

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

Banking Department

Savings and Loan Department

Office of Consumer Credit Commissioner

Finance Commission

Texas Library and Archives Commission

**A Staff Report
to the
Sunset Advisory Commission**



SUNSET ADVISORY COMMISSION

STAFF REPORT

on the

OFFICE OF THE CONSUMER CREDIT COMMISSIONER

1982

FOREWORD

Over the past several years, there has been a sustained interest among the states in a new concept in legislative review popularly described as sunset. Since 1976, more than half the states have enacted legislation which embodies the primary element of sunset, the automatic termination of an agency unless continued by specific action of the legislature.

The acceptance of this concept has been aided by a general agreement that the normal pressures of the legislative process tend to prevent a systematic review of the efficiency and effectiveness with which governmental programs are carried out. The sunset process is, then, an attempt to institutionalize change and to provide a process by which a review and redefinition of state policy can be accomplished on a regular systematic basis.

The Texas Sunset Act (Article 5429K, V.A.C.S., as amended) was enacted by the 65th Legislature in 1977. Under the provisions of the Act, agencies are automatically terminated according to a specified timetable, unless specifically continued by the legislature.

To assist the legislature in making the determination of whether an agency should be continued and, if continued, whether modifications should be made to its operations and organizational structure, the Act establishes a ten-member Sunset Advisory Commission composed of eight legislative members and two public members. The commission is required to evaluate the performance of the agency in accordance with specific criteria set out in the Act and to recommend necessary changes resulting from the findings of the evaluation.

The process by which the commission arrives at its recommendations moves through three distinct phases beginning with a self-evaluation report made by the agency to the commission. The second phase involves the preparation of a report to the commission by its staff, evaluating the activities of the agency, and proposing suggested changes for commission consideration. The final phase involves public hearings on the need to continue or modify an agency and the development of commission recommendations and legislation, based on the agency self-evaluation, staff report, and public testimony.

The Sunset Commission's findings, recommendations, and proposed legislation are then required to be transmitted to the legislature when it convenes in regular session.

INTRODUCTION AND ORGANIZATION OF AGENCY REVIEW

The Texas Sunset Act abolishes this agency on September 1, 1983 unless it is re-established by the 68th Legislature.

The staff reviewed the activities of this agency according to the criteria set out in the Sunset Act and has based its conclusions on the findings developed under these criteria.

Taken as a whole, these criteria direct the review of an agency to answer four primary questions:

1. Does the state need to perform the function or functions under review?
2. Could the public still be adequately served or protected if the functions were modified?
3. Is the current organizational structure the only practical way for the state to perform the function?
4. If the agency is continued and continues to perform the same functions, can changes be made which will improve the operations of the agency?

The report is structured to present the performance evaluation of the agency. The application of the across-the-board recommendations developed by the commission to deal with common problems are presented in a chart at the end of the report and are not dealt with in the text except in one instance. When the review develops a position which opposes the application of a particular recommendation, the rationale for the position is set forth in the text.

SUMMARY OF STAFF FINDINGS AND CONCLUSIONS

SUMMARY

The Office of the Consumer Credit Commissioner was created in 1963 and is currently active. The agency's major functions include: 1) the licensing of finance companies, pawnshops, and pawnshop employees; 2) the annual examination of licensees; and 3) enforcement efforts directed toward violations of the Consumer Credit Code.

The results of the review indicated that the agency is generally operated in an efficient and effective manner, and that sufficient reason exists for the state to continue to regulate the consumer credit industry in Texas. If the agency is continued, the review indicated several areas where modifications would improve the operations of the agency.

Approaches for Sunset Commission Consideration

I. MAINTAIN THE AGENCY WITH MODIFICATIONS

- A. Agency operations
 - 1. Overall administration
 - a. Initiate a procedure to index and publish interpretation letters prepared by the commissioner regarding the agency's interpretation of statutory provisions. (management improvement/non-statutory)
 - 2. Evaluation of programs
 - a. Amend the statute to allow the commissioner flexibility in determining qualifications for licensure as a pawnshop owner or employee consistent with that provided other state agencies. (statutory)
- B. Recommendations for other sunset criteria
 - 1. EEOC/Privacy
 - a. The agency should update its affirmative action statement and actively seek minority employees when a job vacancy occurs. (management improvement/non-statutory)
 - 2. Public participation
 - a. The agency should make efforts to meet its statutory obligation to assist and encourage the development of consumer education programs as well as taking steps to increase public awareness of its activities, particularly its

responsibilities for receiving and investigating complaints.
(management improvement/non-statutory)

3. Conflicts of interest

- a. The statute should be amended to require the agency to develop a process which would ensure that agency personnel are informed of their responsibilities under conflict-of-interest statutes. (statutory)

AGENCY EVALUATION

The review of the current operations of an agency is based on several criteria contained in the Sunset Act. The analysis made under these criteria is intended to give answers to the following basic questions:

1. Does the policy-making structure of the agency fairly reflect the interests served by the agency?
2. Does the agency operate efficiently?
3. Has the agency been effective in meeting its statutory requirements?
4. Do the agency's programs overlap or duplicate programs of other agencies to a degree that presents serious problems?
5. Is the agency carrying out only those programs authorized by the legislature?
6. If the agency is abolished, could the state reasonably expect federal intervention or a substantial loss of federal funds?

BACKGROUND

Organization and Objectives

Small loan lenders have operated in Texas since before the turn of the century. However, the existence of a constitutional provision limiting interest rates to 10 percent made it difficult for small loan companies to operate profitably within that legal limit. As a result unregulated lenders, often referred to as "loan sharks," set up business in the state. Numerous surveys conducted between 1908 and 1958 indicated that abuses prevalent in the small loan business included: 1) overcharges on loans; 2) the use of high pressure tactics to encourage borrowers to renew their loans; 3) pyramiding of loans; and 4) harassment of borrowers.

The first attempt to regulate the small loan industry in Texas occurred in 1915 with the enactment of the "Loan Brokers Act." This Act was declared unconstitutional in 1919. Unscrupulous lenders operated without restraint until 1927 when the 40th Legislature enacted another law requiring loan brokers to file bonds, keep records of transactions and give receipts to borrowers for payments. This Act proved ineffective in the control of the small loan problem since it provided no real supervision, and the permitted interest rate was so low that reputable small loan companies could not operate.

Despite numerous efforts to strengthen the regulation of the small loan industry in 1929, 1939, 1941, and 1949, a comprehensive regulatory loan act was not adopted until 1963. This legislation was in response to the approval of a constitutional amendment in 1960 to authorize the legislature to classify loans and lenders, license and regulate lenders, and fix maximum interest rates. The Texas Regulatory Loan Act required those lending cash to consumers in amounts of \$1,500 or less with annual interest rates above 10 percent to be licensed and operate within the provisions of the law which included restrictions on maximum loan maturities and interest rate ceilings.

Four years later the Regulatory Loan Act was replaced by the more comprehensive Consumer Credit Code in response to studies which showed that the Regulatory Loan Act covered only a small segment of institutions and concerns which offered consumer credit as a means of enlarging sales and serving customers. Abuses identified in connection with non-regulated lenders included: 1) inadequate or incomplete disclosure of interest rates and carrying charges; 2) failure to inform the purchaser accurately of the total installment price; 3) general misrepre-

sentation of the product or its performance; 4) failure to disclose payments made; 5) harassment; and 6) aggressive, misleading and/or fraudulent salesmanship. The Texas Consumer Code retained most of the provisions of the Regulatory Loan Act and added new state regulation in the areas of installment loans of less than \$2,500, second mortgage loans, and retail and motor vehicle installment sales.

In 1971, the Office of the Consumer Credit Commissioner also assumed responsibility for the regulation of pawnbrokers. The most recent change in the Consumer Credit Code occurred in 1981 when the 67th Legislature increased interest rate ceilings on most credit transactions, and provided for the indexing of the ceiling based on the price of treasury bills issued by the Federal Reserve Board.

The Office of the Regulatory Loan Commissioner was established in 1963, and became the Office of the Consumer Credit Commissioner (OCCC) in 1967. The commissioner is charged with the responsibility of administering and enforcing the provisions of the Consumer Credit Code, and is appointed by, and serves at the pleasure of the Finance Commission of Texas. The agency is financed primarily from fee income deposited to an operating account outside the state treasury or invested in interest-bearing accounts. For calendar year 1982, the agency has a staff of 28 and an operating budget of \$1,049,554.

Regulation of the consumer loan industry in Texas takes the general form used by most states. There are currently some 1,525 loan offices and 925 pawnshops operating in Texas regulated by the OCCC. The agency also has responsibility for enforcing provisions of the Consumer Credit Code concerning the financing of retail consumer goods, mobile homes and automobiles. The major areas of responsibility of the agency include: 1) the licensing of finance companies, pawnshops, and pawnshop employees; 2) the annual examination of licensees; and 3) enforcement efforts directed toward violations of the Code.

Each finance company and pawnshop must be examined by the agency at least once a year. Major objectives of the examination are to determine a licensee's compliance with the Code and with the agency's rules and regulations. The exam focuses on whether proper interest rates are being charged, whether proper refunds are being made to clients when necessary, record-keeping practices, internal controls, and performance of the management. An exam report is prepared and the licensee is notified of any problems found and must take steps to rectify those problems. In calendar year 1981, the agency conducted a total of 1,863 licensee

examinations which resulted in refunds being made to Texas consumers totalling nearly \$180,000.

The agency also investigates and resolves consumer complaints concerning activities in violation of the Consumer Credit Code. Approximately 120 complaints were received in 1981, all of which were resolved informally.

The review and evaluation of the Office of the Consumer Credit Commissioner indicated that its regulatory activities generally serve to ensure an adequate level of public protection. However, the review did show that modifications in a number of areas would increase the efficiency and effectiveness of agency operations. Results of the evaluation follow.

REVIEW OF OPERATIONS

The evaluation of the operations of the Office of Consumer Credit Commissioner is divided into general areas which deal with: 1) a review and analysis of the policy-making body to determine if it is structured so that it is fairly reflective of the interests served by the agency; and 2) a review and analysis of the activities of the agency to determine if there are areas where the efficiency and effectiveness can be improved both in terms of the overall administration of the agency and in the operations of specific agency programs.

Policy-Making Structure

In general, the structure of a policy-making body should have as basic statutory components, specifications regarding the composition of the body and the qualifications, method of selection, and grounds for removal of the members. These should provide executive and legislative control over the organization of the body and should ensure that members are competent to perform required duties, that the composition represents a proper balance of interests impacted by the agency's activities, and that the viability of the body is maintained through an effective selection and removal process.

The Office of Consumer Credit Commissioner (OCCC) operates under the direction of the Finance Commission. Three members of the Finance Commission are assigned by the chairman to a consumer credit section. This section is not currently active, and all matters pertaining to the OCCC are acted on by the Finance Commission as a whole. The review showed that several improvements could be made in this structure. These recommendations were considered as a part of other changes in the structure of the Finance Commission and are discussed in the report of that agency.

Overall Administration

The evaluation of the overall administration of the agency focused on determining whether the operating policies and procedures of the agency provide a framework which is adequate for the internal management of personnel and funds, and which satisfies reporting and management requirements placed on the agency and enforced through other state agencies.

The objectives of the administrative activities of the agency include: 1) directing and supervising administration of the Consumer Credit Code; 2) managing agency personnel records, purchasing, inventory, and deposits and investment of

revenue; and 3) budgeting for the agency. The results of the evaluation indicated that the agency is generally administered in an efficient manner. The review showed that although agency revenues are not deposited to the state treasury, the agency is generally in compliance with the requirements placed on agencies controlled through the appropriations process. In addition, analysis of the agency's investment policies indicated that the agency has maximized the yield on its investments through efficient money management practices. However, two areas of concern were identified in the review. First, analysis of the agency's telephone records showed agency personnel are not making efficient use of the State Telephone System (STS), which has resulted in telephone costs that are higher than necessary. The agency has indicated that it will take steps to ensure regular usage of STS for eligible calls in the future.

The second area of concern relates to the issuance of interpretation letters by the commissioner. The review indicated that the agency receives frequent inquiries from the public, primarily related to interest provisions in the statute, as well as concerning other areas of the Consumer Credit Code. The commissioner and the agency's general counsel have prepared over 80 interpretation letters in the past year, mostly concerning changes in the Code resulting from enactments of the 67th Legislature.

Provisions of the Administrative Procedure Act provide for the indexing of commissioner's orders. The principle underlying this requirement, that the public should be on notice of how an act is being interpreted by the agency charged with its administration and enforcement, appears to apply to the interpretation letters issued by the commissioner. Precedent for indexing this type of interpretation has been set at the national level by the Board of Governors of the Federal Reserve System which currently indexes and publishes an "Official Staff Commentary on Regulation Z-Truth in Lending." The agency should implement procedures to index and publish written interpretations regarding the Consumer Credit Code. This will provide a valuable guide to individuals regulated by the statute as to how the agency's rules and the Act is interpreted or applied to a particular set of circumstances.

Evaluation of Programs

The review of the agency's program activities focused on the extent to which these activities achieve the objectives of the Consumer Credit Code: 1) to protect the public from unlawful lending practices through the licensing and examination of

consumer finance companies and pawnshops; and 2) by regulating other elements of the credit industry. The review also sought to determine if areas exist where the efficiency and effectiveness of the operations could be improved.

Licensing. A major statutory responsibility related to the commissioner's regulation of consumer credit activities is the licensing of finance and loan companies, pawnshops and pawnshop employees. In addition, the agency issues licenses to banks and savings and loan associations that make small loans which are regulated by the Consumer Credit Code, although they are not examined by the OCCC. This licensing function was broken down into two basic parts for the purpose of the review. In any licensing process, the agency must first make a determination of competence, and in this case, minimum net assets required by statute. Once the license is issued, a renewal process should be in place when necessary to keep the system current. To evaluate the effectiveness of the initial determination, the review focused on whether the determinations are based on qualifications which are clear, easily determined, and reasonably related to the activity; whether these qualifications include an evaluation which accurately and fairly determines competence and net assets; whether processing procedures are designed to handle applications in a reasonable amount of time; and whether the renewal process is appropriate.

By statute, a person must first obtain a license from the Consumer Credit Commissioner before engaging in the business of making loans of \$2,500 or less and charging interest or fees for this service. In order to obtain a license, a person is investigated by the OCCC as to whether they have the financial responsibility, experience, character, general fitness and net assets of at least \$25,000 available for the operation of the business.

To operate a pawnshop, a person is required to obtain a license prior to beginning operations. In addition, each employee of a pawnshop must be licensed to work in a pawnshop. To be eligible for a pawnshop or employee license, an applicant must be of good moral character and not have been convicted of or be under indictment for theft, fraud, forgery, or any crime involving moral turpitude. In addition, the pawnshop owner must have net assets of at least \$75,000 readily available for use in conducting the business.

The review of these licensure operations indicated that the system in place and requirements are generally adequate; however, one area of concern was

identified which relates to the qualifications that pawnshop owners and employees must meet to become licensed.

The Texas Pawnshop Act currently requires that applicants for licensure as a pawnshop owner or employee be of good moral character or business repute, and not have been convicted or be under indictment of theft, fraud, forgery or any other crime involving moral turpitude. These requirements are absolute even though an applicant may have maintained "clean" records for as long as 30 years subsequent to a conviction. The consumer credit commissioner does not have the authority to make an exception based on the facts of a particular situation.

The 67th Legislature considered the restrictiveness of an absolute denial of a license based on prior actions and through the provision of Article 6252-13c, V. A. C. S., authorized licensing agencies to consider factors such as: 1) the extent and nature of a person's criminal activity; 2) the age of the person at the time of the commission of the crime; 3) the amount of time that has elapsed since the person's last criminal activity; 4) the conduct and work activity of the person; 5) evidence of a person's rehabilitative effort; and 6) other evidence of a person's present fitness in determining whether a conviction disqualifies an individual from licensure. However, this Act does not apply in the case of licensure of pawnshop owners and employees since the Pawnshop Act specifically requires that a license be absolutely denied to applicants convicted of specific crimes. The review did not identify any reason to deny the Consumer Credit Commissioner the flexibility to determine the qualifications for licensure consistent with that provided other state agencies. The statute should be amended to provide this authority.

Examination and Enforcement. The objective of agency examination and enforcement activities is to prevent or halt violations of law or regulations and unsafe or improper practices. Three basic parts of these activities were evaluated during the review. First, the method of scheduling examinations was reviewed in terms of whether they are conducted as frequently as necessary to ensure compliance, and whether travel funds were used efficiently for this purpose. Next, performance of the examination was reviewed to determine whether specified procedures were used in conducting on-site visits, whether the scope of the examination was as broad as necessary to ensure compliance, and whether requirements imposed on the entity being reviewed by the agency were reasonable. Finally, the agency's use of information gained during the visit was examined to determine whether results were properly reported and whether a procedure existed

for follow-up of violations discovered during the process. In addition, the agency's complaint process was reviewed to determine whether complaints were properly logged in, investigated, and whether all parties to the complaint were notified of the results.

The Consumer Credit Code requires that all licensees be examined annually, except banks and savings and loan associations which are examined by other state agencies. The agency's examiners work out of two districts, Houston and Dallas, and spend most of the year performing examinations throughout the state. After each examination a written report, including the examiner's findings and any recommendations for corrective action, is prepared and a copy is sent to the licensee. The agency also reviews an annual report by the licensee which is required to be filed with the commissioner. Any problems identified are usually rectified at the time of the examination, or after the licensee receives the written report. The licensee is required to notify the OCCC of actions taken to correct problems identified in the examination. When necessary, a follow-up examination is made. The commissioner also has the authority to issue cease and desist orders, and to suspend licenses, though these sanctions are rarely used. Criminal violations can be referred to local district attorneys for prosecution. The agency also receives and investigates complaints against all licensees and other businesses regulated under the Consumer Credit Code.

The review indicated that the scheduling, performance and reporting of examinations, and the enforcement of results are conducted in a reasonable manner. Improvements can be made, however, in the agency's procedures for handling complaints. The agency receives both written and telephone complaints. Those pertaining to activities of licensees are generally forwarded to the examination division for action. Others are handled by the agency's director for consumer protection. Complaints are not logged in and separate files are not kept for all complaints. The Sunset Commission has developed an across-the-board recommendation for the handling of complaints which directs an agency to keep an information file concerning each written complaint filed. During the review, this procedure was discussed with the agency, and the agency has indicated that it would take steps to implement this procedure.

In addition, it was noted that one type of complaint handled by the agency concerned debt collection practices. These activities are currently governed by the Debt Collection Practices Act which is codified as Chapter 11 of the Consumer

Credit Code. However, the review indicated that no state agency is assigned responsibility for administering the provisions of the Act. While the Consumer Credit Commissioner has the authority to resolve this type of complaint against licensed loan companies and pawnshops, there is no statutory authority to resolve collection regulated complaints against debt collection agencies, credit card companies, department stores and other non-licensed elements of the consumer credit industry, although the agency tries to resolve these complaints informally.

EVALUATION OF OTHER SUNSET CRITERIA

The review of the agency's efforts to comply with overall state policies concerning the manner in which the public is able to participate in the decisions of the agency and whether the agency is fair and impartial in dealing with its employees and the general public is based on criteria contained in the Sunset Act.

The analysis made under these criteria is intended to give answers to the following questions:

1. Does the agency have and use reasonable procedures to inform the public of its activities?
2. Has the agency complied with applicable requirements of both state and federal law concerning equal employment and the rights and privacy of individuals?
3. Has the agency and its officers complied with the regulations regarding conflict of interest?
4. Has the agency complied with the provisions of the Open Meetings and Open Records Act?

EVALUATION OF OTHER SUNSET CRITERIA

The material in this section evaluates the agency's efforts to comply with general state policies developed to ensure: 1) the awareness and understanding necessary to have effective participation by all persons affected by the activities of the agency; and 2) that agency personnel are fair and impartial in their dealings with persons affected by the agency, and that the agency deals with its employees in a fair and impartial manner.

Open Meetings/Open Records

Meetings and activities conducted by the Office of Consumer Credit Commissioner show general compliance with the requirements of the Open Meetings Act and the Open Records Act. The results of the review indicate that the Consumer Credit Act makes statements regarding the financial condition of a finance company confidential. A review of statutes of other state financial regulatory agencies indicates this provision is consistent with those Acts and should be retained.

EEOC/Privacy

The review of the agency's performance regarding equal employment opportunities shows the agency last filed an affirmative action statement in 1973. Although the review indicated that the agency rarely has job openings due to a very low job turnover rate, the agency should update its affirmative action statement and actively seek minority employees when a job vacancy occurs by sending notice of any vacancy to the Texas Employment Commission and to the Equal Opportunity Division of the Office of the Governor.

Public Participation

In general, the review of public participation consists of an evaluation of the extent to which persons served by the programs and the general public have been kept informed of program activities, and the extent to which the program is responsive to the changing demands and needs of the public. In addition, the review focused on whether the agency has adequately fulfilled its statutory requirement to assist and encourage the establishment of non-profit debt counseling services and consumer education programs.

The agency has worked with local groups in several Texas cities to establish non-profit debt counseling programs which assist citizens in handling burdensome

debt situations. However, the agency has not been active in the development of consumer education programs. Interviews with legal aid foundations and consumer groups who assist the public with problems related to the agency's responsibilities indicated limited awareness of the activities of the Office of Consumer Credit Commissioner. In response to problems resulting from the low visibility of regulatory agencies, the Sunset Commission has developed across-the-board approaches requiring the agency to: 1) prepare information of consumer interest describing the regulatory functions of the commission; 2) require each written contract to contain the name, address and telephone number of the licensing agency; and 3) require licensees to display signs which inform consumers of the licensing agency's responsibilities. In addition, a survey was made to determine what types of consumer education programs are used in other states. The survey results indicated several other approaches which could be considered by the agency. These include: 1) developing a network for the distribution of informational pamphlets with the assistance of legal aid groups, consumer groups, the Better Business Bureaus, and other state agencies; 2) developing a short course on consumer debt problems which could be made available to school systems and libraries across the state; 3) promoting and holding occasional seminars across the state with the assistance of local groups; and 4) developing free public service announcements for commercial television or programs for cable television's public access channels with the assistance of university media departments and community television organizations.

Conflict of Interest

Under state law, appointed state officers are subject to statutory standards of conduct and conflict of interest provisions. This includes, in certain circumstances, the filing of financial disclosure statements with the Office of the Secretary of State. A review of the documents filed with the Secretary of State indicates that the Consumer Credit Commissioner has filed adequate financial statements. The review also showed that the agency has procedures for making employees aware of their responsibilities under conflict of interest statutes. Although new employees receive copies of these standards, there are no requirements that the employees sign an affidavit that they have read these statutes. Because of the importance of proper notification to new employees, the agency's statute should be amended to require all employees to sign a notarized affidavit that they have read these conflict of interest statutes.

**NEED TO CONTINUE AGENCY FUNCTIONS
AND
ALTERNATIVES**

The analysis of the need to continue the functions of the agency and whether there are practical alternatives to either the functions or the organizational structure are based on criteria contained in the Sunset Act.

The analysis of need is directed toward the answers to the following questions:

1. Do the conditions which required state action still exist and are they serious enough to call for continued action on the part of the state?
2. Is the current organizational structure the only way to perform the functions?

The analysis of alternatives is directed toward the answers to the following questions:

1. Are there other suitable ways to perform the functions which are less restrictive or which can deliver the same type of service?
2. Are there other practical organizational approaches available through consolidation or reorganization?

NEED

The analysis of need and alternatives is divided into: 1) a general discussion of whether there is a continuing need for the functions performed and the organizational setting used to perform the functions; and 2) specific discussion of practical alternatives to the present method of performing the functions or the present organizational structure.

Function

After reviewing the basic sunset questions relating to need for a function, it was determined that sufficient reason exists for the state to regulate the consumer credit industry in Texas. The reasons for this determination are summarized in the material set out below.

Danger to the public is sufficient to warrant regulation. In determining the need for regulation of the consumer credit industry in Texas, an analysis was made of: 1) whether the conditions that led to regulation of the industry in 1963 still exist; and 2) the possible harm to the public in the absence of regulation.

Although small loan lenders have been active in Texas since before the turn of the century, they were not subject to comprehensive regulation until 1963. Prior to that time, numerous surveys consistently documented the existence of abusive practices in the industry including harassment, overcharges on loans and aggressive, misleading or fraudulent sales practices. Many of these abuses stem from the unequal economic relationship between the lender and the borrower. The licensing of institutions and concerns offering consumer credit was designed to allow lenders a rate of interest adequate to recover expenses of operation and make a reasonable profit while providing adequate and effective supervision by the state to prevent abuse of borrowers.

There are approximately 1,525 loan companies currently operating in the state who have more than one million loans outstanding at any one time. Also, some 925 pawnshops are regulated by the agency as well as interest rates in many other credit transactions.

In assessing the types and magnitude of abuses in the industry which can occur, a review was made of the frequency and type of problems found during the examination process. In 1981 alone, the agency conducted 1,863 examinations which resulted in nearly \$180,000 refunds to Texas consumers. Most of these refunds were due to inaccurate calculations of interest charges, and errors in

determining proper credits to customers when loans were prepaid, although some refunds were due to other violations of the Consumer Credit Code. Another possible indication of potential harm is the types and number of complaints received from the public. Agency records show that about 120 complaints are received annually. The agency's staff investigates complaints of such problems as improper rates of interest or other fees being charged, miscalculated loan payments, errors in calculating or crediting accounts and illegal debt collection practices. In addition, the Consumer Credit Commissioner responds to many inquiries during the year from credit granting institutions concerning how to interpret the statutes governing interest rates and credit practices.

Most Texans use consumer credit sometime during their lives, and the actual number using installment payments to acquire goods can be expected to increase. As consumer credit becomes more widespread, the abuses and faults can be expected to increase in scope and kind. The history of abuses and the current supervisory activities of the agency demonstrate that the potential for harm to the public still exists. In the absence of regulation of the industry, it is unlikely that possible harm would diminish; and in fact it would likely increase without the deterrent effect of regulation. Based on this analysis it was determined that the need to perform the functions of the Office of Consumer Credit Commissioner still exists. Alternatives to the current agency structure are discussed in detail in the report on the Finance Commission of Texas.

ACROSS-THE-BOARD RECOMMENDATIONS

OFFICE OF CONSUMER CREDIT COMMISSIONER

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
X		X	1. Require public membership on boards and commissions. 2. Require specific provisions relating to conflicts of interest.
		X	3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
		X	6. Specification of grounds for removal of a board member.
X			7. Board members shall attend at least one-half of the agency board meetings or it may be grounds for removal from the board.
	X		8. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
			9. The board shall make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			10. Require the board to establish skill oriented career ladders.
X			11. Require a system of merit pay based on documented employee performance.
X*			12. The state auditor shall audit the financial transactions of the board during each fiscal period.
X*			13. Provide for notification and information to the public concerning board activities.
X			14. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute.

Office of Consumer Credit Commissioner
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
X			4. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
X			5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	6. (a) Provide for licensing by endorsement rather than reciprocity.
		X	(b) Provide for licensing by reciprocity rather than endorsement.
X			7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
X			1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			4. Specification of board hearing requirements.
			D. PRACTICE
		X	1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	2. The board shall adopt a system of voluntary continuing education.