William Sutherland

SUNSET ADVISORY COMMISSION
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Testimony of William D. Sutherland, VI

My name is William D. Sutherland, VI. The following testimony is presented to oppose the Sunset Advisory Commission Staff Support recommendation that the Texas Savings & Mortgage Lending Department (SML Department) be swallowed up by the Texas Department of Banking (DOB).

I am an attorney practicing law in San Antonio, Texas. Although I primarily represent commercial banks, I represent savings banks in Texas, including filing various corporate applications with the Texas agency, following up on examination issues, responding to consumer complaints, or filing applications for subsidiary organizations.

The Texas SML Commissioners have taken leadership roles on the national stage. The current commissioner is chair of the American Council of State Savings Supervisors (ACSSS) and as such is a state liaison to the Federal Financial Institutions Examination Council (FFIEC). The prior commissioner served as Vice Chairman for the board of managers for the State Regulatory Registry, which operates the Nationwide Mortgage Licensing System & Registry and was also a chair of ACSSS.

My law firm, Kennedy & Sutherland, LLP, has represented a number of state savings banks. I am aware that these institutions have clearly communicated to the trade associations that represent them that they believe that the SML Department should remain separate from the DOB. Although the Sunset Report alleges that there would be savings in the event of a merger, these banks are more than willing to continue to pay for the high-quality regulation and examination that they currently receive. Some of those reasons follow.

First, there is a significant difference in the examination process as carried out by the SML Department. Rather than alternate safety and soundness examinations with the applicable federal regulator (FDIC or Federal Reserve), the SML examinations are always conducted jointly. In addition, unlike DOB, SML participates in compliance examinations. Both the state and the federal examiners must agree and sign off on examination results. This gives the SML Department the opening to provide insights on Texas law and economy, as well as on the mortgage industry, and be the voice of reason when over-the-top input from the bureaucrats in Washington DC would pressure federal examiners to take unreasonable positions.

The Department provides a different perspective to oversight than the Federal counterpart. The FDIC is focused on protecting the insurance fund against loss (ie too big to fail). On the other hand, the Department focuses on providing fair & consistent oversight with emphasis on educating and providing resources to savings banks in a timely and open manner.

This does not mean that SML examiners are push-overs or easy. That would benefit no one. It means Texas savings banks get a balanced examination every time.

It is worthy of note that while savings banks and commercial banks have overlapping products and services, savings banks are focused on mortgage lending products. These include specialized lending that is simply not common for commercial banks. For example, they provide mortgage warehouse lending through traditional lines of credit as well as through innovative, alternative delivery mechanisms such as temporary mortgage purchase programs. In addition, savings banks are significantly more involved in loans that are sold on the secondary market. Often these lenders use desktop underwriting, a different program from the more traditional commercial or consumer loan underwriting system. Accordingly, it is helpful to have a dedicated regulator with examination staff who understand these programs and their unique features.

Furthermore, many of our clients are innovative, within the bounds of safety and soundness concerns, and are actively involved in community development lending and investment. This includes active participation in projects that qualify under Texas and federal "new market tax credits." This innovation is well understood and supported by the SML staff.

Next, the SML Department has a well-earned reputation for working collaboratively with applicants who file with them....whether it is for a license, subsidiary, charter, or other action. Rather than closing a file when there is missing data, they work with industry applicants to get information and keep the process moving. In our practice, we have worked on licensing through many other states. Sadly, this collaborative approach is not always present!

In addition to savings banks, the SML Department regulates, as of April 2018, approximately 32,000 other mortgage lenders including mortgage companies, mortgage banks, and other entities, as well as their loan originators. These are nondepository institutions with a dedicated business model. The Sunset Report notes that the OTS was merged into the Office of Comptroller of the Currency (OCC) in 2011, but it does not observe that the OTS did not regulate comparable nondepository entities. Further, the report did not explain the many years of effort that followed that move as the OCC amended thrift rules and procedures and updated handbooks and examinations.

It is important to note that according to the May 2018 report on HMDA (Home Mortgage Disclosure Act) data for calendar year 2017, sixteen of the top twenty-five mortgage lenders in the United States are non-depository lenders regulated by the Texas SML Department.

The Sunset Report indicates that nine positions could be eliminated by merging the two departments, resulting in a savings to the industry (but with no effect on General Revenue). However, with 32,000 licensees moving into the DOB, it is hard to see how so many positions could be eliminated. Specialized examination and application staff and counsel would continue to be needed. Presumably, a new "mortgage lending division" would be created, parallel to the banking and trust division and the special audits division of the DOB. This would necessitate a Deputy Commissioner to manage and supervise. Also, there is the very real possibility that examinations would take longer to complete as the transition was worked through.

Next, I would note that the separate complaint section of the SML Department is particularly skilled in handling consumer mortgage issues. They understand mortgage lending and have actively retrieved funds for consumers who have paid too much to mortgage brokers.

Finally, as a native Texan, I was surprised to read in the report that one rationale for merger is that Texas is an "outlier" among other states. Candidly, I thought that we embraced Texas exceptionalism! Further, the 2008 Credit Union Sunset Report explicitly did not recommend folding the Texas Credit Union Commission into the Finance Commission. If other states' structure is our guidepost, then it is important to note that in many states all institutions are regulated in a Department of Financial Institutions—like that in New York or the California Department of Business. Furthermore, many states also include securities and insurance in this omnibus regulatory agency. Is this merger proposal merely the first step to such a change?

I would strongly urge that the merger proposal be rejected. No one wins in that scenario; in fact, the mortgage industry in Texas—and the public it serves—would be harmed.

Thank you for this opportunity to comment.

William D. Sutherland, VI