Ken Levine, Director
Sunset Advisory Commission
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Re: Sunset Staff Review of the Finance Commission of Texas and the three finance agencies under its regulatory purview

Dear Mr. Levine:

The Texas Bankers Association (TBA) is pleased to provide comments on the Sunset Advisory Commission's Staff Report on the Finance Commission of Texas, Texas Department of Banking (DOB), Office of Consumer Credit Commissioner (OCCC), and Department of Savings and Mortgage Lending (SML). As background, TBA is the nation's oldest and largest state banking trade association, and we are proud to represent each of our 433 member banks. TBA's membership is composed of both commercial banks and savings and loan associations, and approximately 50% of our members are state chartered institutions. It is with the interests of these members in mind that we write to you today.

Texas is blessed to have a strong banking environment, and Texas bankers take great pride in the fact that our banks weathered the financial crisis of 2008, 2009, and 2010 as well as they did. Our state chartered banks and thrifts were able to navigate one of the nation's most challenging times for banking because of the statutory oversight established by the Legislature and the regulatory oversight adopted by the Texas Finance Commission. The Legislature's faith in the efficient operation and management of the Finance Commission is, we believe, proven by the fact that it has been 18 years since the Finance Commission and the three finance agencies under its regulatory umbrella have undergone Sunset review.

We appreciate your team's thoughtful evaluation of the agencies, and we agree with a number of the recommendations in the Staff Report. We recognize there is always room for improvement and a thorough periodic review of any organization's operations is warranted. However, there are recommendations that our members strongly disagree with. We will highlight those below.

First, we disagree with recommendation 1.1, namely, the abolishment of the Department of Savings and Mortgage Lending as a separate state agency. As a self-directed semi-independent agency, abolishing SML as a separate state agency would yield no fiscal savings to the State of Texas. This agency is paid for by its regulated entities and receives no legislative appropriations. Abolishing this agency will not make state government any smaller – all of its functions would simply be moved to DOB, which would have to grow to absorb them.

From an operational perspective, we do not believe abolishing SML would yield any efficiencies. In preparing for the Finance Commission and the finance agencies' sunset review,

TBA staff reviewed the Sunset Advisory Commission's *Sunset in Texas* publication for guidance on what standards guide a sunset review. (This publication can be found at: https://www.sunset.texas.gov/public/uploads/u64/Sunset%20in%20Texas%202017-2019.pdf.) It's interesting to note that the first question found in the textbox on page 4 of that publication is, "How efficiently and effectively do the agency and its advisory committees operate?" Of the three finance agencies under the Finance Commission's regulatory umbrella, SML operates the most efficiently. The table found on page 34 of the Staff Report highlights just this efficiency: in fact, SML's administration costs are over $44,000 less per staff member than the administration costs at OCCC and almost $50,000 less per staff member than the administration costs at DOB. Certainly this is just one measure, but if the first item Sunset staff looks at is efficiency, and that standard is overwhelmingly measured to be tens of thousands of dollars less than similarly situated agencies, we are hard-pressed to understand recommending SML's abolishment.

Furthermore, based on information found on page 27 of the Staff Report, moving the regulation of state chartered thrifts to DOB will result in those institutions' assessments increasing "on average 17 percent", meaning state savings banks could "pay approximately $4,979 more on average for annual assessments at DOB." Again, we are hard-pressed to understand abolishing an agency that adds no dollars to the state's coffers, the abolishment of which will cause the fees paid by its regulated entities to go up. Please do not overlook the fact that these fee increases will ultimately be borne by Texas consumers through higher banking fees or restricted service offerings.

From a policy perspective, we do not believe that transferring the regulation of state savings banks to the Department of Banking is warranted. Savings banks are required by statute to hold more than 50 percent of assets in real estate investments. As the financial crisis of the last decade reaffirmed, real estate lending is cyclical in nature. Despite market pressures to the contrary, Texas' savings bank regulators took a consistent view of their thrifts' real estate loan portfolios because, again, the institutions were required by statute to hold those loans. We believe this consistency helped state chartered thrifts weather the crisis better than those holding federal charters. The management teams of Texas' thrifts overwhelmingly agree and place a high level of importance on having a dedicated thrift regulator. So much so, in fact, that over 25% of Texas' federally chartered savings banks converted to the state savings bank charter after the federal Office of Thrift Supervision was merged into the Office of the Comptroller of the Currency (e.g., when the dedicated federal thrift regulator was abolished.) This merger was required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, former President Obama's signature banking reform legislation. It's disappointing to see a suggested policy change in Texas that follows such disastrous federal footsteps; we certainly hope Sunset Commission members disagree with this recommendation.

Second, we disagree with recommendation 2.1 requiring the finance agencies to remit all administrative penalties to the General Revenue Fund. In addition to the three finance agencies being self-funding and self-leveling, they are also self-directed and semi-independent. These agencies support their activities through the fees they assess on their regulated entities. They have enjoyed self-directed semi-independent status since it was granted by the Legislature in 2009. No General Revenue Funds are expended in the agencies' operations. In fact, the Finance

Commission and each of the finance agencies are statutorily required to pay the costs incurred by the Sunset Commission in performing its review.

The suggestion that administrative penalties collected by these regulators be remitted to general revenue is counterintuitive. The recommended change in statute is needed, the Staff Report reasons, because it "would help instill confidence in the agency's enforcement programs by removing the appearance that penalties are agency revenue generators". (p. 36, Staff Report) We believe the result of this recommendation being adopted will be that good actors will be forced to pay for bad actors' behavior.

Based on the findings in the Staff Report, the agencies are not using their enforcement authority to set a "speed trap" to increase agency revenue. The total amount of administrative penalties collected by the three finance agencies in FY 2017 was $1,232,969. The finance agencies regulate 64,334 individuals and businesses. The collection of $1.2 million in administrative fines is demonstrating that these agencies are far from using their enforcement programs as a revenue generator. Since these agencies use assessments collected to enforce their governing statutes and regulations, remitting the administrative penalties they collect to the General Revenue Fund will prevent the agencies from recouping any costs associated with their investigations into wrongdoing or unlicensed behavior. This will drive costs up for their regulated industries, and, because these costs will likely be passed on to the end user, ultimately be paid by Texas consumers. Simply stated, we believe sweeping administrative penalties collected into the General Revenue Fund is bad policy and sends a bad message to the entities that follow the finance agencies' rules.

Third, we disagree with the reasoning behind recommendation 2.3 directing the Finance Commission to develop a budget policy that fosters more straightforward budgeting and fee setting. TBA's state chartered members' fees are set by the DOB and SML. They have the ability to review the agencies' annual budgets before they are adopted by the Finance Commission. The public has the opportunity to provide input on the budgets as well. Our members, knowing that the assessment fees they pay fund the agencies, have neither complained about the amount of their annual assessments, nor voiced a desire to have the way these assessments are levied changed.

The agencies' fee setting practices are in place because they budget for potential bad times to ensure adequate funds are on hand in the event of an unforeseen economic downturn. The agencies' practices are especially prudent when viewed in light of the fact that in the event assessments levied were not enough to cover an agency's operating expenses that would very likely be due to the fact that the economy had taken a turn for the worse. This would not be the time to levy additional fees on a state chartered bank or thrift. While the budget policy employed by the finance agencies may seem foreign to appropriators accustomed to a two-year budget cycle, the Finance Commission's budget policy ensures the finance agencies are well capitalized regardless of economic forces in the marketplace.

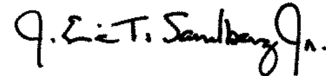
Finally, we disagree with recommendation 2.4 directing the Finance Commission to update its fund balance to limit growth. The Finance Commission updated its fund balance policy in February, 2018, and we believe this updated policy should be fully implemented before any

additional changes are made. Furthermore, we believe the dedicated men and women who serve on the Texas Finance Commission are better suited to set this policy because they have a better understanding of the agencies' finances and their historic and projected budgets and expenditure patterns.

In conclusion, on behalf of our state chartered bankers, TBA does not believe the advantages of consolidating SML into the Department of Banking compensate for the disadvantages. We believe sweeping administrative penalties collected to the General Revenue Fund is bad policy, and we believe existing budgeting practices at the finance agencies are appropriate given the nature of the financial industry. Finally, we believe the Finance Commission's recently adopted fund balance policy should be given time to work rather than being changed a second time in as many years.

Thank you in advance for your careful consideration.

Sincerely,



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cc: Members, Texas Sunset Advisory Commission
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