John C Fleming
General Counsel

**Relating to Sunset Commission Recommendations**

**Finance Commission**

**Department of Banking**

**Department of Savings and Mortgage Lending**

**Office of Consumer Credit Commissioner**

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**Summary of Position of Texas Mortgage Bankers Association**

The Texas Mortgage Bankers Association opposes Sunset staff recommendation 1.1 relating to the abolishment of the Department of Savings and Mortgage Lending. The Department of Savings and Mortgage Lending should remain as a stand-alone regulator for the 26 state chartered savings banks, 400 plus registered mortgage bankers, 1,100 plus mortgage companies and the more than 26,000 individual licensed mortgage loan originators. Abolishing SML does not "shrink government" as all of its regulatory oversight and licensing requirements will remain. If anything, it complicates governance by creating an additional governmental overly upon current SML functions. There is no savings that would benefit Texas taxpayers in general by the consolidation. We question whether any significant savings will be realized by the savings banks or the mortgage banking industry. We believe that a stand-alone regulator dedicated to supervision and regulation of residential mortgage lending benefits all Texans.

The Texas Mortgage Bankers Association supports many of the remaining recommendations contained in the Staff report. Specifically, TMBA supports recommendation 2.1 requiring the Finance Commission agencies to submit administrative penalties to the General Revenue Fund. While TMBA has not seen any current evidence that any of these agencies use penalty assessments as revenue enhancements, we do agree with the conclusion that this recommendation.

The Texas Mortgage Bankers Association agrees with the Finance Commission as to recommendation 2.4 relating to fund balances policy. Because the Finance Commission updated its fund balance policy during this year, no additional change should be made until the results of the recently revised policy can be monitored and analyzed.

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**About the Texas Mortgage Bankers Association.**

Because of the diverse nature of our membership, TMBA has members who are regulated by each of the Finance Commission Agencies. Our state chartered commercial bank members are regulated by the Texas Department of Banking. Our thrift members are regulated by the Texas Department of Savings and Mortgage Lending as are our mortgage banker members. Some of our mortgage banker members have also elected to carry a Chapter 342 license with the Office of Consumer Credit Commissioner. In the past, we have had members that were affiliates of large national bank holding companies that were in the consumer finance loan business, including 2nd lien mortgage loans, and those entities are also regulated by the Office of the Consumer Credit Commissioner. We also have credit union members, many of whom, if not most, are regulated by the National Credit Union Administration (I am not aware of any of our current credit union members that may be subject to jurisdiction of the Texas Credit Union Department).

Our members are banks, thrifts (ie savings and loans and savings banks), credit unions, the mortgage subsidiaries and affiliates of the depository institutions, and non-depository mortgage bankers (often referred to in the industry as independent mortgage bankers). Our bank members include the large national institutions such as J.P Morgan Chase, Wells Fargo, Bank of America; and Texas based institutions such as Comerica Bank, Frost Bank, Texas Capital Bank, Plains Capital (including its mortgage subsidiary PrimeLending. Our bank members also include a number of community banks. Our mortgage banker members include both small mortgage bankers who do business mainly in Texas; many mid-size members who are based in Texas but do business in multiple states; and the very large national mortgage bankers such as NationStar Mortgage (based in Flower Mound Texas), and Quicken Loans. TMBA is the oldest and one of the two or three largest mortgage trade association in the nation, and we have just celebrated our centennial year.

**TMBA Commends the Work and Professionalism of the Finance Commission Agencies**

TMBA and its members interact with the Finance Commission and each of the Finance Commission Agencies. The Department of Banking, Department of Savings and Mortgage Lending, and Office of Consumer Credit Commissioner each have capable leadership and are staffed by experienced and competent staff. This is evidenced by the election of Charles Cooper, our Banking Commissioner, has Chair of the Conference of State Bank Supervisors. In that role, Commissioner Cooper has been a strong proponent for our dual banking system and community banks. Caroline Jones serves as the President of the American Council of State Savings Supervisors. Likewise, Commissioner Pettijohn has held prominent roles in national consumer protection regulatory groups.

The agency staff with whom our members deal are dedicated public servants who take their responsibilities seriously. We know that they are motivated by doing what is best for Texas. We may not always agree with them, but we never question their dedication to the public good.

It is for these reasons that TMBA has supported and continues to strongly support the agencies' status as self- directing semi- independent agencies. My predecessor at TMBA, Larry Temple, and Eric

Sandberg on behalf of TBA worked very hard with Chairman Vicki Truitt to secure passage of legislation to secure SDSI status for the Finance Commission agencies in 2009. And, we believe the stewardship of the Finance Commission and each of the Finance Commission agencies demonstrate our faith in them was well placed.

**Snapshot of the Mortgage Industry Today**

Earlier this month, the Consumer Financial Protection Bureau released data on mortgage loan originations for the year 2017 as reported under the Home Mortgage Disclosure Act (HMDA). According to the report, " banks and thrifts collectively accounted for about 36.3 percent of all reported mortgage originations and affiliates of banks accounted for another 3.5 percent; independent mortgage companies, about 50.6 percent; credit unions, about 9.7 percent. Over the past few years, the share of loans originated by independent mortgage companies has risen sharply. In 2017, these lenders originated 56.1 percent of first lien owner-occupied single-family site-built home-purchase loans, up from 53.3 percent in 2016 and just 35.0 percent in 2010. Independent mortgage companies also originated 55.8 percent of first-lien, owner-occupied, single-family site-built refinance loans, an increase from 52.2 percent in 2016" (Data *Point Mortgage Activity and Trends.* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_hmda_2017-mortgage-market-activity-trends_report.pdf).

Significantly, the top 25 mortgage loan originators by volume for 2017 include 16 mortgage banks, one state bank subsidiary, and 8 national banks or federal savings banks. The largest originator by volume was Quicken Loans, a non-depository affiliated mortgage company. Three of the top 5 originators likewise are non-depository affiliated mortgage companies. (See Table 11 of the Data Point report appended to this paper). Each one of the 16 largest non-depository mortgage companies does business in Texas and are currently licensed or registered by the Department of Savings and Mortgage Lending.

**Continue the Savings and Mortgage Lending Department**

In our view, the current portfolio of SML responsibilities is one of those rare cases where the total value of the agency exceeds the sum of its individual parts. Much of the discussion relating to recommendation 1.1 centers on the 26 state chartered savings banks. The discussion tends to focus as to whether this number is a viable number to support a stand-alone agency. But that is only part of a much bigger picture. The Department of Savings and Mortgage Lending oversees more than 400 mortgage bankers, over 1,100 mortgage brokers (now statutorily referred to as mortgage companies. The Department licenses more than 26,000 individual residential mortgage loan originators. As indicated above, this oversight extends to 16 of the largest mortgage loan originators in the country. Combining regulatory oversight of the 26 state chartered savings bank and oversight of non-depository mortgage lenders makes the Department of Savings and Mortgage Lending the only Texas agency whose sole mission is to oversee residential mortgage lending. This dual charge of the SML creates an agency that is robust and has the resources to continue effective regulation of the mortgage industry into the future.

Abolishing the Department of Savings and Mortgage Lending does not shrink government or make government smaller or more accessible. The Department of Savings and Mortgage Lending is responsible for chartering, examining and supervising state chartered savings banks; registering mortgage bankers, licensing, examining, and supervision of mortgage brokers (companies) and 26,000

plus individual licensed originators; and investigating and resolving consumer complaints. None of those functions are scheduled to go away, but they would be enveloped in a larger agency with at least one additional layer of decision makers if not more between the staff and agency stakeholders.

As recognized in the report, because of SML's self-funding, self-leveling status, consolidation of the agencies will not impact the State Budget nor will it result in any savings to Texas tax payers. TMBA questions whether or not consolidating SML into the Department of Banking will result in any significant savings to the stakeholders who pay the assessments and fees. The staff report projects a reduction of "nine duplicative positions" with a projected savings of approximately $1,360,000 in each fiscal year. We respectfully disagree. TMBA closely monitors the staffing and budget of the Department of Savings and Mortgage Lending. We are also aware of the organization and staffing of the Department of Banking. Frankly, we do not see there are nine positions that could be eliminated without a drastic cut in services, responsiveness, or weakening of supervision.

We assume for instance the report anticipates the elimination of the SML commissioner job, but TMBA would anticipate (and would certainly strongly work for) the creation of a new deputy commissioner for mortgage lending inside the Department of Banking that would oversee all non-depository mortgage regulation and oversight. The deputy commissioner should be employed at a salary commensurate with the existing DOB deputy commissioners. As the DOB deputy commissioners make slightly more than the current SML commissioner, there is no savings here. The staff report seems to anticipate that the mortgage licensing and examination functions of SML would be absorbed by the DOB division that currently handles licensing and examination of money service businesses and other non-depository industries (preneed funeral contract sellers and perpetual care cemeteries). That division, the special audits division, has a highly talented staff headed by a very capable Deputy Commissioner, but that staff would have to be significantly expanded to handle the additional work load. In April, SML reported that for the first six months of this fiscal year its existing staff received 4,718 applications and over 54,000 related filings. The individual licenses for residential mortgage loan originators must be renewed annually. SML has a separate dedicated group of examiners for non-depository mortgage lenders. These examiners are consumer compliance examiners (as opposed to depository examiners that are safety and soundness examiners). This entire group and their supervisor would need to be transferred in order to provide the current level of examination coverage. In addition, we believe there should be no reduction in the investigator staff that is responsible for investigating and resolving consumer complaints. It is possible that some of the accounting, human resources, information technology positions are duplicated, but the savings from those overall would not be significant. And, if fully implemented the staff recommendations relating to sharing of resources among the Finance Commission Agencies could readily accomplish that goal.

The report notes that currently non-depository mortgage industry license fees generate 61% of the revenues, but only 49% of the expenditures are attributable to non-depository licensing and supervision. We believe this has not always been the case and suspect that during periods when licensing numbers were down, the thrift assessments supported the non-depository regulatory functions. We believe any continuing imbalance can be addressed within the existing agency framework.

The license fees for Texas originators are among the lowest in the country. As such, TMBA has not received any member comment that Texas fees are excessive. If anything, some of our members have

expressed opinions that the fees should be increased in order for SML to enlarge its licensing division in order to provide quicker turnaround times for branch approvals and new loan originator licenses.

TMBA believes consolidation of SML into DOB will not result in any significant savings to its independent mortgage bankers. The Sunset staff report seems to acknowledge that our savings bank members could see an initial increase of $4,979 in assessments with a possible (but not certain) reduction at some time in the future. Whatever, the numbers, TMBA members are willing to bear the current costs of continuing SML as a stand-alone regulator.

Public policy supports the dual banking system in the United States. A depository (whether a bank, thrift, or credit union may choose its regulator. It may choose a federal regulator or a state regulator. Supporters of the state system of regulation have often said that the states are the laboratories of innovation. A fundamental corollary should be that part of that innovation includes various structures for how regulatory responsibilities are exercised. The staff report suggests that the maintenance of a separate thrift regulator makes Texas an outlier. We would suggest that this makes Texas not an outlier but distinctive with regulator choice not available elsewhere. Retaining a stand-alone thrift regulator gives additional reasons for organizers of new thrift institutions to look to Texas as a possible home state for chartering. Charter choice and regulator choice are good things.

The staff report concludes that the business models of savings banks and commercial banks in *some* cases may look very similar. We believe that can be the case. However, a state commercial bank may at any time alter its business plan and exit or reduce its residential mortgage line of business. Savings banks may not to do because of the requirement to meet the Qualified Thrift Lender test. The QTL test means that for a savings bank today and every day the mission of that institution is to promote residential mortgage lending. This is one very important backstop to make sure there are multiple sources of residential mortgage loans when commercial banks may determine better profit opportunities can be found in other financial products and elect to reduce their residential mortgage lending profile.