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Mr. Ken Levine, Director
Texas Sunset Advisory Commission
1501 N. Congress, 6th Floor
Robert E. Johnson Bldg.
Austin, TX 78701

RE: Sunset Staff Study on the Self-Directed Semi-Independent (SDSI) Status of the State Agencies

Dear Mr. Levine:

Thank you for the opportunity to offer comments on the Sunset Staff Study on the Self-Directed Semi-Independent Status of the State Agencies (Report). As you know, the Office of Consumer Credit Commissioner (OCCC) has been an SDSI agency since 2009 and has found SDSI status to be instrumental in supporting the agency in its efforts to fulfill its mission of regulating the credit industry and educating consumers and creditors, thereby producing a fair, lawful, and healthy credit environment for economic prosperity in Texas.

The OCCC would respectfully note some of the findings on this Report that the agency believes will challenge its ability to most effectively fulfill its mission. The report suggests that there is an undefined and inconsistent approach to managing SDSI agencies. The OCCC, along with the Texas Department of Banking and the Texas Department of Savings and Mortgage Lending, believe that the Legislature has set sufficient safeguards in place to prevent exposing the State to unnecessary risk. The agencies have significant state oversight through periodic reviews or audits from the Comptroller of Public Accounts (CPA), State Auditor's Office (SAO), State Office of Risk Management (SORM), Sunset Advisory Commission, Department of Information Resources (DIR), and an external CPA firm performing the internal audit function.

The agency seeks to provide the highest degree of transparency in its operations. Not only does the OCCC comply with the statutory SDSI annual and biannual reporting requirements, but the agency continually works towards providing high quality reporting of operations to its oversight bodies, interested stakeholders, and the public. Detailed operational and financial reports are publicly posted and presented at each of the six meetings the Finance Commission (oversight board) conducts each year. Examples include: quarterly performance measures reports which are used as a tool to report progress in fulfilling statutory mandates, regulatory purpose, quarterly financial statements and budget variance reports, which give a status on the financial condition of the agency.

Each house of the Legislature, in its rules, designates a committee of the respective body with direct oversight responsibility for the agencies. The OCCC works diligently to maintain solid relationships with its oversight legislative committees, the Senate Business & Commerce Committee and the House Investment & Financial Services Committee. The agency has regularly provided written reports on agency operations and has appeared before the respective oversight committees during regular sessions and the interim to provide information on regulatory matters, implementation of recent legislation, legislative proposals, and items of general interest to the Legislature. More recently, the OCCC provided quarterly reporting to the Senate Business & Commerce Committee as well as periodic reports to the House Investments and Financial Services Committee, assuring the Legislature that needed safeguards and oversight are already in place and working. The OCCC deeply values the trust and confidence that the Legislature has placed in it, not only as an SDSI agency, but also in its assignment of additional regulatory responsibilities through legislative acts in recent sessions.

The OCCC does not believe that there is a one-size-fits-all approach that will result in effectively administering and overseeing SDSI agencies. What works for one, may not work for another. The OCCC acknowledges the recommendation for standards for SDSI agencies and generally does not object to standards; however, the agency would prefer to see an alignment specifically for financial regulatory agencies and would recommend it being placed within the governing statute for financial regulatory agencies: Chapter 16 of the Texas Finance Code.

Placing all current SDSI agencies under the SDSI Act (Act) is a decision that must be thoroughly vetted. The OCCC does not shy away from change and governance, if it is in the right direction. The Act as written is for professional licensing agencies. It does not align well with fundamental regulatory concepts for financial service providers.

Requirements within the Act that do not specifically seem to align with financial regulatory agencies include:

- For example, among other things, the act requires reporting on examination candidates and certificate holders, concepts which are not applicable to financial regulatory agencies*§ 472.104(a)*.
- Number of enforcement cases alleging threat to public health, safety, or welfare or a violation of professional standards of care, *§ 472.104(g)*. This is not a financial regulatory standard.
- Professional licensing fee of $200 to GR and scholarship fee, *§ 472.105*. The OCCC does not issue professional licenses. It is unclear whether subjecting the OCCC to the Act would result in a situation where the agencies' regulated business entities would be assessed the additional professional licensing fee by virtue of inclusion in the Act when the entities are not individual professionals requiring an occupational type license.
- Limitations on the agency related to ownership and management of its own facilities, *§ 472.108*. The act limits the ability of an agency to acquire property, either real or personal, by a means other than leasing. The OCCC, along with the Texas Department of Banking and the Texas Department of Savings and Mortgage Lending own and manage their headquarters facility. It is important that the financial regulatory agencies retain the ability to purchase, maintain, and dispose of property in order to properly carry out their functions on a cost effective basis.

The Report also recommends that SDSI agencies remit a specified fixed sum to the General Revenue Fund. The OCCC fully expects to pay for the costs of its operations and as a self-funded agency does not intend to place any additional burden on the GR Fund. The OCCC pays for services that it uses from the

Office of the Attorney General, State Auditor's Office, and State Office of Risk Management, as well as its fair share assessment of the statewide allocation cost. Although we recognize the importance of providing funding for the State, this is counter to the Self-Leveling /Self-Funding model and the fundamental concept that assessments collected from regulated industries should pay for their costs of regulation, direct and indirect. Under the agency's enabling legislation, fees collected for regulators are to be used for that purpose and should not be diverted for an unrelated purpose, Tex. Fin. Code *§ 14.107*. The agency uses a mechanism to ensure the revenues collected correlate with fees assessed and the cost of operations.

The OCCC and the other regulatory agencies follow a self-leveling methodology. Under self-leveling methodology, the agency adjusts its assessments to the regulated industries to approximate the expenditures associated with the respective industries. Usually the methodology entails the use of assessments to manage and match the revenue level to the anticipated expenditure level. It is important to ensure that changes do not disrupt revenue and expenditure streams the agency has come to depend on to rapidly adapt and respond to dynamic changes and industry growth in the regulatory environment. For an SDSI agency that is self-leveling, predictability and flexibility are important in the exercise of good financial stewardship.

Lastly, the OCCC has been able to successfully use administrative penalties as a deterrent to noncompliance with regulatory statutes, while balancing the collection of administrative penalties as a credit for good compliance behavior with other regulated entities. Administrative penalties collected are credited against the revenue budget of the applicable industry and result in a discount to the assessment rate of the applicable industry. Using this strategy supports a philosophy supported by the regulated industries in which companies with high rates of compliance pay less and companies with low rates of compliance pay more. Diverting these funds into the General Revenue Fund would hinder the agency's ability to incentivize the "good players." Further, it would result in a greater cost to the respective regulated industry.

Overall, SDSI status has given the Office of Consumer Credit Commissioner the flexibility to be a better regulatory agency, allowing the agency to operate more efficiently, with flexibility to expand and contract resources in response to economic conditions. The OCCC highly values accountability and transparency and stands ready to work with the Sunset Advisory Commission to improve standards and reporting. We appreciate this opportunity to provide comments for the Sunset Staff Study on the Self-Directed Semi-Independent (SDSI) Status of the State Agencies.

Please let me know if we can provide any other information.

Sincerely,

Leslie L. Pettijohn
Commissioner