulated by either the Federal Reserve or the FDIC.

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The Organization and Operation of the Division Is Based on Maximizing Efficiency

The Division has two distinct programs: depository operations and non-depository operations. **Depository operations** oversees the financial condition of state-chartered banks, credit unions and bank holding companies in the state and analyzes depository institution applications for mergers, new branches, and charters. Within depository operations, the operations regulation section of the Division conducts information systems and information security examinations. The **non-depository operations** program oversees mortgage lenders, brokers, loan originators, regulated consumer lenders and money transmitters. This program looks for compliance with all applicable consumer protection laws and other relevant statute in examinations. The program also reviews and acts upon applications from non-depository institutions moving into or beginning operations within the state.

The Division has two distinct programs: depository operations and non-depository operations.

The Division is a fully-funded special revenue agency. The total operating costs of the agency are shown in Table 1. Note that the “other expenses” in fiscal year 2008 reflect a transfer of \$426,075 to the general revenue fund.

Table 1 Division of Banking Expenditures					
	FY 2007	FY 2008	FY 2009	FY 2010	Budgeted FY 2011
FTE Positions	29.5	29.5	28.5	28.0	32.0
Total Personal Services	\$1,467,878	\$1,534,177	\$1,481,929	\$1,439,378	\$1,697,727
Employee Benefits	\$438,835	\$467,154	\$444,491	\$425,388	\$529,976
Other Expenses	\$529,184	\$1,025,650*	\$649,427	\$804,814	\$916,095
Total	\$2,435,897	\$3,026,981	\$2,575,847	\$2,669,580	\$3,143,798
<p><i>*The increased other expenses in FY 2008 reflect a transfer to the general revenue fund. Source: State of West Virginia Executive Budget FY 2009-2011, Division of Banking</i></p>					

The Division relies on assessment fees from regulated depository institutions based on asset size, licensing and assessment fees as well as a \$50 hourly examination fee for non-depository licensees, and civil administrative penalties to cover its operating costs as defined by WV Code §31A-2-8(a)(1). The Division of Banking provided the breakdown of revenue sources for FY 2010 by institution type, and the percentage of revenue derived from each is shown in Table 2. This reveals that state banks were the main revenue source for the Division in 2010. However, the Division’s annual reports over the past 10 years show that the largest revenue stream varies from year to year between state banks and non-depository institutions, which include consumer lenders, mortgage and money transmitter companies.

Institution	Percent Revenue
State-chartered Banks	58.9
Bank Holding Companies	4.3
State-chartered Credit Unions	1.0
Regulated Consumer Lenders	4.7
Mortgage Companies	20.7
Money Transmitter Companies	2.8
Other Sources*	7.6

Source: Division of Banking
**Includes penalties, foreclosure reporting fees, and bank/bank holding company application fees.*

State bank assessment fees are charged to banks semiannually, and banks pay an amount according to the assessment fee schedule.

State bank assessment fees are charged to banks semiannually, and banks pay an amount according to the assessment fee schedule in WV Code §31A-2-8(b). The full fee schedule is in Appendix B. However, the assessment fees given in Code are the highest allowable assessments, but the Commissioner sets assessments within the codified schedule semiannually. The purpose of the assessment fees is to fund the “expenses of the division of banking and all incidental costs and expenses necessary for its operations.” **In 2010, the Commissioner assessed banks at 40 percent of the maximum amount allowed by Code, which was sufficient to fund the depository operation of the agency.**

The agency's mission is to ensure compliance with state and federal banking laws and the safety and soundness of state financial institutions. Specifically, the mission as stated by the Division in the 2011 Executive Budget is:

To promote, on behalf of West Virginia citizens the safety and soundness of state-chartered and licensed depository and non-depository institutions within the framework of statutory limitations and industry standards for financial institutions operating within West Virginia.

The agency's mission is to ensure compliance with state and federal banking laws and the safety and soundness of state financial institutions.

The Division works to fulfill the mission through examinations of financial institutions following Generally Accepted Accounting Principles, as well as state and federal laws, regulations, and policy statements. Currently, there are 52 state-chartered banks out of 60 commercial banks headquartered in the state. There have been no state bank failures since 1991, and the banking industry in the state remains stable despite the recession. State bank assets grew from 17.2 billion at the end of fiscal year 2007 to 20.1 billion at the end of 2008. Asset growth slowed following 2008, but assets reported by the Division in 2009 still grew slightly to 20.8 billion.

The Depository Operation also regulates five state credit unions. The Non-depository Operation of the Division regulates 194 mortgage lenders, 87 mortgage brokers and 801 mortgage originators, 42 regulated consumer lender office locations and 35 money transmitters. Some of the non-depository institution examinations, especially those of money transmitters, are done in conjunction with other states, as these non-depository entities are generally large and deal with more interstate and international transactions.

The Division conducts an average of 123 examinations per year.

The Division conducts an average of 123 examinations per year. Table 3 shows the total number of examinations conducted by the Division in the past five years and the type of institution examined. **Certain financial institutions must be examined on an 18-month cycle, and the Division has completed those examinations on time over the past two fiscal years.** Also, the non-depository operation only recently began examinations of money transmitters in 2007 as Table 3 shows. In fact, the non-depository program was formed and began taking on regular examination responsibilities in 2000 following amendments to the West Virginia Code which brought first lien mortgage lenders and brokers under Division supervision, and the Code was again amended in 2002 to

include loan originators. Given the nature of these types of organizations, the non-depository operation is assisted by the Conference of State Bank Supervisors (CSBS), a national professional organization which supports state banking, to coordinate examinations of large, national mortgage organizations. It is important to note that the Division does not have to complete examinations for every state-chartered bank within the cycle. They stagger most examinations with either the Federal Reserve or the FDIC. Appendices C and D show the due date of each exam for each institution with a statutorily-defined schedule, the date each examination was completed, the organization that conducted the examination and the assets of those institutions.

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Table 3
Number of Examinations by Type of Institution

	2005	2006	2007	2008	2009
Bank Holding Companies	15	19	15	14	13
Commercial Banks and Trust Companies (Trust, Compliance, EDP, Visitations and Targets)	48	59	55	61	65
Credit Unions	6	6	5	4	4
Money Transmitter	N/A	N/A	6	5	0
Regulated Consumer Lenders	9	4	5	8	3
Mortgage Lender/Broker Examinations & Visitations	42	42	39	32	31
Total Examinations	120	130	125	124	116

Source: Division of Banking Annual Reports for FY 2006-2009

Finally, as a member of the CSBS, the Division has access to a lobbying group that serves as both a resource for state bank regulatory agencies as well as a professional development organization. CSBS dates back to 1902, when it was formed as a clearinghouse for ideas and information regarding the state-chartered banking system. The Division is accredited by CSBS to maintain quality standards for examinations, and the accreditation process requires continuing education for examiners. CSBS also compiles publications to provide information to members about other state banking systems and agencies. Information from its “2008 Profile of State Chartered Banking” will be discussed throughout the report.

Representatives of the Division of Banking Express Some Anxiety Over Recent Turnover in the Examiner Position

Like many other state agencies, the Division faces two main challenges in keeping its staffing levels stable and retaining well-qualified, experienced employees. First, the nature of work conducted by the Division is replicated in federal government financial regulatory agencies that offer much higher salaries than the Division. Second, 15 employees, 13 full-time and 2 temporary, are now or will become eligible to retire in the next 5 years. Four of these employees are supervisors in the depository operations, operations regulation, legal section and the administrative section of the Division. **To put this into perspective, 46 percent of the total staff of the Division and 53 percent of senior-level examiners will become eligible to retire in the next 5 years.** Although the agency lacks a formal succession plan, the Commissioner is confident that these senior positions can be adequately filled by existing lower-level staff.

Importantly, the Commissioner and other employees of the Division consistently expressed concerns about keeping talented staff in the agency given the availability of higher-paying jobs elsewhere in the banking industry. This anxiety may be heightened due to recent turnover in the agency. **Five examiners (28 percent of examiners) resigned over the past three years, with all of those examiners moving into other banking industry positions. Prior to this, the last examiner resigned in June, 2005.** These five examiners contributed a combined 41 years of experience to the Division prior to resignation. Four of the resigned examiners had worked for the Division for 5 to 10 years, and the other had been with the agency approximately 15 years. Table 4 shows the tenure of Division examiners over the past four fiscal years by operation.

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Table 4
Current Tenure of Division of Banking Examiners

Examiner	Operation	Number of Years as of:			
		FY 2007	FY 2008	FY 2009	FY 2010
1	Depository	24.8	25.8	26.8	27.8
2	Depository	19.9	20.9	21.9	22.9
3	Depository	13.9	14.9	15.9	16.9
4	Depository	13.9	14.9		
5	Depository	13.0	14.0	15.0	16.0
6	Depository	11.9	12.9	13.9	14.9
7	Depository	7.2	8.2	9.2	
8	Depository	3.9	4.9	5.9	
9	Depository	3.7	4.7	5.7	6.7
10	Depository	2.6	3.6	4.6	
11	Depository	2.4	3.4	4.4	5.4
12	Depository				0.4
13	Depository				0.4
14	Depository				0.3
15	Depository				0.2
16	IT	9.8	10.8	11.8	12.8
17	IT	9.5	10.5	11.5	12.5
18	Non-depository	9.2	10.2	11.2	12.2
19	Non-depository	6.8	7.8	8.8	9.8
20	Non-depository	4.0	5.0	6.0	7.0
21	Part-time	7.2	8.2	9.2	10.2
22	Part-time	2.8	3.8	4.8	5.8
	Number of Examiners	18	18	17	17
	Average Tenure	9.2	10.2	11.0	10.1
	Median Tenure	8.2	9.2	9.2	10
	Total Examiner Tenure	166.5	184.5	186.5	182.2
	Average Depository Tenure	10.7	11.7	12.3	12.4
	Median Depository Tenure	11.9	12.9	11.5	6.7
	Total Depository Examiner Tenure	117.3	128.3	123.3	112

Source: Division of Banking

This reveals that average tenure and median tenure have remained between 8 to 11 years during this time period for all examiners, but this is not the case for depository examiners. **The median tenure for depository examiners fell from 11.5 years in 2009 to 6.7 years in 2010 due to the addition of four new examiners.** The average tenure for all examiners remained stable, ranging between 9 and 12 years, however, this is skewed by the long tenure of some examiners. Also due to the long tenure of several examiners, total years of experience in all the examiner positions has remained stable from 2008 to 2010, but this has dropped among depository examiners from 128.3 years of combined experience in 2008 to 112 years in 2010. The addition of four examiners this year is the first time in the past four years that the Division has had new examiners, and all of these examiners are working in the depository operation.

In exit interviews conducted by the Division, employees typically overtly cite a better opportunity as their reason for leaving, but the Commissioner asserted that:

...the underlying motivation is often to either attain a higher salary or to eliminate job-related travel.

Also, **during interviews with senior-level Division staff, all interviewees pointed out the low salaries and lack of raises as the reason for the recent examiner turnover.** Furthermore, all of the senior-level examiners interviewed expressed concern that more examiner positions may be vacated in the near future given the salary issue and the availability of higher-paying jobs. Finally, training costs could become burdensome for the agency if the Division experiences more turnover or if several of the employees mentioned above choose to retire around the same time. It is the relatively low salaries available to examiners that underlie the anxiety regarding turnover, and the low salaries could be a factor in future examiner turnover.

Division of Banking Examiner Salaries Are Not Competitive With Those in the Federal Government and the Surrounding States

The salary for an examiner trainee begins at \$28,008 based on Division of Personnel salary schedules. Currently, the median salary of all Division examiners is approximately \$50,868, including senior-level examiner salaries. Since the Division of Banking has not been able to

Total years of experience in all the examiner positions has remained stable from 2008 to 2010, but this has dropped among depository examiners from 128.3 years of combined experience in 2008 to 112 years in 2010.

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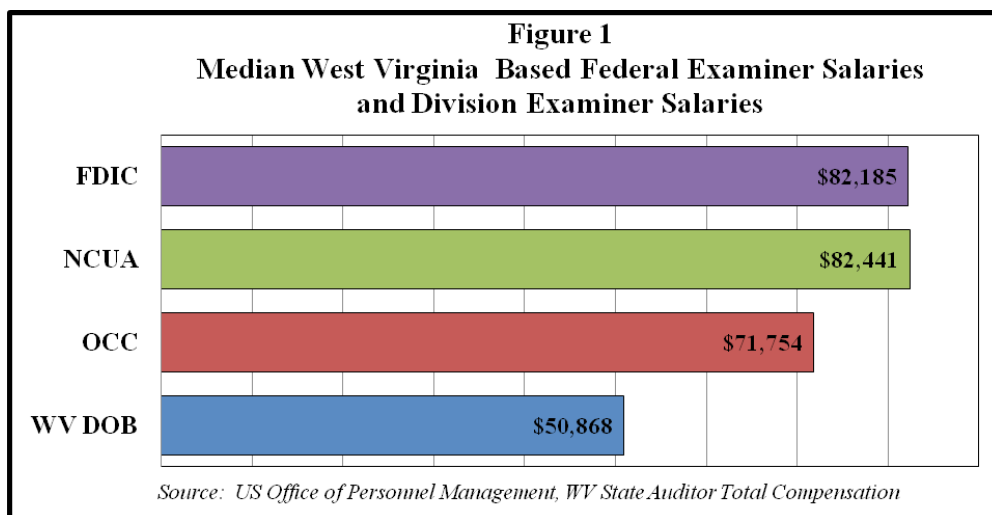
grant merit raises for the past five years and the constraint of classified salaries, the salaries of Division employees do not compete with the salaries offered by federal regulators or similar agencies in surrounding states.

To determine the extent of the salary issue, the Legislative Auditor compared median salaries of Division examiners and federal financial regulatory examiners working in the state as well as surrounding state bank examiner salaries. For the comparison, the Legislative Auditor used the financial institution examiner position and credit union examiner position as a benchmark for comparison with examiner positions in the Division. The federal regulatory banking agencies used for comparison are the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of Currency (OCC) and the National Credit Union Administration (NCUA).

Figure 1 illustrates the median salaries of FDIC, OCC and NCUA examiners based in West Virginia. At the time the salaries were reported, there were 17 locally-based FDIC examiners, 10 OCC examiners and 7 NCUA examiners. **Figure 1 shows that median West Virginia examiner salaries are \$20,886 less than median OCC examiner salaries, \$31,573 less than median NCUA examiner salaries and \$31,317 less than FDIC examiner salaries.**

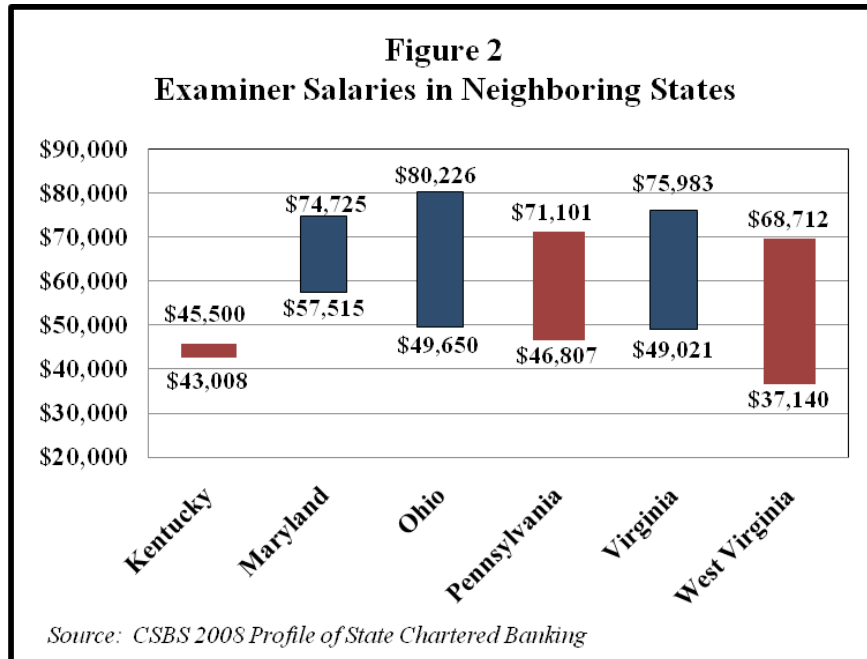
To determine the extent of the salary issue, the Legislative Auditor compared median salaries of Division examiners and federal financial regulatory examiners working in the state as well as surrounding state bank examiner salaries.

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To view the salary issue from another perspective, the Legislative Auditor considered the minimum to maximum state bank examiner salary ranges published for all state banking agencies by CSBS in 2008. Select salary ranges are depicted in Figure 2 based on proximity. In this analysis, West Virginia examiners have the lowest salary in comparison with neighboring states.

West Virginia examiners have the lowest salary in comparison with neighboring states.



The examiner position is classified by the West Virginia Division of Personnel (DOP), which is responsible for setting the salary. DOP compares the salaries in 13 southeastern states to assist in setting the compensation for the examiner position. Thus, the Legislative Auditor compared bank examiner salary ranges among these southeastern states. Figure 3 shows the salary ranges of the 13 southeastern states and West Virginia bank examiners. **These data show that West Virginia examiner salaries are still among the lowest, but the ranges compare better with the southeastern states than the surrounding states, understandably, since these were the salaries considered by DOP in setting the salary for bank examiners in West Virginia.** Although, these states represent a large and diverse geographical area, it excludes 3 of West Virginia’s 5 neighboring states. It is more likely that a bank examiner living on the western border of the state would take a job in Ohio to earn a higher salary than to take a job in North Carolina or Mississippi. **The Legislative Auditor finds that the current methodology used by**

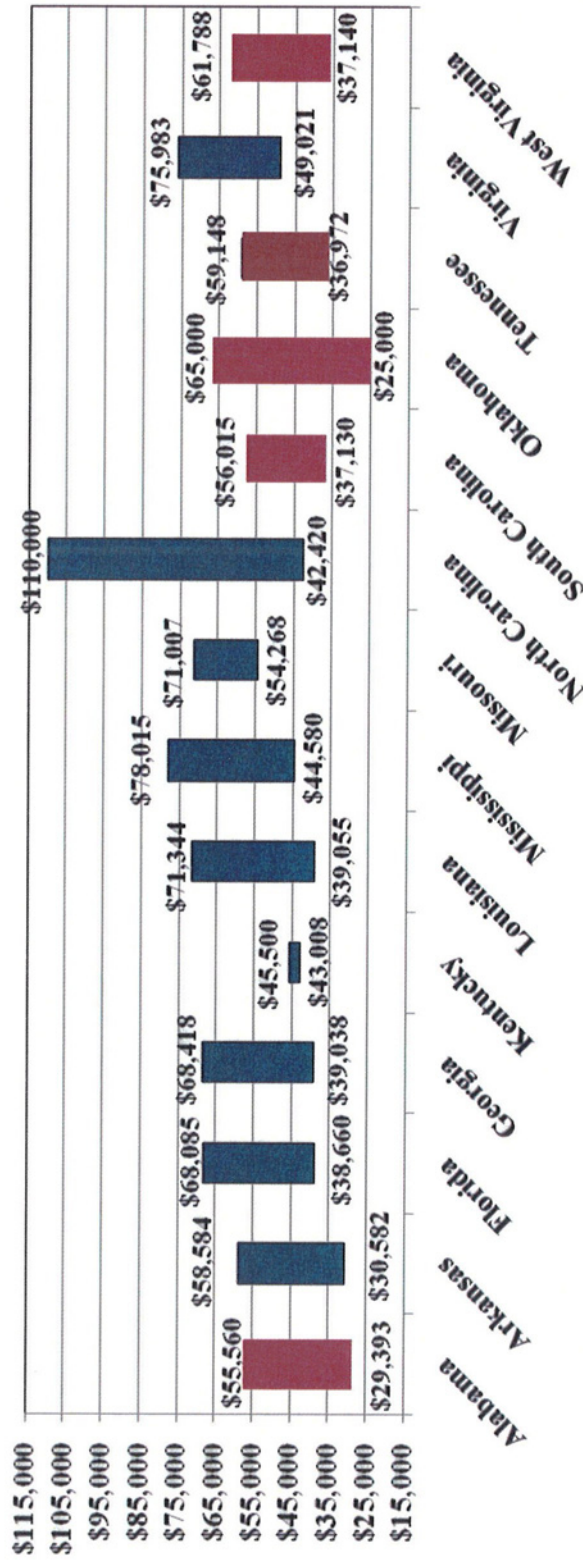
The West Virginia Division of Personnel compares the salaries in 13 southeastern states to assist in setting the compensation for the examiner position, but it does not consider 3 of West Virginia’s 5 neighboring states.

the DOP to set examiner salaries may have resulted in these salaries not being competitive.

Currently, the DOP is working with The Hay Group to improve the classified compensation plan. The Hay Group project intends to revise the definition of the state government market to include private and public sector salaries in West Virginia and private and public sector salaries in surrounding states. The goal is to achieve an internally fair and externally competitive classification system. However, the results of the study could be a long way from completion, as the project is currently in the survey phase. The Commissioner of Banking should consider meeting with the DOP to have it reexamine its method of setting salaries for the examiner position.

The Commissioner of Banking should consider meeting with the Division of Personnel to have it reexamine its method of setting salaries for the examiner position.

Figure 3
Examiner Salaries in Southeastern States



**These are the states used by the Division of Personnel to calculate salary ranges.
Source: CSBS 2008 Profile of State Chartered Banking*

Exempting the Examiner Position from Classified Service May Alleviate the Salary Concerns in the Division of Banking

Given the availability of similar jobs and the anxiety regarding turnover among senior-level Division employees, the Division could possibly retain experienced staff if allowed more flexibility in setting salaries. According to §31A-2-4(c)(2) the Commissioner may:

...if he or she elects, have all personnel subject to and under the classified service of the state personnel division.

Currently, all examiners are classified state employees, but the Commissioner could gain more control over salaries and other human resource practices by exercising her authority to exempt employees. **The Legislative Auditor recommends that the Commissioner consider exempting examiner positions in order to address personnel concerns, because the job classification and coinciding salary ranges are the primary inhibitor to examiner pay increases.** This change is an option if the Division wants to make examiner salaries more competitive.

Currently, all examiners are classified state employees, but the Commissioner could gain more control over salaries and other human resource practices by exercising her authority to exempt employees.

The Current Assessment Fee Structure Would Allow For Increased Salaries

If the Commissioner exempts examiner positions (or other positions in the agency), the Division would need to increase revenue to cover the resulting higher personnel costs of the agency. **Currently, the Division is charging less than half of the maximum assessment fee allowed by WV Code §31A-2-8(a)(1), which defines assessment fees for state banks.** In communication with the Legislative Auditor, the Commissioner expressed that the fee structure is beneficial for state banks and sufficient to cover the operating costs of the Division. The Commissioner states:

The Division assessed state-chartered banks at 40% of the maximum level allowable under the schedule in both July 2009 and January 2010, generating revenues of \$1.8 million, which proved to be more than sufficient to support the organizational unit [depository operations] responsible for bank examinations.

At the same time, the Commissioner acknowledges that the fee structure can be a disadvantage to the Division in the case of problematic or complex regulated institutions. It should be noted that the assessment fees collected are intended to support the operation of the entire agency according to Code--not just the depository operations as the quote indicates. Thus, assessment fees could be raised enough within the current assessment parameters to pay for higher salaries or other additional resources necessary to address problematic regulated institutions.

Two Boards Are Under the Authority of the Commissioner of Banking, but the West Virginia Lending and Credit Rate Board is No Longer in Operation

The Commissioner of Banking serves as Chair of the Board of Banking and Financial Institutions and Chair of the West Virginia Lending and Credit Rate Board. The Board of Banking is authorized by §31A-3-1, and it is granted the authority to approve or disapprove state-charter applications, branch applications, merger or acquisition applications, and to intervene with state-chartered shareholder actions if those actions place the depositor's funds in jeopardy. The Board must comply with the Open Meetings Act, and the Legislative Auditor finds that the Board of Banking is in compliance.

However, **the Lending and Credit Rate Board authorized by §47A-1-1 has not met, collected fees or promulgated any orders since 1999.** The Board was created to semiannually set the maximum interest rates and finance charges on loans, credit sales and similar transactions. In December 1997, the Legislative Auditor released an audit report which identified that federal legislation and other state legislative changes rendered the Board unnecessary. Furthermore, the report noted that in over 13 years of the Board's existence, it only changed credit rate ceilings once in 1995 after it first set rate ceilings at 18 percent when the Board was created in 1982. The current Commissioner of Banking and the General Counsel for the Division agree that the Board is unnecessary. Given the evidence, the Legislative Auditor recommends that the Legislature consider terminating the West Virginia Lending and Credit Rate Board.

Assessment fees could be raised enough within the current assessment parameters to pay for higher salaries or other additional resources necessary to address problematic regulated institutions.

The Legislative Auditor recommends that the Legislature consider terminating the West Virginia Lending and Credit Rate Board.

The Deputy Commissioner Position as Defined in Statute Should be Reevaluated

West Virginia Code §31A-2-1 creates the deputy commissioner position within the Division of Banking. The position has been vacant since 1999. When asked about the position, the Commissioner cites the Division's commitment to fiscal responsibility as the reason for the vacancy, and that there is no need to fill the position. This position was kept vacant by the previous two commissioners as well. However, the vacancy could leave the Division and the Board of Banking and Financial Institutions with limited enforcement capacity if the Commissioner would not be able to fulfill her duties. WV Code §31A-2-4(c)(15) defines the delegation authority of the Commissioner. Statute allows the Commissioner to delegate most duties to the qualified staff she selects, but the following authority can only be exercised by the Commissioner or the Deputy Commissioner:

(A) Order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule promulgated or order issued thereunder;

(B) Order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor of the financial institution;

(C) Revoke the certificate of authority, permit or license of any financial institution except a banking institution in accordance with the provisions of section thirteen of this article; and

(D) Accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which could be subject to an order under the provisions of this chapter. This assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving the assurance fails to comply with its terms, the assurance is prima facie evidence that prior to this assurance the person engaged in conduct described in the assurance

The deputy commissioner position within the Division of Banking has been vacant since 1999.

The vacancy could leave the Division and the Board of Banking and Financial Institutions with limited enforcement capacity if the Commissioner would not be able to fulfill her duties.

However, if three commissioners have not felt the need for a deputy,

the statutory duties of the position and the Commissioner's delegation authority may need to be reevaluated by the Legislature. **The Legislative Auditor recommends that the Legislature consider amending the statute to allow the Commissioner to designate the Deputy Commissioner duties to a designee of his or her choice.**

Conclusion

While the Division of Banking fulfills its role as a financial regulator, the Legislative Auditor is concerned that the Division's salaries for examiners may not be competitive. Financial institution examiner position salaries in the Division are not competitive with federal examiner salaries that are locally-based, and the salaries also are not competitive with the salaries offered by some neighboring state bank supervisory agencies. Theoretically, if the Division's salaries for examiner positions are not competitive, this could hinder the agency's ability to attract and retain these positions. It is a concern that the Division of Personnel's methodology to determine salaries for examiners does not incorporate salary data from three of the five surrounding states. The Commissioner of Banking should establish a dialogue with the Division of Personnel to have it reexamine the methodology used to determine salaries for examiner positions. However, the Commissioner of Banking may want to consider exercising the statutory authority to exempt Division employees from the classified personnel system if this personnel issue cannot be resolved satisfactorily. Furthermore, if salaries need to be raised to be more competitive, the Commissioner may have to raise assessment fees within the codified fee structure to support competitive salaries.

Theoretically, if the Division's salaries for examiner positions are not competitive, this could hinder the agency's ability to attract and retain examiners.

Also, the West Virginia Lending and Credit Rate Board has not met since 1999, and federal legislation has largely superseded the powers of the Board. The Deputy Commissioner position, which is set out in Code, has been vacant since 1999, so the duties of the position may need to be reevaluated by the Legislature.

Recommendations

1. *The Legislative Auditor recommends that the Commissioner consider entering into a dialogue with the Division of Personnel to have it reexamine the current methodology it uses to determine the salaries of*

examiner positions.

2. If the manner in which examiner salaries are determined cannot be resolved by the Division of Personnel, the Commissioner of Banking may want to consider using the statutory authority to exempt examiner positions from the classified personnel system.

3. The Legislative Auditor recommends that the Legislature consider terminating the West Virginia Lending and Credit Rate Board established in West Virginia Code §47A-1-1.

4. The Legislative Auditor recommends that the Legislature consider amending the statute to allow the Commissioner to designate the Deputy Commissioner's duties to a designee of his or her choice within the Division of Banking.

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

December 3, 2010

Sally Cline, Commissioner
West Virginia Division of Banking
One Players Club Drive
Suite 300
Charleston, WV 25311-1638

Dear Commissioner Cline:

This is to transmit a draft copy of the performance review of the West Virginia Division of Banking conducted as part of the Agency Review of the Department of Revenue. This report is scheduled to be presented during the December 13-15, 2010 interim meeting of the Joint Committee on Government Operations and the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by December 7, 2010. We need your written response by noon on December 9, 2010 so that it will be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, December 9, 2010 to make arrangements.

We request that you do not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

c. John Musgrave, Acting Cabinet Secretary, Department of Revenue

Joint Committee on Government and Finance

Appendix B: Division of Banking Fee Structure

Division of Banking Fee Structure				
Total Assets Over:	But Not Over This:	Pay This Amount:	Plus:	Of Excess Over:
\$0	\$2,000,000	\$0	0.00164502	\$0
\$2,000,000	\$20,000,000	\$3,290	0.000205628	\$2,000,000
\$20,000,000	\$100,000,000	\$6,991	0.000164502	\$20,000,000
\$100,000,000	\$200,000,000	\$20,151	0.000106926	\$100,000,000
\$200,000,000	\$1,000,000,000	\$30,844	0.000090476	\$200,000,000
\$1,000,000,000	\$2,000,000,000	\$103,225	0.000074026	\$1,000,000,000
\$2,000,000,000	\$6,000,000,000	\$177,251	0.000065801	\$2,000,000,000
\$6,000,000,000	\$20,000,000,000	\$440,454	0.000055988	\$6,000,000,000
\$20,000,000,000	\$40,000,000,000	\$1,224,292	0.00005267	\$20,000,000,000

Source: WV Code §31A-2-8(a)(1)

Appendix C: Depository Operations Exam Schedule

Depository Operations Exam Schedule				
Exam Due	Exam Date	Bank Name	Regulating Agency	Total Assets*
7/27/2010	4/20/2009	Summit Community Bank, Inc.	WVDOB	\$1,511,615,000
7/29/2010	12/15/2008	Main Street Bank Corp.	WVDOB	\$224,812,000
8/5/2010	12/22/2008	CNB Bank, Inc.	WVDOB	\$282,821,000
8/18/2010	1/26/2009	Freedom Bank, Inc.	FDIC	\$161,744,000
8/19/2010	1/20/2009	Logan Bank & Trust Company	WVDOB	\$232,009,000
8/25/2010	7/6/2009	The Poca Valley Bank, Inc.	FDIC	\$294,671,000
9/3/2010	7/27/2009	Bank of Mingo	WVDOB	\$113,167,000
9/6/2010	12/8/2008	First Central Bank, Inc.	FDIC	\$129,166,000
9/19/2010	2/23/2009	Bank of Gassaway	WVDOB	\$163,500,000
9/28/2010	9/28/2009	United Bank, Inc.	WVDOB	\$3,713,994,000
10/9/2010	3/9/2009	The Bank of Monroe	WVDOB	\$105,852,000
10/26/2010	9/28/2009	Bank of Charles Town	FDIC	\$302,772,000
10/29/2010	3/31/2009	Williamstown Bank, Inc.	WVDOB	\$118,351,000
11/26/2010	4/13/2009	The Grant County Bank	FDIC	\$245,876,000
12/11/2010	6/1/2009	Citizens Bank of Morgantown, Inc.	FDIC	\$30,569,000
12/14/2010	3/30/2009	Wesbanco Bank, Inc.	FDIC	\$5,334,086,000
12/30/2010	6/1/2009	Northern Hancock Bank & Trust Company	WVDOB	\$31,341,000
2/25/2011	12/7/2009	Putnam County Bank	FRB Richmond	\$539,988,000
3/9/2011	8/17/2009	Citizens Bank of West Virginia, Inc.	FDIC	\$237,135,000
3/11/2011	8/31/2009	Davis Trust Company	FDIC	\$141,287,000
3/15/2011	8/17/2009	MVB Bank, Inc.	WVDOB	\$394,096,000
4/1/2011	2/2/2010	BC Bank, Inc.	WVDOB	\$118,507,000
4/1/2011	8/31/2009	The Calhoun County Bank, Inc.	WVDOB	\$120,264,000
4/27/2011	10/13/2009	Bank of Mount Hope, Inc.	FDIC	\$121,793,000
4/29/2011	9/28/2009	FNB Bank, Inc.	WVDOB	\$141,137,000
5/25/2011	5/3/2010	Rock Branch Community Bank, Inc.	FDIC	\$65,961,000
6/3/2011	11/9/2009	First Neighborhood Bank, Inc.	FDIC	\$134,139,000
6/3/2011	10/26/2009	Clear Mountain Bank, Inc.	WVDOB	\$395,929,000
6/17/2011	11/23/2009	Community Bank of Parkersburg	WVDOB	\$228,751,000
6/22/2011	4/19/2010	Centra Bank, Inc.	WVDOB	\$1,368,949,000
7/25/2011	12/14/2009	Union Bank, Inc.	WVDOB	\$182,321,000
7/27/2011	1/4/2010	The Harrison County Bank	FDIC	\$90,684,000

8/16/2011	2/1/2010	Miners and Merchants Bank	FDIC	\$48,273,000
8/18/2011	1/19/2010	First Peoples Bank, Inc.	WVDOB	\$121,387,000
8/18/2011	11/9/2009	First Sentry Bank, Inc.	FDIC	\$492,700,000
8/19/2011	2/1/2010	Cornerstone Bank, Inc.	FDIC	\$83,860,000
8/24/2011	2/1/2010	West Union Bank	WVDOB	\$107,656,000
9/4/2011	12/7/2009	MCNB Bank and Trust Co.	FDIC	\$309,832,000
9/16/2011	2/8/2010	The First State Bank	WVDOB	\$229,032,000
10/12/2011	2/1/2010	Traders Bank, Inc.	WVDOB	\$155,675,000
10/15/2011	3/15/2010	Pioneer Community Bank, Inc.	WVDOB	\$116,464,000
10/22/2011	4/5/2010	The Citizens Bank of Weston, Inc.	FDIC	\$167,495,000
10/22/2011	4/5/2010	Pendleton Community Bank, Inc.	FDIC	\$246,354,000
10/22/2011	3/30/2010	Jefferson Security Bank	WVDOB	\$255,497,000
11/17/2011	4/12/2010	First Exchange Bank	WVDOB	\$201,300,000
12/4/2011	5/24/2010	Whitesville State Bank	FDIC	\$72,252,000
12/9/2011	5/3/2010	First Bank of Charleston, Inc.	WVDOB	\$160,655,000
12/25/2011	6/14/2010	Clay County Bank, Inc.	FDIC	\$72,204,000
12/28/2011	4/12/2010	Capon Valley Bank	FRB Richmond	\$160,755,000
1/2/2012	5/10/2010	The Pleasants County Bank	FRB Richmond	\$55,606,000
1/13/2012	6/7/2010	The Bank of Romney	WVDOB	\$234,726,000
2/26/2012	7/21/2010	Boone County Bank, Inc.	WVDOB	\$171,705,000
<i>Source: Division of Banking Depository Operation</i>				
<i>*As of 6/30/10</i>				

Appendix D: Credit Union Exam Schedule

Credit Union Exam Schedule				
Name	City	Exam Due	Exam Date	Total Assets
West Virginia Baptist State Convention Credit Union	Hilltop	4/16/2010	9/28/2009	\$179,413
West Virginia Public Employees Credit Union	Charleston	9/12/2010	2/18/2009	\$45,355,255
Clarksburg Area Postal Employees Credit Union	Clarksburg	1/30/2011	7/13/2009	\$10,303,263
Local #317 I.A.F.F. Credit Union	Charleston	2/20/2011	8/10/2009	\$6,171,434
West Virginia Central Credit Union	Parkersburg	12/10/2011	5/24/2010	\$81,668,996
<i>Source: Division of Banking Depository Operation *As of 6/30/10</i>				

Appendix E: Agency Response



WEST VIRGINIA DIVISION OF BANKING
ONE PLAYERS CLUB DRIVE
SUITE 300
CHARLESTON, WEST VIRGINIA 25311-1638
www.wvdlb.org

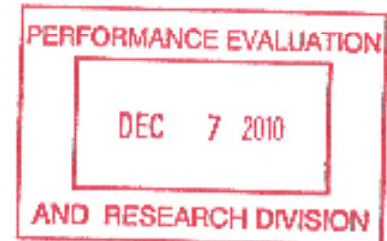
(204) 558-2294
Fax: (204) 558-0442

Earl Ray Tomblin
Governor

Sara M. Cline
Commissioner

December 7, 2010

John Sylvia, Director
Performance Evaluation and Research Division
West Virginia Legislature
Building 1, Room W-314
1900 Kanawha Blvd E.
Charleston, WV 25305-0610



Dear Director Sylvia:

We have reviewed the draft copy of the performance review of the West Virginia Division of Banking. The review was conducted as part of the Agency Review of the Department of Revenue. The Division accepts the report's four recommendations. We will work with the Administration, along with the Division of Personnel and the Legislature to accomplish those goals.

We appreciate your efforts, as reflected in the draft report, and do not think an exit meeting is needed. Of course we remain available to you if any further information or clarification is required.

Again, thank you for your time and your thoughtful consideration of our concerns, and please and let me know if you or your staff have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Sara M. Cline".

Sara M. Cline
Commissioner

cc: John Musgrave, Acting Cabinet Secretary, Department of Revenue



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939