



*South Carolina*  
**DEPARTMENT OF CONSUMER AFFAIRS**  
 293 Greystone Boulevard Suite 400  
 P. O. BOX 5757  
 COLUMBIA, SC 29250-5757

**Commissioners**  
**David Campbell**  
 Chair  
 Columbia  
**W. Fred Pennington, Jr.**  
 Vice Chair  
 Simpsonville  
**Mark Hammond**  
 Secretary of State  
 Columbia  
**James E. Lewis**  
 Myrtle Beach  
**Jack Pressly**  
 Columbia

**Carri Grube Lybarker**  
 Administrator/  
 Consumer Advocate

**PROTECTING CONSUMERS SINCE 1975**

January 29, 2024

*Via Electronic Mail Only*

Honorable Joseph H. Jefferson, Jr.  
 Subcommittee Chair, Healthcare and Regulatory  
 House of Representatives Legislative Oversight Committee  
 P O Office Box 11867  
 Columbia SC 29211

**RE: Additional questions from subcommittee members**

Dear Chair Jefferson:

I am in receipt of your letter dated January 5, 2024, and email dated January 22, 2024, regarding subcommittee meeting follow-up questions from various members of the subcommittee. Please find the Department’s responses to these questions below.

**Budget**

1. Does the DCA need approval from the General Assembly to increase fees and fines? If so, when did the agency last seek to increase fees and fines?

**Response:** Yes, DCA needs approval from the Legislature to change the dollar amount of fines and fees. The agency is not able to adjust licensing fees on its own authority, a power given other sister agencies in the regulation of non-depository financial institutions. All amounts are listed in statutes or regulations. Increase requests have traditionally been submitted when a bill amending the statute on other grounds is introduced. Provisos have also been used to temporarily modify a fee until the permanent statutory change is made.

2. Which fees or fines contribute most to the agencies other funds total?

**Response:** Looking at a five-year collection average (FY19–FY23), Credit Grantor Notification Fees constitute the largest category of other funds with approximately \$541,000 annually. Fees collected under the Mortgage Broker licensing program come in second with an average of \$425,000 annually. Professional Employer Organizations are third with an average of \$245,000 in fees annually.



3. Provide a list of the following:

- Licensing fees, associated statute or regulation, and date fee was last modified.
- Fines, associated statute or regulation, and date fine was last modified.

**Response:** Please see both lists attached.

### **Expert Witnesses**

4. Is there any state regulation regarding how or when your agency can procure expert witnesses or consultants?

**Response:** The Consumer Protection Code permits the hiring of “regular staff, temporary, professional, technical, or research specialists to assist in preparing and presenting cases” for the Consumer Advocacy Division. *See* S.C. Code Ann. Section 37-6-608. It further requires the payment be commensurate with what is generally paid by regulated entities, not to exceed appropriations. Procurement of expert witnesses is exempt from the SC Procurement Code. *See* S.C. Code Ann. Section 11-35-710(A); [Board exemptions list](#).

### **Consumer Advocacy in Other States**

5. Several states in the southeast (e.g., Alabama, Arkansas, Georgia, Kentucky, Florida, Louisiana, North Carolina, etc.) do not have standalone consumer advocacy agencies. The Attorney General’s Office, in many cases, is the entity responsible for consumer advocacy and protection.

- What is the benefit of having a standalone consumer advocacy agency?

**Response:** A combination of the 1968 and 1974 versions of the Uniform Consumer Credit Code, the Consumer Protection Code was enacted nearly fifty years ago to provide for consumer protection in the credit marketplace. The drafters recommended administration and enforcement fall under the purview of one agency:

“In order to obtain the administration essential to the effectiveness of this Act, the National Conference recommends centralizing all powers of administration in a single official or agency.” *Comment 6.103*

The Code is nuanced and complex, as changes to one section could significantly affect another. The consistency of the administration and enforcement of the laws is also an important factor in ensuring a balanced marketplace. The Department is uniquely situated—through its regulatory authority, charge to receive and mediate consumer complaints, and general interaction with the public—to become aware



of matters with which the public should be wary as well as to educate consumers and businesses alike on their rights and responsibilities under various laws.

One example of the efficiency of a centralized consumer protection structure can be seen in the Department's complaint processing function. From Fiscal Year 2019 through Fiscal Year 2023, DCA only referred an average of 9% of complaints to other state or federal agencies. Of the complaints assigned within DCA, the Legal Division handled 26% as the business or subject matter fell within the agency's regulatory jurisdiction. DCA's Identity Theft Unit handled 2% and the remaining 72%, on average, were handled via the voluntary mediation process in the Consumer Services Division. Voluntary mediation occurs when (1) DCA is required to take certain complaints but does not have enforcement authority (i.e., cable complaints, Homeowner Association complaints), or (2) no other state or federal agency has jurisdiction over the business or subject matter.

### H. 3952

6. At the August 9, 2023, meeting, the committee received testimony regarding the agency's relationship with the state's automobile dealers.
  - How has the DCA sought to inform the state's automobile dealers regarding the law change put into effect by H.3952?

**Response:** DCA has performed the following outreach/educational efforts:

- In June 2023, the Department updated its closing fee filing forms as well as its online filing system. During that timeframe, staff worked one-on-one with dealers that filed for a closing fee under the new law.
- On June 29, 2023, the Department held a webinar for motor vehicle dealers to explain the changes in the statute. Topics included: (1) the filing process; (2) perpetual certificates; (3) disclosure requirements; (4) Department access to records; and (5) Department reviews and investigations. The Department also posted the video to YouTube where it has been viewed 157 times.
- On October 6, 2023, the Department emailed all dealers to make them aware of its [new dedicated webpage for motor vehicle dealers](#) as well as the updated [Guide for Auto Dealers](#) and [Closing Fee FAQs](#). Attached to the email was an Advisory Letter (updated September 2023), which touched on various laws applicable to dealers, including the closing fee statute.
- On December 5, 2023, the Department held its annual webinar on renewals related to the auto industry and addressed the Closing Fee Statute changes. The Department also posted the video to YouTube where it has been viewed 62 times.



- On January 3, 2024, the Department emailed all dealers with a filed closing fee to address questions about whether a dealer needed to file a renewal by January 31<sup>st</sup>.
  - On January 22, 2024, the Department emailed all dealers that had not filed for a closing fee under the new statute to remind them of the January 31<sup>st</sup> deadline to file for a perpetual certificate.
- How has agency leadership trained its staff regarding the parameters of the new law? How has the new law impacted the agency's processes and procedures?

**Response:** The law was amended heavily in 2023, revising definitions and the filing process itself, as well as creating a framework for Department reviews and investigations. As such, Department processes and procedures were revised to coincide with the wholesale revisions. Throughout the legislative process, the Department actively followed H. 3952 and had internal discussions about how to implement it as the language evolved. The week the new law became effective, staff discussed the bill and changes to internal processes. As closing fee filings are received, hands-on training and collaboration among staff is taking place.

- How has the DCA sought to improve relations with the state automobile dealers?

**Response:** The Department has revamped its closing fee webpage and dedicated it to all filings related to motor vehicle dealers. The Department has also provided education through its website and emails, a webinar dedicated to closing fee statute changes, an updated Guide for Auto Dealers, updated Closing Fee FAQs, and an updated Advisory Letter. In an email to the dealers, the Department also offered to answer any questions the dealers may have either by phone or by a meeting (virtual, by phone, or in person). As a result of that email, the Department received several requests for phone calls and in person meetings to assist dealers with their questions. The Department is unaware of any issues with any individual automobile dealer.

- Has the new law improved the agency's relationship with the state's automobile dealers?
  - If yes, how?
  - If no, why?



**Response:** Yes. The amendment clearly sets forth a framework for the Department's review of closing fees and for compliance reviews and investigations, so all parties are on the same page. Individual dealers have also expressed appreciation for the efficient process and quick turnaround times for closing fee filings. Since the law became effective, we have processed 24% more applications compared with the same timeframe the previous year. The average number of days to process applications decreased from 3.6 days to 2 days. We processed 98.2% in 15 days or less compared to 93.2% the previous year.

On the other hand, we are still in litigation with the South Carolina Automobile Dealers Association. This is a unique lawsuit and the Department's intention and desire is to resolve it as expeditiously as possible. The Department believes the new law renders moot the issues raised in the lawsuit. As stated by the Association on August 9, 2023, the new law took care of 98% of its concerns.

### **Agency Staffing**

7. Agency personnel, on several occasions, has pointed to limited human resources as a factor inhibiting the agency's ability to reach the state's consumers.
- Has DCA leadership considered training volunteer community members to extend the agency's reach across the state?

**Response:** No, we have not considered training volunteers.

- If the agency were able to train volunteer community members, in what capacity could these volunteers serve the agency and their local community?

**Response:** If the agency were able to train volunteer community members, those members might be able to assist in outreach efforts through representation of the agency at fairs or presenting standardized presentations.

### **Public Information Division**

8. The Public Information Division has 3 FTEs. How many in-person presentations did the division facilitate in the prior fiscal year? Does the agency have targets for the total number in-person and virtual presentations given annually?

**Response:** The Public Information Division facilitated 85 in-person presentations in the 2023 Fiscal Year. The agency has a goal of giving 125 total presentations each fiscal year. There is not a distinction in the goal between in-person or virtual presentations.



### **Workers' Compensation Insurance**

9. Are any of the industries licensed by the Department of Consumer Affairs required to attest to having workers' compensation insurance? If not, would there be a benefit to requiring this information be provided during initial and renewal filings?

**Response:** Professional Employer Organizations (PEOs). The requirement is statutory due to the services PEOs provide client companies. DCA does not believe there would be a benefit to requiring this information for other applicants as it is not needed for us to perform our regulatory duties.

10. Does the DCA have authority to request licensed businesses provide proof of workers' compensation insurance during compliance reviews and inspections?

- If so, would the agency be amenable to informing the SC Workers' Compensation Commission of businesses found to not have workers' compensation insurance?

**Response:** We can only request proof of coverage from Professional Employer Organizations (PEOs). DCA would be happy to provide the Workers' Compensation Commission with information on noncompliant businesses.

11. At the October 19, 2023, meeting, agency representatives stated the South Carolina State Accident Fund has not been reviewed by DCA. The State Accident Fund provides mandatory workers' compensation insurance for all state agencies and offers coverage to local and municipal governments. Why would the DCA not review this agency?

**Response:** DCA's authority to review workers' compensation insurance issues is found in Title 38, Section 73. Generally, that section provides for copies of certain "filings" made with the Department of Insurance to be provided to DCA for review. The State Accident Fund is not explicitly identified in Title 38, section 73 but is instead established in Title 42, Section 7. DCA is not mentioned in that title nor are we aware of any filings by the Fund with the Department of Insurance.

### **Department of Insurance**

12. According to staff testimony presented at the October 19, 2023, meeting, statute requires insurance companies to submit filings to the DCA.

- Please identify the associated statute and provide an opinion as to whether the statute should be amended to reflect the Department of Insurance's submission of insurance filings to DCA on behalf of insurance companies.



**Response:** For workers compensation filings, insurance companies are required to provide filings to DCA directly per S.C. Code Ann. Section 38-73-525 (B)(1). While the workers compensation submittal process may not strictly follow the statute, it has been effective and sufficiently allows DCA to perform its duties; therefore, DCA does not believe the statute should be amended at this time. If an amendment was considered, DCA would recommend it contain language similar to that for fire/allied/homeowners insurance. Per S.C. Code Ann. Section 38-73-260(E), the Department of Insurance is to provide those filings or can direct the companies to provide the filing to DCA. (Note the same language is found in S.C. Code Ann. Section 38-73-240(E)).

13. According to staff testimony presented at the October 19, 2023, meeting, DCA engaged the Department of Insurance (DOI) regarding access to their online system. Access to this system would allow DCA to obtain insurance filings without DOI needing to transfer the information.

- Would access to this system resolve any known conflicts with statute?

**Response:** Access could rectify the conflict in the statute; however, many factors including security, would need to be reviewed to determine feasibility. As stated in response to Question 12, while insurers and DOI utilize the System for Electronic Rate and Form Filing (SERFF) for submitting, reviewing, and processing insurance filings, the current process among DCA, DOI and insurers is working effectively. As such, DCA does not believe it needs access to SERFF at this time.

- Has DCA leadership reengaged the Department of Insurance to discuss shared access to their online system?

**Response:** Yes, DCA has reengaged DOI regarding the possibility of shared access. Part of the discussion included SERFF's framework and potential confidentiality issues associated with such access as well as the system's capability, or lack thereof, in limiting access to only those filings falling within our jurisdiction.

## Reports

14. The DCA produces several reports that examine consumer protection trends. The dates for several reports are not current. Are the identified reports still produced by the agency? If so, will updated reports be posted online?

- Complaint Report – 2017
- Credit Counseling Report – 2016
- Scam Report – 2017



- Security Breach Notice Report – 2017
- Identity Theft Unit (Fifth Anniversary Report) – 2018

**Response:** DCA is required by law to issue an annual State of Credit Report, Mortgage Log Report and Homeowners Associations Complaint Report. The other reports are issued on DCA’s initiative, when resources allow, to celebrate the anniversary of a law or Division or relay a compilation of data in which the public has indicated interest. As indicated below, some of the reports were one-time reports, are combined into a larger report, or the data has been released via a press release only:

- **Complaint Report** – Instead of a report, DCA issues at least one press release annually containing data similar to that contained in this Report. When we move to a new Complaint System (target FY25) we hope to automate an annual report.
- **Credit Counseling** – In 2017, the Department began issuing a standalone State of Credit Report. The Credit Counseling Annual Report data is a component thereof.
- **Scam Report** – 2017 was the last year the Department published a report solely on scams. In 2021 and 2022 the information included in this Report was included in the combined “ID Theft and Scams” reports. Ten-year historical data on scams was also included in the Identity Theft Unit 10-Year Anniversary Report. The agency created an automated report in 2021 showing the number of scams reported and top three categories. These numbers are actively posted monthly under the [“Scams”](#) tab on our website. At the end of each year a month-by-month summary is posted on the “Reports” page.
- **Security Breach Notice Report** – Instead of a report, DCA issues at least one press release annually containing data regarding security breach notices received. We also included data on security breaches in the 2018 Identity Theft Unit Fifth Anniversary Report. We do have draft versions for 2018–2020 that were not finalized. We will review those and post online and discuss producing such reports for 2021 forward or a compilation thereof.
- **Special ID Theft Reports** – Over the past several years SCDCA has created several one-time reports on milestone anniversaries of the creation of the Identity Theft Unit. The latest update to the page is the [10-Year Anniversary Report](#) posted on December 14, 2023.





15. The State of Credit Report, Identity Theft Unit Report, and 2022 Mortgage Log Data Report provide a variety of metrics to inform interested parties regarding the state of consumer access to services and consumer safety in the marketplace.

- DCA does not provide any opinions, suggestions, or recommendations regarding the data, which may provide context or assist in the development of public policy decisions.
  - Is DCA averse to providing such feedback?

**Response:** DCA is charged with advising the Governor and General Assembly on laws and amendments that would promote the protection of legitimate interests of South Carolina consumers. *See* S.C. Code Ann. Section 37-6-117(g). Traditionally these recommendations are made during the legislative process, but the agency would be happy to provide feedback in the issued reports.

### **Licensed Businesses**

16. According to information provided by agency personnel at the Thursday, November 9, 2023, meeting, the Investigator Team has five staff members who are responsible for visiting licensees to verify adherence to state laws and regulations. Additionally, agency personnel stated the agency does not have the resources or capacity to visit all licensed businesses.

- What percentage of licensed businesses are visited in an average year?

**Response:** Our goal is to review 25% of licensed businesses each fiscal year. The investigators may visit these businesses or do a desk review (business provides records via secure portal).

- Does the agency have targets for the total number visits conducted annually by industry type?

**Response:** No, with the exception of preneed funeral contract providers as that statute requires that we visit each at least once every two years.

- What percentage of licensed businesses should be visited annually to safeguard against violations of state law? How many investigators would be needed to achieve this percentage?

**Response:** Ideally DCA investigators would review 50% of licensed businesses each year to ensure compliance with state law. This is comparable to what is required for preneed providers (once every two years) and is similar to what other agencies that regulate non-depository institutions do. The five existing investigators typically review 25% each year. In order to review 50% each year, the Department would need five more investigators.



- How many inspectors would the agency need to visit 25%, 50%, and 75% of licensed businesses respectively?

**Response:** The five existing investigators typically review 25% each year. Based on this, the Department would need 10 to review 50% and 15 to review 75%.

- Please identify the total number of businesses by industry type (e.g., pawn brokers, continuing care retirement communities, etc.) and the percentage of those businesses visited by an investigator in the prior fiscal year.

**Response:** Please see the table below.

Industry	Total Number of Businesses as of August 2022	Percentage Reviewed FY23
Athlete Agents	167	0
Credit Counseling	89	0
CCRC	35	14.3%
DMPO	33	15.2%
Mortgage Brokers	554	17.3%
Motor Club	25	0
Motor Vehicle Dealers	829	7.2%
Pawnbrokers	119	33.6%
Physical Fitness	596	34.7%
Preneed Funeral	350	41.7%
Prepaid Legal	10	0
PEO	111	0
Credit Grantor Notification	1,643	0
Maximum Rate Schedule	1,622	0
Credit Grantor Notification – Rent-to-Own	5	0

- Provide the committee a list of licensed businesses by industry type (include addresses).

**Response:** Please see attached. Note that the addresses in the Mortgage Broker tab (orange column) should not be posted publicly. These are pulled



from a regulator-only report in the Nationwide Multistate Licensing System and could include home addresses.

### **Homeowners Associations**

17. Are developers required to ensure HOA's have a certain amount of financial reserves available prior to turning over control of the HOA to a community governing board? Insufficient reserves could require significant increases in regime fees once the community governing board takes control of the HOA.

- Would there be a benefit to having such a requirement?

**Response:** Currently, DCA is not aware of a law requiring a HOA to have financial reserves. The agency can certainly see a benefit of requiring reserves to ensure proper care and performance of duties that fall on the HOA; however, we do not have sufficient knowledge of the subject matter to assert that the benefit outweighs any potential consequences.

### **Future Outlook**

18. The DCA has been in existence for nearly 50 years and has provided services to consumers and businesses successfully over that period.

- Will the DCA need to abandon its current operational paradigm to meet the challenges consumers and businesses will experience in the next 5-15 years? Please explain.

**Response:** No. The agency has a culture of resiliency and has weathered many storms in its nearly 50-year history. DCA has relied on technology to be able to consistently provide its services in an efficient and cost-effective manner. DCA was one of the first agencies to adopt YouTube and Facebook and served as the sole SC state agency on Nextdoor for some time. We are able to operate currently at staffing levels far below those in the past, even though responsibilities have continued to increase. The agency will need to continue to identify areas for automation of staff tasks and use technology to enhance services with the goal of allowing staff to focus on customer service/ provide one-on-one customer assistance. Staff training and education is an important component of successfully performing job functions in the ever-evolving marketplace as well. DCA will prioritize that effort as well to help ensure the agency can continue to serve its constituency effectively.

- What significant changes to the consumer and business environment does DCA leadership and the commission board anticipate may disrupt how the agency serves its core constituency (e.g., artificial intelligence (AI), etc.)?



**Response:** Artificial Intelligence is certainly a development that we have already seen impact the consumer marketplace and business operations of regulated entities. We've seen its use by businesses to streamline compliance as well as in making credit decisions. Similar with the use of "Big Data" or methods of culling information from nontraditional sources to use in making credit decisions, marketing of products, etc. Artificial Intelligence and technology/ software are also providing new tactics scammers can use to separate consumers from their hard-earned money and/or personal information. Education of consumers and businesses alike in this everchanging landscape and making sure technology is leveraged responsibly and within the bounds of the law will be priorities.

19. Has agency leadership or the commission board conducted a study to determine if the agency should receive additional resources to establish a physical presence regionally (e.g., Upstate, Midlands, etc.)?
- If not, do you believe there is value in conducting such a study?

**Response:** No, DCA has not conducted a study regarding a regional presence. Prior to the Great Recession, DCA partnered with libraries across the state to create satellite offices. DCA employees would staff the office at least once monthly to meet face-to-face with consumers, take complaints, and make presentations. Locations included Florence, Gaffney, Summerville, and Greenwood. The satellite location initiative was discontinued due to budget cuts in 2009 and DCA's subsequent reduction in force.

With the advancement in technology, DCA does not believe a study is necessary. We are able to harness technology in a cost-efficient manner to reach and assist more consumers now than ever and are able to focus in-person presentations and contacts with groups that may not be as technologically savvy. The Outreach Coordinator position requested in the agency's FY24 Budget Request and FY25 Request would assist in that effort.

20. According to DCA's website, the agency has responsibility for approximately 15 industries. What is the exact number?

**Response:** DCA has licensing and regulatory authority for 12 specific industries designated in various statutes:

Athlete Agents, Continuing Care Retirement Communities, Credit Counselors, Discount Medical Plan Organizations, Mortgage Brokers, Motor Clubs, Motor Vehicle Dealer Closing Fees, Pawnbrokers, Physical Fitness Service Providers, Preneed Funeral Contract Providers, Prepaid Legal, Professional Employer Organizations.



DCA also has regulatory authority for Consumer Credit Sellers (e.g., furniture stores, jewelry stores, appliance stores), Consumer Lenders (e.g., installment lenders, title lenders), Consumer Lessors, and Rent-to-own. These various businesses file Credit Grantor Notification, Credit Grantor Notification (Rent-to-Own), and Maximum Rate Schedules (credit sales, loans, credit cards). Because these three filings cover an array of industry types, we generally refer to the totality as “15 industries.”

We appreciate the opportunity to provide clarification and hope this information is helpful. Please feel free to reach me at 803-734-4233 or [CLybarker@scconsumer.gov](mailto:CLybarker@scconsumer.gov) with any questions.

Best regards,

A handwritten signature in blue ink that reads "Carri Grube Lybarker".

Carri Grube Lybarker, Esq.

Enclosures: As stated.