

**SELF EVALUATION REPORT  
TO  
THE SUNSET ADVISORY COMMITTEE**

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**TEXAS SAVINGS AND LOAN DEPARTMENT**

**AUGUST 1999**

**JAMES L. PLEDGER  
SAVINGS AND LOAN COMMISSIONER**

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# TEXAS SAVINGS AND LOAN DEPARTMENT

## Self-Evaluation Report

### ***I. Key Functions, Powers, and Duties***

Please provide the following information about the overall operations of the agency. More detailed information about individual programs will be requested in a later section.

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| <p><b>A. Provide an overview of the agency's mission, key functions, powers, and duties. Specify which duties are statutory.</b></p> |
|--|

The fundamental mission of the Savings and Loan Department is to protect the depositors of Texas by ensuring the safe and sound operation of state chartered savings institutions in compliance with the state and federal statutes and regulations governing financial institutions, and establish a regulatory environment that promotes a strong state thrift system to meet the credit needs of the Texas economy for consumer, small business, and residential housing finance.

The Savings and Loan Department regulates nearly 50% of the Texas domiciled thrift industry and 25% of the industry's \$52.8 billion in total assets, serving the deposit and credit needs of Texas citizens. The state chartered thrift system includes small community institutions and multibillion dollar statewide institutions with sophisticated and sometimes highly complex operations. Following the 1998 Finance Commission decision to end its study on consolidation and support an independent savings and loan department, the agency began its first sustained period of growth in more than a decade with total assets under regulation increasing by more than 50% in the past year.

Texas benefits from statutory provisions that enhance the dual financial institution system of state and federal charters with a full range of competitive state charter alternatives. Unlike the constituencies of many state agencies, depository institutions have a choice in chartering a depository institution which in turn determines the regulatory agency. Because of federal preemption, nationally chartered institutions are not subject to state regulatory control and the state has little or no influence with these institutions.

In a 1998 review by the Finance Commission of the need for a separate savings and loan department, executives of state chartered thrift institutions expressed a strong desire to continue the present structure. They believe that with the separate department, their regulator better understands the unique aspects of their business. Separate regulatory agencies are available in the federal system and the existence of separate state regulatory agencies encourages acceptance and expansion of the state system. Texas' separate regulatory structure for thrift institutions and the Finance Commission's

commitment to that structure have been cited as important factors in the significant growth of the state thrift system over the past year.

**MORTGAGE BROKER LICENSING.** In 1999, the responsibility of licensing mortgage brokers was assigned to the Savings and Loan Department by the 76th Legislature. Mortgage brokers originate more than half of the mortgage loans nationwide and the percentage is expected to be the same for Texas. The legislation provides for regulation of this important part of the Texas housing finance industry for the first time and takes advantage of the agency's extensive experience with residential housing finance.

**STATUTORY DUTIES AND KEY FUNCTIONS.** The agency's statutory duties with respect to the state chartered thrift system are established through the provisions of the *Texas Savings Bank Act* and the *Texas Savings and Loan Act* in response to the Texas Constitution mandate that "The Legislature shall by general law, authorize the incorporation of state banks and savings and loan associations and shall provide a system of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors thereof." The new *Mortgage Broker License Act* sets forth agency statutory duties with respect to first lien residential mortgage brokers.

The agency meets these responsibilities by performing the following key functions in regulation of the thrift and mortgage broker industries:

- ' Efficient license, charter and application processing,
- ' Comprehensive savings institution examination and monitoring,
- ' Responsive investigation and resolution of consumer complaints,
- ' Objective enforcement action and hearing process, and
- ' Effective promulgation of regulations that promote statutory compliance with minimum regulatory burden.

**B. Does the agency's enabling law correctly reflect the agency's mission, key functions, powers, and duties?**

Yes. Both the *Texas Savings and Loan Act* and the *Texas Savings Bank Act* provide sufficient authority to the agency with respect to regulation and supervision of these institutions.

The *Mortgage Broker License Act* establishes Texas' first requirement for licensing and regulation of mortgage brokers and loan officers related to their primary business of first lien home mortgages. The statute's investigative authority is primarily consumer complaint driven and does not provide for regular examination of mortgage brokers. It is expected that the statute will require some refinement in the future but, as enacted, the act provides considerable authority for the protection of Texas consumers.

**C. Please explain why these functions are needed. Are any of these functions required by federal law?**

The savings institution functions of the agency provide consumer protection to ensure the safety of individual, business and public deposits in the State and the availability of credit to support the consumer, small business, residential housing and real estate finance needs of the Texas economy. The agency's monitoring and regulatory oversight ensures that the Texas savings institutions are operating in a safe and sound manner.

States charter and regulate financial institutions because it is one of the few ways a state can exert any influence over the depository institutions operating in its jurisdiction. Nationally chartered institutions do not have to comply with many state laws because of federal preemption. A state thrift system enables Texas to ensure that its thrift institutions are responsive to Texas consumers and provide a safe and sound system for this component of the housing finance industry.

Until the enactment of the *Mortgage Broker License Act*, the mortgage broker industry was largely unregulated with respect to its primary business of originating first lien home mortgages. Mortgage brokers have been credited with originating more than half of the mortgage loans made nationwide and recent reports have suggested that number is as high as 70 percent. Texas consumers did not have a central facility for lodging complaints regarding these activities and no educational or experience standards existed in the state to ensure that mortgage brokers were competent or responsible. The statute establishes such standards and provides for the active investigation of complaints to protect Texas consumers.

#### **D. In general, how do other states carry out similar functions?**

Organizationally, thrift regulation is conducted through a wide range of regulatory structures. Several states have relatively autonomous thrift regulatory functions while others have structured the function as part of a division or unit of a larger agency, including in some cases the full array of financial service providers (i.e., insurance, securities, banking, thrift institutions, credit unions, finance companies, pawn brokers, mortgage bankers, mortgage brokers, realtors, appraisers, etc.). Most states have structured thrift regulation in the same agency as commercial bank regulation.

From a regulation and policy standpoint, Texas conducts its thrift functions in a manner much more consistent with other states. Texas has designated the Finance Commission as the body responsible for the promulgation of policy and regulations for banks, thrift institutions and consumer credit providers. Credit unions are not part of this combined policy function. Numerous states have a single entity responsible for this function.

The mortgage broker regulatory function is usually structured either in the same agency as thrift institutions or as part of a consumer credit group. In nearly all cases, mortgage broker regulation is combined with the regulation of mortgage bankers. Some states require mortgage brokers to pass a test prior to licensing. Many states conduct regular examinations of mortgage brokers to ensure compliance with applicable statutes. It should be noted that the *Mortgage Broker License Act* did not vest in the Finance Commission the responsibility for the promulgation of policy or regulations for mortgage brokers. This responsibility resides with the Savings and Loan Commissioner.

**E. Describe any major agency functions that are outsourced.**

Certain common administrative functions are outsourced to other specialized state agencies, including: legal representation by the Office of Attorney General; telecommunication and procurement services from the General Services Commission; risk assessment by the State Office of Risk Management; performance and financial audits by the State Auditors' Office; USAS and USPS accounting services by the Comptroller of Public Accounts; and employee benefit services from the Employee Retirement System. The agency does not outsource any activities to private industry.

The Finance Commission has encouraged the use of shared administrative functions among the agencies under its jurisdiction. The agency shares the following administrative costs with the other Finance Commission agencies (Department of Banking and Office of Consumer Credit Commissioner) to reduce operating costs for each agency:

Finance Commission Administrative Law Judge -- The *Texas Banking Act of 1995* created the Finance Commission Administrative Law Judge (ALJ) position to hear contested cases related to the agencies' licensing, chartering, application and enforcement actions. As an employee of the Finance Commission, the ALJ can provide the independent hearing process critical to best serve Texas citizens, while developing valuable industry knowledge and understanding of the statutes and regulations enforced by the agencies. This creates the most efficient environment for fair, timely and cost effective administrative hearing decisions. ALJ costs are shared by the agencies based on the time expended on their respective hearings. These costs are generally passed on to the applicant, protestant or appellant based on the ALJ's ruling and the governing statute.

Building Services -- The Finance Commission Building is shared by the Finance Commission agencies. The building was acquired and is maintained with funds derived from fees and assessments paid by the industries regulated. Certain shared building costs and services (e.g., telephone, mail, delivery services, printing, security and building maintenance) are administered by the Department of Banking and reimbursed by the other agencies based upon costs and usage resulting in considerable savings to the agencies.

Reception Services -- The agency and the Office of Consumer Credit Commissioner share the reception function for the second floor of the Finance Commission building. The receptionist is also the initial telephone contact for calls to the primary office telephone number for each of these agencies. The primary staffing of this function is provided by the agency and the costs are shared based on usage. Backup staffing is provided by both agencies based on usage.

Legal Services -- The Department has outsourced its legal counsel and representation with the Office of the Attorney General. The agency previously employed an in-house general counsel but eliminated that function as part of a comprehensive staffing reduction several years ago. Because of recent increases in thrift activity and the addition of mortgage broker licensing and enforcement responsibilities, the agency hired a general counsel in August 1999. The Department will continue to outsource litigation representation to the Office of the Attorney General.

**F. Discuss anticipated changes in federal law and outstanding court cases as they impact the agency's key functions.**

Financial modernization legislation (H.R. 10 and S. 900), which has passed both the House and Senate and is awaiting a conference committee, will impact all financial institutions as the Glass-Steagall restrictions on the mixing of banking and commerce are repealed. Additionally, authority for the establishment of unitary thrift holding companies which can be acquired by commercial businesses is eliminated in both versions of the legislation. Existing unitary thrift holding companies will be grandfathered and may continue to engage in a full range of diversified activities at the holding company level.

Although passed by both Houses, there are significant differences in the bills and the Clinton Administration has threatened to veto the bill if enacted in the Senate form. Major policy differences that remain unresolved include: the scope of the Community Reinvestment Act; whether non-banking activities can be conducted through bank subsidiaries or must be conducted in holding company affiliates; financial privacy; and grandfathering of unitary thrift holding companies. If the legislation becomes law and the unitary thrift holding company is eliminated, a significant advantage for commercial banks to convert to the state savings bank charter will disappear, removing a recent source of commercial bank conversions to the charter.

**G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency.**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT<br/>Exhibit 1: Statutes/Attorney General Opinions</b>   |  |
|--|--|
| <b>Statutes</b>  |  |
| <b>Citation/Title</b>  | <b>Authority/Impact on Agency</b>  |
| Article 16, Sec 16(a) Texas Constitution   | Provides for a system of state supervision, regulation, and control of banks and savings and loan associations.      |
| Title 2, Finance Code, Vernon's Texas Codes Annotated-- Financial Regulatory Agencies  | Finance Commission structure and oversight of the Department   |
| Title 3, Finance Code, Vernon's Texas Codes Annotated --<br>Texas Savings Bank Act, Subtitle C<br>Texas Savings and Loan Act, Subtitle B | Chartering and regulation of state savings banks<br>Chartering and regulation of state savings and loan associations |
| Mortgage Broker License Act, Subtitle E  | Licensing and regulation of mortgage brokers and their loan officers   |
| Interstate Banking Provisions, Subtitle G  | Parameters for interstate operations of state S&Ls and SSBs  |

|  |  |
|--|--|
| Home Owners' Loan Act, 12 USC §1461 et.seq<br><br>Federal Deposit Insurance Act, 12 USC §1811 et.seq   | Federal regulation of state savings and loan associations and holding companies<br><br>Federal regulation of state savings banks and deposit insurance   |
| National Bank Act, 12 USC §21 et.seq<br><br>Real Estate Settlement Procedures Act, 12 USC §2601 et.seq<br><br>Equal Credit Opportunity Act, 15 USC §1691 et.seq<br><br>Truth in Lending Act, 15 USC §1666 et.seq | Parity for state savings banks<br><br>Federal lending procedures applicable to mortgage brokers<br><br>Federal lending laws applicable to mortgage brokers<br><br>Federal disclosure laws applicable to mortgage brokers |
| <b>Attorney General Opinion No.</b>  | <b>Impact on Agency</b>  |
| N/A  |  |

**H. Please fill in the following chart:**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT</b> |  |   |   |
|--|--|---|---|
| <b>Exhibit 2: Agency Contacts</b>        |  |   |   |
|  | <b>Name</b>  | <b>Address</b>  | <b>Telephone Number<br/>Fax Number<br/>E-mail Address</b>                   |
| <b>Agency Head</b>                       | James L. Pledger<br>Savings and Loan<br>Commissioner                   | 2601 N. Lamar Blvd.<br>Suite 201<br>Austin, Texas 78705 | 512-475-1350 Office<br>512-475-1360 Fax<br>TSLD@mail.capnet.state<br>.tx.us |
| <b>Agency's Sunset<br/>Liaison</b>       | John T. De Marines<br>Director of Corporate<br>Activities and Planning | Same  | Same  |

## II. History and Major Events

**Provide a timeline discussion of the agency's history, briefly describing the key events in the development of the agency, including:**

- Ⓒ the date the agency was established;
  - Ⓒ the original purpose and responsibilities of the agency;
  - Ⓒ major changes in responsibilities or statutory authority;
  - Ⓒ agency/policymaking body name and composition changes;
  - Ⓒ the impact of state/federal legislation, mandates, and funding;
  - Ⓒ the impact of significant state/federal litigation that specifically affects the agency's operations; and
- key organizational events and areas of change and impact on the agency's organization (e.g., a major reorganization of the agency's divisions or program areas).

**Prior to 1913** Texas savings and loans were chartered by special acts of the Legislature.

**Prior to 1961** State savings and loan associations were chartered by the Commissioner of Insurance and Banking (1913-1923), Insurance Commissioner (1923-1929), and finally the Banking Commissioner (1929-1961).

**1961** The Legislature created the Savings and Loan Department under the direction of a Savings and Loan Commissioner appointed by the Finance Commission of Texas, separating the agency from the Department of Banking.

There were 161 state chartered savings and loan associations with \$1.8 billion in assets.

**1963** The Texas Savings and Loan Act was enacted establishing a complete system of laws governing state savings and loan associations.

**1979** There were 255 state chartered savings and loan associations with \$23.8 billion in assets, representing 80% of the savings and loan associations operating in Texas.

**1982** The Garn-St. Germain Depository Institutions Act was enacted, giving savings and loan associations authority to lend up to 100% of the appraised value of real estate, and expanding their authority to make commercial real estate loans, leading to much more speculative activities.

**1986** The Federal Savings and Loan Insurance Corporation (FSLIC) was declared insolvent, resulting in insolvent Texas thrifts being forced to stay open up to three years after reporting insolvency.

There were 235 state chartered savings and loan associations with \$84 billion in assets but approximately one third of the Texas savings and loan industry was reporting insolvency under generally accepted accounting principles.

Texas adopted significant amendments to the *Texas Savings and Loan Act* to enhance enforcement authority of the Department and require applications for changes of control

The Tax Reform Act of 1986 was enacted, removing significant federal income tax incentives for investment in real estate.

**1987** Governor Clements appointed a Task Force to study the savings and loan industry to ascertain the true status of the industry and make recommendations for resolving industry problems.

**1988** The Governor's Task Force issued its report on the Savings and Loan Industry calling for, among other things, enhanced enforcement of lending and investment regulations; restrictions on equity investments; removal of the Savings and Loan Department from the Appropriations process to ensure adequate funding for the Department; elimination of the salary cap on the commissioner's salary; and improved coordination between state and federal thrift regulators.

The Southwest Plan was established by the Federal Savings and Loan Insurance Corporation (FSLIC) resulting in the closure of many insolvent S&Ls in Texas and converting nearly all such institutions to a federal thrift charter.

There were 189 state chartered savings and loan associations with \$78.4 billion in assets. There was a January reduction in force from 79 employees to 56.

**1989** The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) was enacted, abolishing the FSLIC and shifting its deposit insurance activities to the Federal Deposit Insurance Corporation (FDIC). Insolvent institutions are placed under the control of the Resolution Trust Corporation. All state chartered institutions are placed under an unprecedented triple regulatory structure of the FDIC, Office of Thrift Supervision, and the state chartering agency, further weakening the viability of the remaining state chartered thrifts.

**1989** Texas Legislature enacted S.B. 607 which eliminated the separate industry sections of the Finance Commission; shifted regulatory and policy responsibility to the full Finance Commission and restructured the Finance Commission to provide for a majority of public members.

There were 123 state chartered savings and loan associations with \$37.0 billion in assets. There was an August reduction in force after enactment of FIRREA from 59 employees to 30.

**1991** The last insolvent state chartered S&Ls of the 1980s finally closed by FDIC.

**1992** There were 31 state chartered savings and loan associations with \$8.3 billion in assets. There was a January reduction in force from 30 employees to 6.

**1993** The *Texas Savings Bank Act* was enacted establishing a new financial institution charter having a mandatory level of housing and housing related loans and investments and a regulatory structure more consistent with state commercial banks. The act also provided broader consumer and commercial loan lending authority than the savings and loan charter.

The Department reestablished its examination force and expanded the supervisory staff increasing total agency personnel to 15 in anticipation of federal conversions to state savings bank charter.

**1994** First conversion to a state savings bank charter by a state chartered savings and loan association.

**1995** First de novo state savings bank charter approved. First new state thrift charter granted in more than ten years.

**1996** First conversion of a federal thrift to the state savings bank charter.

**1997** There were 24 state chartered savings banks and savings associations with \$8.2 billion in assets. Agency staffing fluctuates to 12. One de novo savings bank charter approved.

**1998** Regulated assets under Department's jurisdiction increase 51 percent. The Department received applications for and approved two de novo savings bank charters. First commercial bank converted to a state savings bank charter.

**1999** There were 24 state chartered savings banks and savings and loan associations with \$12.9 billion in assets. All but one state institution had converted to the state savings bank charter. One de novo state savings bank charter approved and four de novo charter applications in various stages of processing.

The *Mortgage Broker License Act* was enacted, establishing the state's first requirement that mortgage brokers be licensed and prescribes standards of education and conduct. Agency named as licensing and regulatory agency. Texas Comptroller of Public Accounts estimates 1,200 mortgage brokers and 3,000 loan officers will require licensing under the act before January 1, 2000.

### III. Policymaking Structure

**A. Please complete the following chart:**

| <b>Finance Commission of Texas</b><br>Exhibit 3: Policymaking Body |   |   |  |   |
|--|---|---|--|---|
| <b>Member Name</b>   | <b>Term/<br/>Appointment<br/>Dates/<br/>All appointed<br/>by the<br/>Governor</b> | <b>Qualification</b><br>(e.g., public<br>member,<br>industry<br>representative<br>) | <b>Address</b>   | <b>Telephone Number<br/>Fax Number<br/>E-mail Address</b> |
| W. D. Hilton, Jr.<br>Chair   | Term: 2/1/02<br>Apptmt. date:<br>10/11/95   | Public member   | Trust Services, Inc.<br>2608 Eastland Ave.<br>Ste. 202<br>Greenville, TX 75402               | 903/454-3700<br>903/455-5830<br>dhilton@trustservices.org |
| Jeff Austin, Jr.   | Term: 2/1/00<br>Apptmt. date:<br>5/3/94   | Banking<br>executive  | Austin Bank, Texas N.A.<br>P.O. Box 951<br>Jacksonville, TX 75766                            | 903/586-1526<br>903/586-0643<br>austin16@ballistic.com    |
| Steven C.<br>Hastings, Jr.   | Term: 2/1/00<br>Apptmt. date:<br>5/3/94   | Public member<br>CPA  | Medcare Financial<br>Solutions, Inc.<br>600 Six Flags Dr., #524<br>Arlington, TX 76011       | 817/695-1122<br>817/695-1228<br>shastings@medcarefin.com  |
| Deborah H.<br>Kovacevich   | Term: 2/1/04<br>Apptmt. date:<br>5/29/98  | Banking<br>executive  | State Bank of Jewett<br>P.O. Box 125<br>Jewett, TX 75846-0125                                | 903/626-4483<br>903/626-5816<br>sboj@risecom.net          |
| Marlene Martin   | Term: 2/1/02<br>Apptmt. date:<br>6/28/96  | Public member   | Attorney at Law<br>6243 W. IH 10, Ste. 840<br>San Antonio, TX 78201                          | 210/737-3997<br>210/737-3990<br>mmmjdcpa@aol.com          |
| Manuel J. Mehos  | Term: 2/1/02<br>Apptmt. date:<br>6/28/96  | Savings<br>executive  | Coastal Banc ssb<br>5718 Westheimer,<br>Ste. 600<br>Houston, TX 77057                        | 713/435-5315<br>713/435-7878<br>mehos@coastalbanc.com     |
| Victor (Buddy)<br>Puente, Jr.                                      | Term: 2/1/04<br>Apptmt. date:<br>6/28/96  | Public member   | Southwest Office<br>Systems<br>P.O. Box 612248<br>Dallas-Ft. Worth Airport,<br>TX 75261-2248 | 817/255-8602<br>817/255-8640<br>bpuente@sostexas.com      |
| John Snider  | Term: 2/1/00<br>Apptmt. date:<br>5/29/98  | Savings<br>executive  | Shelby Savings Bank,<br>SSB<br>P.O. Box 1806<br>Center, TX 75935-0706                        | 409/598-5688<br>409/598-5350<br>ssbank@sat.net            |

| Member Name     | Term/<br>Appointment<br>Dates/<br>All appointed<br>by the<br>Governor | Qualification<br>(e.g., public<br>member,<br>industry<br>representative<br>) | Address   | Telephone Number<br>Fax Number<br>E-mail Address  |
|-----------------|---|--|---|---|
| Robert V. Wingo | Term: 2/1/04<br>Apptmt. date:<br>5/29/98                              | Public member  | Sanders Wingo Galvin &<br>Morton Advertising<br>4050 Rio Bravo, Ste. 230<br>El Paso, TX 79902 | 915/533-9583<br>915/533-3601<br>bobwingo@swgm.com |

**B. How is the chair of the policymaking body appointed?**

Under Fin. Code §11.107, the Governor appoints a member of the Finance Commission as the presiding of

**C. Describe the primary role and responsibilities of the policymaking body.**

The primary role of the Finance Commission is to appoint the Savings and Loan Commissioner, the Banking Commissioner, and the Consumer Credit Commissioner and oversee the operation of their respective agencies. The Commission also adopts rules implementing statutes for most but not all of the industries supervised by the three agencies. Appeals of certain actions taken by the consumer credit and banking commissioner may be heard by the Commission, and the Commission's administrative law judge (ALJ) conducts hearings on behalf of the agency heads. The Commission also performs mandated studies on the availability, quality, and prices of financial services offered to agricultural, small business and individual consumers in the state and on home equity lending in Texas.

**D. List any special circumstances or unique features about the policymaking body or its responsibilities.**

The Finance Commission is an umbrella agency, or an oversight board, employing one full time employee (an ALJ) and a part-time executive director (currently filled by the banking commissioner). Commission members serve without remuneration. All administrative functions of the Commission are typically performed by the staff of the agency head who serves as executive director. Responsibility for the mandated legislative studies has been coordinated among the agency heads. Staff support and office space for the ALJ are provided by the Banking Department, with the other Finance Commission agencies billed for use of the ALJ's services in proportion to the amount of time devoted to each agency's business. The costs of the Finance Commission building and shared services are generally borne by the supervised agencies in proportion to their respective share of staffing, appropriations or space. (Section 11.204 of the Texas Finance Code).

The Finance Commission must comply with all laws and requirements applicable to state agencies (including reports), although nearly all its activities are executed by its subsidiary agencies.

Although the banking and thrift industries have statutory representation on the Finance Commission, the majority of the Commission's members are public members. Supervised institutions other than banks and thrifts regulated by the Finance Commission agencies do not have statutorily mandated representation on the Commission.

**E. In general, how often does the policymaking body meet? How many times did it meet in FY 1998? in FY 1999?**

Fin. Code §11.106 requires that the Finance Commission meet at least six times a year. In FY 1998, the Commission met six times. To date in FY 1999, the Commission has met five times, with a sixth meeting scheduled for August 20,

**F. What type of training do the agency's policymaking body members receive?**

A one-day orientation is conducted for new Finance Commission members, which includes a review of: statutory responsibilities of the Finance Commission and its members; open meetings procedures; open records laws; the Public Funds Investment Act; ethics; administrative law; state accounting procedures; and instructions on preparation of travel vouchers. Each of the commissioners also familiarizes the new members with the activities and policies of their respective agencies. Additionally, members are regularly notified of and encouraged to attend various seminars conducted by the Governor's Office and the Office of the Attorney General.

**G. Does the agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, please describe these policies.**

The roles of the Finance Commission members are outlined in Fin. Code §§11.101-107. In general, the Finance Commission adopts rules, reviews policy, and monitors performance of the Finance Commission agencies through its direct supervision of the commissioners. Each agency's commissioner operates as the chief executive officer of his/her respective agency, and is responsible for the agency's daily operations. The executive director of the Finance Commission is responsible for administrative support of the Commission, and preparation of all required reports and records. The ALJ is an employee of the Finance Commission and reports to the Finance Commission through the Audit Committee. Under Fin. Code §11.201, the executive director exercises administrative supervision over, and prepares an annual evaluation of, the ALJ, for approval by the Finance Commission. The Finance Commission ALJ independently performs all quasi-judicial duties without direct supervision. Under Fin. Code §11.203, the ALJ is not subject to the direction or control of the Department of Banking, Savings and Loan Department or the Office of Consumer Credit Commissioner.

Under the Mortgage Broker License Act, rule making authority is vested in the Savings and Loan Commissioner, but subject to review and direction of the Commission, similar to the rule making authority of the Banking Commissioner in the funeral services industry and the Consumer Credit Commissioner's rulemaking authority for pawnshops.

**H. If the policymaking body uses subcommittees or advisory committees to carry out its duties, please fill in the following chart.**

**Finance Commission of Texas**  
**Exhibit 4: Subcommittees and Advisory Committees**

| Name of Subcommittee or Advisory Committee          | Size/Composition/How members are appointed | Purpose/Duties   | Legal Basis for Committee |
|---|--|--|---------------------------|
| Audit Committee<br>(Standing Committee)             | Three members appointed by Chair.          | To contract for and review a risk evaluation of the agencies, set the scope and review findings of audits of selected internal operations. Also, to annually review the evaluation of the ALJ and make recommendations to the full Finance Commission with regard thereto. | Fin. Code 11.107 (c)(3)   |
| Home Equity Study Committee<br>(Ad Hoc Committee)   | Three members appointed by Chair.          | Contract for, set the scope of, and review findings of research on the availability, quality, and prices of financial services offered to agricultural businesses, small businesses, and individual consumers in Texas (currently home equity lending).                    | Fin. Code 11.107 (c)(3)   |
| Commissioner Search Committee<br>(Ad Hoc Committee) | Four members appointed by Chair.           | To select search firm, set profile of successful candidate, and recommend final candidates for the position of banking commissioner.   | Fin. Code 11.107 (c)(3)   |
| Sunset Committee<br>(Ad Hoc Committee)              | Four members appointed by Chair.           | To review and coordinate the agencies' response to the Sunset Advisory Commission.   | Fin. Code 11.107 (c)(3)   |

Other Finance Commission committees may be appointed as the presiding officer considers necessary to carry out the business of the responsibilities of the Commission.

**Mortgage Broker Advisory Committee.** Additionally, the *Mortgage Broker License Act* creates the Mortgage Broker Advisory Committee (Fin. Code §156.104) to advise and assist the Savings and Loan Commissioner. The committee is composed of six members, four appointed by the Commissioner and two appointed by the Texas Real Estate Commission. Members are to be from the industry and serve for staggered three year terms. The Commissioner may remove a committee member for failure to discharge their responsibility or if it is determined the member did not have the qualifications required at the time of appointment. The committee must meet at least twice each year and serves without remuneration. Powers and duties are as delegated by the Commissioner, but specifically include advising the Commissioner with respect to rules, procedures, form and content of applications and documents required by the agency, interpretation, implementation and enforcement of the Act. The statute is effective September 1, 1999.

**I. How does the policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of the agency?**

The Finance Commission obtains public input through its open meeting, and the rulemaking process. Notice for Finance Commission and subcommittee meetings is posted with the Secretary of State and on the Finance Commission website <http://www.fc.state.tx.us>. Meetings are generally held in the Hearings Room at the Finance Commission Building, which can seat over 50 members of the public. Members of the public are able to address the Commission during the meetings through a sign-up procedure. Interested parties are also invited to participate in the Finance Commission studies of financial services and home equity lending.

All hearings conducted by the ALJ are open to the public except as to matters that are made confidential by law. Some sections of the Finance Code require public notice of particular types of hearings to be published in the newspaper and sometimes for competitors of the applicant and law enforcement agencies to be given notice of the application and an opportunity to be heard for or against the application. These requirements are carefully observed in the hearing process.

All rule proposals are published for comment in the *Texas Register*. Many proposals are also distributed by the agencies for pre-comment among identified interested parties as a means of achieving negotiated, consensus solutions. Pre-comments are summarized for the Finance Commission prior to a vote to propose the rule, and comments received on proposals are summarized for the Finance Commission before a vote to adopt.

The Finance Commission reviews the feedback received by its agencies through surveys made of their respective constituencies.

#### ***IV. Funding***

##### **A. Describe the agency's process for determining budgetary needs and priorities.**

The Chief Administrative Officer and the Director of Corporate Activities and Planning prepare an operating budget within appropriations and revenue collection limits. The budget and personnel staffing levels are based on current and anticipated industry size and condition. The budget is reviewed and approved by the Commissioner and presented to the Finance Commission. Monthly operating reports are prepared and reviewed monthly by the Director of Corporate Activities, the Chief Administrative Officer and the Commissioner. Priorities are determined by the size and health of the state's thrift industry.

The Department also receives, as part of its appropriations, a contingency rider which would enable the agency to increase appropriated funds in the event of an increase in regulated assets, supervisory problems or workload. The use of the contingency rider must be approved by the Finance Commission and submitted to the Governor's Budget Office and the Legislative Budget Board.

**PLEASE FILL IN EACH OF THE CHARTS BELOW, USING EXACT DOLLAR AMOUNTS.**

##### **B. Show the agency's sources of revenue. Please include all local, state, and federal sources.**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT</b>   |                    |
|--|--------------------|
| <b>Exhibit 5: Sources of Revenue — Fiscal Year 1998 (Actual)</b>   |                    |
| <b>Source</b>  | <b>Amount</b>      |
| Appropriations from General Revenue (including employee benefits appropriated elsewhere in the General Appropriations Act) | \$1,201,624        |
| Appropriated Receipts  | 13,472             |
| <b>TOTAL REVENUE SOURCES FROM APPROPRIATIONS</b>   | <b>\$1,215,096</b> |
| Less: Lapsed Appropriations  | (215,501)          |
| <b>TOTAL</b>   | <b>\$1,002,821</b> |

Agency expenditures and revenue requirements are maintained at a level consistent with the size and condition of the industry regulated. Growth through conversion of other financial institutions to the state savings bank charter occurred at a rate slower than anticipated when the agency made its request for legislative appropriations; therefore, personnel staffing and expenditures were maintained below appropriated levels.

Pursuant to “Special Provisions Related to All Regulatory Agencies,” Article VIII, General Appropriations Act, 1998-1999 Biennium, the agency must collect sufficient revenue to cover the cost of appropriations as well as the amount of “Other Direct and Indirect Costs Appropriated Elsewhere in the Act” as specified in the agency’s appropriations bill pattern. In FY1998 the agency collected \$1,070,314 (Comptroller Object Code 3172) of revenue from the thrift industry in fees and assessments to fund these requirements, fully covering the agency’s “costs” under this provision. This requirement is repeated in the General Appropriations Act for the 2000-2001 Biennium.

**C. If you receive funds from multiple federal programs, show the types of federal funding sources.**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT</b>                    |                                  |                    |                      |                      |
|---|----------------------------------|--------------------|----------------------|----------------------|
| <b>Exhibit 6: Federal Funds — Fiscal Year 1998 (Actual)</b> |                                  |                    |                      |                      |
| <b>Type of Fund</b>   | <b>State/Federal Match Ratio</b> | <b>State Share</b> | <b>Federal Share</b> | <b>Total Funding</b> |
| N/A   |                                  |                    |                      |                      |

The agency receives no federal funds. The only federal assistance received is through an indirect subsidy in the area of examiner training. The Office of Thrift Supervision allows the agency’s examiners to attend their schools on a space available basis at no tuition charge. The agency also utilizes the training courses available from the Federal Deposit Insurance Corporation, the Federal Reserve Bank and the Federal Financial Institutions Examination Council.

**D. Show the agency's expenditures by strategy.**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT</b>                               |                  |
|--|------------------|
| <b>Exhibit 7: Expenditures by Strategy — Fiscal Year 1998 (Actual)</b> |                  |
| <b>Goal/Strategy</b>   | <b>Amount</b>    |
| A.1.1 Examination  | \$431,219        |
| A.2.1 Monitoring   | 99,956           |
| A.2.2 Enforcement  | 122,370          |
| A.3.1 Applications Processing  | 37,621           |
| B.1.1 Consumer Complaints  | 16,284           |
| C.1.1 Indirect Administration  | 117,984          |
| <b>GRAND TOTAL:</b>  | <b>\$825,434</b> |

**E. Show the agency's expenditures and FTEs by program.**

| <b>TEXAS SAVINGS AND DEPARTMENT</b>   |                               |  |                               |                             |                                 |
|---|-------------------------------|--|-------------------------------|-----------------------------|---------------------------------|
| <b>Exhibit 8: Expenditures and FTEs by Program — Fiscal Year 1998 (Actual)</b>                        |                               |  |                               |                             |                                 |
| <b>Program/Strategy</b>   | <b>Budgeted FTEs, FY 1998</b> | <b>Actual FTEs as of August 31, 1998</b> | <b>Federal Funds Expended</b> | <b>State Funds Expended</b> | <b>Total Actual Expenditure</b> |
| <b>PROGRAM:</b> Regulation and supervision of state chartered savings banks and savings associations. |                               |  |                               |                             |                                 |
| Examination   | 10.5                          | 6.3                                      | \$0                           | \$431,219                   | \$431,219                       |
| Monitoring  | 1.7                           | 1.5                                      | 0                             | 99,956                      | 99,956                          |
| Enforcement   | 2.0                           | 2.0                                      | 0                             | 122,370                     | 122,370                         |
| Applications Processing   | 1.0                           | .8                                       | 0                             | 37,621                      | 37,621                          |
| Consumer Complaints   | .4                            | .4                                       | 0                             | 16,284                      | 16,284                          |
| Indirect Administration   | 3.4                           | 2.4                                      | 0                             | 117,984                     | 117,984                         |
| <b>PROGRAM TOTAL</b>  | <b>19.0</b>                   | <b>13.4</b>                              | <b>\$0</b>                    | <b>\$825,434</b>            | <b>\$825,434</b>                |

In 1998, the agency had one program--regulation of the state chartered thrift industry. Powers and activities of state chartered savings banks and savings and loan associations are essentially the same. Variations in the federal regulatory structure for these institutions do not significantly affect the manner of the agency's regulation or the personnel used to regulate them. The functions of examination, monitoring,

enforcement, application processing, and consumer complaint resolution are inseparable components of the regulation and supervision of the thrift industry, are performed or participated in by the same agency personnel, and are not easily bifurcated into separate programs in operation or theory. Accordingly, payroll costs and expenditures are allocated to the various strategies based on estimated time spent by each individual in performing duties in the designated strategies.

The agency's new responsibility to license and regulate mortgage brokers who originate first lien residential mortgages beginning in FY2000 will create a separate and distinct program with an authorized 5 FTEs and appropriations of \$400,039 in FY2000 and \$275,106 in FY2001.

**F. If applicable, please provide information on fees collected by the agency.**

| <b>TEXAS SAVINGS AND DEPARTMENT</b>  |   |   |                        |  |
|--|---|---|------------------------|--|
| <b>Exhibit 9: Fee Revenue and Statutory Fee Levels — Fiscal Year 1998</b>  |   |   |                        |  |
| <b>Description/<br/>Program/<br/>Statutory Citation</b>  | <b>Current<br/>Fee/<br/>Statutory<br/>maximum</b> | <b>Number<br/>of<br/>persons<br/>or<br/>entities<br/>paying<br/>fee</b> | <b>Fee<br/>Revenue</b> | <b>Where Fee Revenue<br/>is Deposited<br/>(e.g., General Revenue<br/>Fund)</b> |
| Annual Fee To Do Business--<br>State Chartered Savings Banks<br>State Chartered Savings and<br>Loan Associations | See<br>Exhibit C<br>for Fee<br>Schedule           | 25  | \$938,603              | General Revenue Fund   |
| Fee For Special Examinations<br>(Cost of Regularly Scheduled<br>Examination Included in Annual Fee)              | \$365 per<br>day/per<br>examiner                  | 1   | \$2,925                | General Revenue Fund   |
| New Charter Applications<br>7 TAC §63.1 and §79.91   | \$10,000  | 2   | \$20,000               | General Revenue Fund   |
| Holding Company Registration<br>7 TAC §79.107 (SSB Only)   | \$5,000   | 2   | \$10,000               | General Revenue Fund   |
| Branch Office Application<br>7 TAC §63.2 and §79.92  | \$2,500   | 5   | \$12,500               | General Revenue Fund   |
| Merger Application<br>7 TAC §63.9 and §79.99   | \$2,500<br>Ea. Inst.                              | 2   | \$10,000               | General Revenue Fund   |
| Purchase and Assumption<br>Application<br>7 TAC §63.9 and §79.99   | \$2,000<br>Ea. Inst.                              | 5   | \$25,000               | General Revenue Fund   |
| Conversion to State Savings Bank<br>Application<br>7 TAC §79.105 (SSB Only)                                      | Varies by<br>asset size                           | 6   | \$27,500               | General Revenue Fund   |

|  |          |   |          |                      |
|--|----------|---|----------|----------------------|
| Change of Control<br>7 TAC §63.11 and §79.101  | \$10,000 | 1 | \$10,000 | General Revenue Fund |
| Rebuttal of Control<br>7 TAC §63.11 and §79.101  | \$2,500  | 1 | \$2,500  | General Revenue Fund |
| Investment in Subsidiary<br>7 TAC §63.12 and §79.102   | \$2,500  | 3 | \$7,500  | General Revenue Fund |
| Subsidiary Name Change, Offices,<br>or New Activity Designations<br>7 TAC §63.12 and §79.102 | Various  | 2 | \$700    | General Revenue Fund |
| ATM Application<br>7 TAC §63.10 and §79.100  | \$500    | 4 | \$2,000  | General Revenue Fund |
| Financial Institution Change of<br>Name or Location<br>7 TAC §63.4 and §79.94                | \$500    | 1 | \$500    | General Revenue Fund |

All of the agency fees are assessed pursuant to authority of Sections 61.007 and 91.007, Title 3, *Texas Finance Code*. Pursuant to Section 13.008, Title 2 of the *Texas Finance Code*, the agency’s revenue collections are limited to “reasonable and necessary fees for the administration of Subtitle B and C, Title 3, and for the support of the finance commission as provided by Subchapter C, Chapter 11.” See Exhibit C for a schedule of the agency’s annual assessment fee applicable to state chartered savings institutions beginning with Call Reports submitted as of December 31, 1998.

The annual fee charged to each state chartered savings bank and savings and loan association is an assessment fee based on the total asset size of the institution. This fee includes regularly scheduled examinations and normal supervision costs. Problem institutions in the lowest three categories of the financial institution rating system pay a prescribed premium of up to 50% for additional supervision and a fee for any special or extra examinations. The annual assessment fee is paid quarterly and adjusted as needed to assure that agency revenue collections are adequate to cover all costs of its operations. The assessment rate is set annually by the Commissioner with the consent of the Finance Commission.

The amount of all application fees required by statute is established by Finance Commission rule upon recommendation of the agency.

**G. Please fill in the following chart.**

| TEXAS SAVINGS AND LOAN DEPARTMENT |                |                    |         |                |
|-----------------------------------|----------------|--------------------|---------|----------------|
| Exhibit 10: Purchases from HUBs   |                |                    |         |                |
| FISCAL YEAR 1996                  |                |                    |         |                |
| Category                          | Total \$ Spent | Total HUB \$ Spent | Percent | Statewide Goal |
| Heavy Construction                | \$0            | \$0                | 0.0%    | 11.9%          |

|                              |          |          |       |       |
|------------------------------|----------|----------|-------|-------|
| <b>Building Construction</b> | \$0      | \$0      | 0.0%  | 26.1% |
| <b>Special Trade</b>         | \$0      | \$0      | 0.0%  | 57.2% |
| <b>Professional Services</b> | \$0      | \$0      | 0.0%  | 20.0% |
| <b>Other Services</b>        | \$9,070  | \$120    | 1.3%  | 33.0% |
| <b>Commodities</b>           | \$29,432 | \$12,849 | 43.6% | 12.6% |
| <b>TOTAL</b>                 | \$38,502 | \$12,969 | 33.7% | N/A   |

**FISCAL YEAR 1997**

| <b>Category</b>              | <b>Total \$ Spent</b> | <b>Total HUB \$ Spent</b> | <b>Percent</b> | <b>Statewide Goal</b> |
|------------------------------|-----------------------|---------------------------|----------------|-----------------------|
| <b>Heavy Construction</b>    | \$0                   | \$0                       | 0.0%           | 11.9%                 |
| <b>Building Construction</b> | \$0                   | \$0                       | 0.0%           | 26.1%                 |
| <b>Special Trade</b>         | \$0                   | \$0                       | 0.0%           | 57.2%                 |
| <b>Professional Services</b> | \$0                   | \$0                       | 0.0%           | 20.0%                 |
| <b>Other Services</b>        | \$9,516               | \$0                       | 0.0%           | 33.0%                 |
| <b>Commodities</b>           | \$5,842               | \$1,224                   | 21.0%          | 12.6%                 |
| <b>TOTAL</b>                 | \$15,358              | \$1,224                   | 8.0%           | N/A                   |

**FISCAL YEAR 1998**

| <b>Category</b>              | <b>Total \$ Spent</b> | <b>Total HUB \$ Spent</b> | <b>Percent</b> | <b>Statewide Goal</b> |
|------------------------------|-----------------------|---------------------------|----------------|-----------------------|
| <b>Heavy Construction</b>    | \$0                   | \$0                       | 0.0%           | 11.9%                 |
| <b>Building Construction</b> | \$0                   | \$0                       | 0.0%           | 26.1%                 |
| <b>Special Trade</b>         | \$340                 | \$340                     | 100.0%         | 57.2%                 |
| <b>Professional Services</b> | \$0                   | \$0                       | 0.0%           | 20.0%                 |
| <b>Other Services</b>        | \$8,323               | \$2,737                   | 32.8%          | 33.0%                 |
| <b>Commodities</b>           | \$21,680              | \$7,839                   | 36.1%          | 12.6%                 |
| <b>TOTAL</b>                 | \$30,343              | \$10,916                  | 36.0%          | N/A                   |

As indicated in the tables above, the agency purchases relatively few goods and services. With the exception of occasional computer equipment and software purchases, most of the agency's purchases are from either proprietary single source service providers (i.e., West Publications for law books, financial industry statute and regulation library on CD-ROM, financial institution industry information data base, asset and liability management interest rate modeling for financial institution data, etc.) or the General Services Commission.

**H. Does the agency have a HUB policy? How does the agency address performance shortfalls related to the policy?**

Yes. Because of the small number of purchases made by this agency, the agency's HUB policy is to try purchasing all non-supply items, except single source items, from a HUB with the state performance measure of purchasing at least 20% from HUB vendors. The agency purchaser is instructed to that effect and the purchaser's progress is monitored by the Chief Administrative Officer and Director of Corporate Activities and Planning through the requisition approval and payment authorization process for each purchase.

## V. Organization

**A. Please fill in the chart below. If applicable, list field or regional offices.**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT<br/>Exhibit 11: FTEs by Location — Fiscal Year 1998</b> |                              |   |  |
|--|------------------------------|---|--|
| <b>Headquarters, Region, or Field Office</b>   | <b>Location</b>              | <b>Number of Budgeted FTEs, FY 1998</b> | <b>Number of Actual FTEs as of August 31, 1998</b> |
| Headquarters (Only Office)   | Austin                       | 10                                      | 9  |
| Field Examination Staff  | Various (Personal Residence) | 9                                       | 6  |
| <b>TOTAL</b>   |                              | 19                                      | 15   |

Within the limitation of FTEs authorized by the General Appropriations Act, agency FTEs are maintained at a level consistent with the size and condition of the industry regulated. In 1998, the growth of the state thrift system through conversion of other depository financial institutions (e.g., federal savings associations, state and national banks) to the state savings bank charter was slower than anticipated when the agency made its appropriation request, due to uncertainty created by pending financial institution modernization legislation before Congress.

**B. What was the agency's FTE cap for FY 1998?**

The agency's FY1998 FTE cap in the General Appropriations Act was 19.

**C. How many temporary or contract employees did the agency have as of August 31, 1998?**

No temporary or contract employees were on staff as of August 31, 1998. The agency may use temporary employees briefly in the initial phase of mortgage broker license application processing between September 1, 1999 and January 1, 2000. During this period 1,200 mortgage brokers and 3,000 loan officers must be licensed.

**D. Please fill in the chart below.**

| TEXAS SAVINGS AND LOAN DEPARTMENT                   |                 |                                |                        |          |                        |        |                        |
|---|-----------------|--------------------------------|------------------------|----------|------------------------|--------|------------------------|
| Exhibit 12: Equal Employment Opportunity Statistics |                 |                                |                        |          |                        |        |                        |
| FISCAL YEAR 1996                                    |                 |                                |                        |          |                        |        |                        |
| Job Category  | Total Positions | Minority Workforce Percentages |                        |          |                        |        |                        |
|   |                 | Black                          |                        | Hispanic |                        | Female |                        |
|   |                 | Agency                         | Civilian Labor Force % | Agency   | Civilian Labor Force % | Agency | Civilian Labor Force % |
| Officials/Administration                            | 3               | 0%                             | 5%                     | 0%       | 8%                     | 0%     | 26%                    |
| Professional  | 10              | 0%                             | 7%                     | 0%       | 7%                     | 60%    | 44%                    |
| Technical   | 0               | 0%                             | 13%                    | 0%       | 14%                    | 0%     | 41%                    |
| Protective Services                                 | 0               | 0%                             | 13%                    | 0%       | 18%                    | 0%     | 15%                    |
| Para-Professionals                                  | 0               | 0%                             | 25%                    | 0%       | 30%                    | 0%     | 55%                    |
| Administrative Support                              | 3               | 0%                             | 16%                    | 67 %     | 17%                    | 67%    | 84%                    |
| Skilled Craft                                       | 0               | 0%                             | 11%                    | 0%       | 20%                    | 0%     | 8%                     |
| Service/Maintenance                                 | 0               | 0%                             | 19%                    | 0%       | 32%                    | 0%     | 27%                    |
| FISCAL YEAR 1997                                    |                 |                                |                        |          |                        |        |                        |
| Job Category  | Total Positions | Minority Workforce Percentages |                        |          |                        |        |                        |
|   |                 | Black                          |                        | Hispanic |                        | Female |                        |
|   |                 | Agency                         | Civilian Labor Force % | Agency   | Civilian Labor Force % | Agency | Civilian Labor Force % |
| Officials/Administration                            | 3               | 0%                             | 5%                     | 0%       | 8%                     | 0%     | 26%                    |
| Professional  | 11              | 0%                             | 7%                     | 0%       | 7%                     | 36%    | 44%                    |
| Technical   | 0               | 0%                             | 13%                    | 0%       | 14%                    | 0%     | 41%                    |
| Protective Services                                 | 0               | 0%                             | 13%                    | 0%       | 18%                    | 0%     | 15%                    |
| Para-Professionals                                  | 0               | 0%                             | 25%                    | 0%       | 30%                    | 0%     | 55%                    |
| Administrative Support                              | 2               | 0%                             | 16%                    | 100%     | 17%                    | 50%    | 84%                    |
| Skilled Craft                                       | 0               | 0%                             | 11%                    | 0%       | 20%                    | 0%     | 8%                     |
| Service/Maintenance                                 | 0               | 0%                             | 19%                    | 0%       | 32%                    | 0%     | 27%                    |
| FISCAL YEAR 1998                                    |                 |                                |                        |          |                        |        |                        |
| Job Category  | Total Positions | Minority Workforce Percentages |                        |          |                        |        |                        |
|   |                 | Black                          |                        | Hispanic |                        | Female |                        |
|   |                 | Agency                         | Civilian Labor Force % | Agency   | Civilian Labor Force % | Agency | Civilian Labor Force % |

|                                 |    |    |     |      |     |     |     |
|---------------------------------|----|----|-----|------|-----|-----|-----|
| <b>Officials/Administration</b> | 3  | 0% | 5%  | 0%   | 8%  | 0%  | 26% |
| <b>Professional</b>             | 11 | 9% | 7%  | 0%   | 7%  | 36% | 44% |
| <b>Technical</b>                | 0  | 0% | 13% | 0%   | 14% | 0%  | 41% |
| <b>Protective Services</b>      | 0  | 0% | 13% | 0%   | 18% | 0%  | 15% |
| <b>Para-Professionals</b>       | 0  | 0% | 25% | 0%   | 30% | 0%  | 55% |
| <b>Administrative Support</b>   | 3  | 0% | 16% | 100% | 17% | 67% | 84% |
| <b>Skilled Craft</b>            | 0  | 0% | 11% | 0%   | 20% | 0%  | 8%  |
| <b>Service/Maintenance</b>      | 0  | 0% | 19% | 0%   | 32% | 0%  | 27% |

**E. Does the agency have an equal employment opportunity policy? How does the agency address performance shortfalls related to the policy?**

The agency has an EEO policy. The agency’s goal is to hire the best qualified individuals regardless of race, ethnicity, national origin, gender or sexual preference with the objective of achieving personnel diversity consistent with the population. Because of the agency size (number of FTEs), turnover has in recent years only provided the opportunity to hire two or three individuals annually. As indicated in the professional category for FY1998, progress has been made and would be better than indicated for both FY1998 and FY1997 if Asian minorities were considered.

Agency requirements in the professional and officials category include significant experience in the financial institution industry, or regulation thereof. Therefore, the population of available candidates is limited by the demographics of the financial institution industry. Agency size only permits hiring candidates without specific industry experience in one or two examiner positions at a time. In FY1998, the agency enjoyed greater success in attracting qualified minority candidates than in other recent years, but retention of those individuals has not been good. Frequently, qualified minority examiners are hired, and once trained by the agency, are hired away by the financial institution industry at higher pay, or into jobs requiring less travel.

**VI. Guide to Agency Programs**

Please complete this section for each agency program (or each agency function, activity, or service). Copy and paste the question boxes as many times as needed to discuss each program. Please contact Sunset staff with any questions about applying this section to the agency.

**PROGRAM: Regulation and Supervision of State Chartered Savings Banks and Savings and Loan Associations**

**A. Please complete the following chart.**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT</b><br><b>Exhibit 13: Program Information — Fiscal Year 1998</b> |  |
|---|--|
| <b>Name of Program</b>  | Regulation and supervision of state chartered savings banks and savings and loan associations. |
| <b>Location/Division</b>  | Austin, Texas / Only Office  |
| <b>Contact Name</b>   | John T. De Marines   |
| <b>Number of Budgeted FTEs, FY 1998</b>   | 19.0   |
| <b>Number of Actual FTEs - August 31, 1998</b>  | 15.0   |

The agency maintains its operating expenditures and FTE's at a level consistent with the size and condition of the industry it regulates. When pending federal legislation slowed expected conversion of federally chartered institutions to the state system, the agency deferred hiring the additional staff budgeted to examine these institutions.

**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

The agency's savings institution program relates to the examination, supervision and regulation of state chartered savings institutions. The key functions related to this program are (a) on-site examinations of savings institutions, (b) extensive supervisory monitoring using all available information about the operations, financial condition and safety and soundness of regulated institutions, including call reports, audit reports, application submissions and other requested data; (c) evaluation and approval or denial of corporate applications to branch, merge, reorganize, or acquire control of state chartered savings institutions; (d) initiation of enforcement actions to correct unsafe or unsound activities or statutory and regulatory violations; (e) review and resolve consumer complaints involving regulated institutions; and (f) promulgation of regulations in conjunction with the Finance Commission.

**C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.**

Chartering and regulation of state savings and loan associations was separated from the Department of Banking in 1961, with the creation of the Savings and Loan Department. This change in regulatory structure was a direct result of the thrift industry's desire for its own independent regulator and to create an environment more conducive to the granting of new thrift charters and branch network expansion. With that change, the current program of savings institution chartering separate from commercial banks was established and a thrift regulatory structure was established to provide oversight, regulation, and supervision of state chartered thrift institutions and ensure that those institutions were operated in a safe and sound manner.

The program's statutory duties with respect to the state chartered thrift system are established through the provisions of the *Texas Savings Bank Act* and the *Texas Savings and Loan Act* in response to the

Texas Constitution mandate that “The Legislature shall by general law, authorize the incorporation of state banks and savings and loan associations and shall provide a system of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors thereof.”

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

With the enactment of FIRREA in 1989, the state savings and loan system was subjected to an unprecedentedly burdensome regulatory structure imposing higher costs and regulatory obligations on state chartered savings associations. Numerous state savings associations converted to a federal charter to avoid these additional costs and redundant regulatory structure. In 1993, the Texas Savings Bank Act was enacted to ensure that the state continued to have a viable state chartered thrift industry. State savings banks, like savings and loan associations, are required by law to maintain a significant portion of their investment portfolio in housing and housing related loans and investments.

The regulation and supervision of savings institutions and other depository financial institutions is a continuing obligation of government. As such, there will not be a time when the mission is completed and no longer needed.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

The program serves all the people of Texas by ensuring a safe and sound banking system to meet the credit needs of consumers, small businesses and others individuals for residential housing and real estate finance. The deposit and credit services of savings institutions are available to all persons and business entities. There are no qualifications or eligibility requirements associated with these services.

**F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.**

The program is administered by the Savings and Loan Commissioner. Examinations are performed by field examiners under the supervision of the Chief Examiner. The strategies of monitoring, enforcement, application processing and administrative support are directed by the Director of Corporate Activities and Planning. Supervisory Analysts function as off site monitors of all activities of assigned savings institutions between examinations. The Chief Administrative Officer supervises the administrative and human resource functions of the agency and serves as the agency’s chief accounting officer. The program is administered entirely from the headquarters office with field examiners on constant travel status and headquartered from their homes at various locations around the state.

**G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

There is no direct involvement with local units of government.

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

As a single program agency in FY1998, funding sources for this program are identical to the funding sources for the agency as a whole as described in IV(b). All funds are derived from the regulated institutions. No federal funds are available, but some very limited subsidy related to examiner training is provided.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

Yes. In addition to application fees that are set by rule, the statute provides for an annual fee for each institution. The annual fee is an assessment based on the savings institution's asset size. The fee is paid in quarterly installments and can be modified, with consent of the Finance Commission, to ensure that agency revenue provides an adequate funding source to cover the agency's cost of operations and assure achievement of its mission. Because financial institution charters are extremely competitive and a savings institution has the option of changing to an alternate charter (i.e., to a state or national bank, or federal savings association), a significant incentive exists for the agency to remain extremely efficient in order to keep overall regulatory costs competitive with those of other charters.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

Financial institution charters similar to the state savings institution charter are available from the Office of Thrift Supervision (federal savings association), Texas Department of Banking (state commercial bank), Texas Credit Union Department (state credit union), the Comptroller of the Currency (national bank charter) and the National Credit Union Administration (federal credit union). All state savings institutions are also regulated by one of the federal banking agencies: state savings and loan associations by the Office of Thrift Supervision, state savings banks that are members of the Federal Reserve Bank by the Federal Reserve, and non-member state savings banks by the Federal Deposit Insurance Corporation.

Savings institutions are distinguished from other depository institution charters through the statutory requirement that a significant portion of their assets must be invested in housing and housing-related loans and investments. Due to their concentration of mortgage lending, savings institutions must employ sophisticated investment techniques to control the interest rate risk in their investment portfolio.

Interest rate risk management in savings institutions is often more complex than in other types of depository institutions and, therefore, familiarity with and understanding of such techniques is an important factor in the choice of regulator by these institutions. Consequently, most savings institutions regulated by the agency contend that the only comparable alternative charter is a federal thrift charter.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

**State Savings Banks.** All state savings banks are subject to the federal regulatory jurisdiction of the FDIC. The agency coordinates all regulatory actions with the FDIC and emphasis is placed on regular communication with the FDIC. Examinations are performed jointly with one examination report issued and supervisory actions are coordinated. Whenever possible, enforcement actions are joint and at a minimum the particulars of the enforcement action are coordinated to minimize duplication and/or conflicting regulatory requirements. To reduce duplication in the application process, the agency permits applicants to submit FDIC application forms and supplement the FDIC application by letter for any unique state requirements or additional information the agency needs. Final application approval is coordinated with the FDIC to assure consistent results and full sharing of information.

There are currently no state savings banks that are Federal Reserve Bank members and subject to its regulatory jurisdiction.

**State Savings and Loan Associations.** The Office of Thrift Supervision is the primary federal regulator for these institutions and the agency performs alternating examinations with the OTS. This reduces examination duplication, but is less desirable than the joint program with the FDIC because of the long delay between on-site visits by the examination staffs of each agency. All other regulatory activities and actions are coordinated in essentially the same manner as with the FDIC. At July 31, 1999, there is only one state chartered savings and loan association in Texas. All others have converted to the state savings bank charter.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

No additional information required.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

The regulation provided by this program is needed to ensure a safe and sound system of thrift institutions in Texas and to assure that the State has a role and influence with respect to the thrift industry operating in Texas. The thrift industry in Texas, including state and federal institutions, consists of more than \$40 billion of financial assets. Since nationally chartered banks and thrifts are not required to comply with all state laws because of federal preemption, the only way the state can have a role in influencing this industry is through the maintenance of a strong and competitive state thrift system. The industry has consistently stated its strong support for a state thrift regulatory system that remains independent of the regulatory structure for commercial banks.

The program of regulation of the state chartered thrift industry is based primarily on regular examination of the institutions under the agency's jurisdiction, comprehensive off site monitoring between examinations, initiation of prompt and appropriate enforcement actions when problems are identified to ensure corrective action, careful review of applications for corporate changes, particularly relating to acquisition of control of a savings institution, and investigation of consumer complaints. These procedures and activities are described more fully below.

**Examination.** Examination of state savings banks is performed jointly with the FDIC and a joint report of examination is issued to the savings institution at the conclusion of the examination. Examination frequency is determined by the institution's size and rating under the Uniform Financial Institution Rating System. Examiners normally spend a week in the office, or a convenient FDIC field office, reviewing information requested from the institution in advance, establishing examination scope, reviewing minutes and performing selected analysis. Examiners then spend two to four weeks in the institution examining records, verifying financial data, evaluating policies and systems, testing compliance with statutes and regulations and reviewing the institution's operations and examination findings with appropriate officers. At the conclusion of the examination field work, an exit conference is held with management and, if warranted, with the institution's board of directors to discuss examination findings and conclusions.

A written examination report is completed in the agency office, or a convenient FDIC field office. The final draft of the report is agreed to by both the state and FDIC examiner-in-charge and forwarded to the FDIC Regional Office and the agency for final review and editing. Typically, the FDIC processes the report in its final bound form and forwards it to the agency for signature. When received at the agency, a copy of the report is circulated to the Commissioner and other supervisory personnel. The supervisory analyst responsible for the agency's off-site monitoring of the institution reviews the report of examination when received from the FDIC and prepares a file summary of the report. The analyst also drafts a letter transmitting the report to the institution. Frequently, supervisory comments are included requiring additional information, follow up reporting, or providing instruction to the institution regarding required remedial action. The Director of Corporate Activities and Planning reviews the report and supervisory letter prior to its mailing. Institutions are normally requested to respond in writing within a specified period.

**Monitoring.** A supervisory analyst is assigned a caseload of twelve to fourteen savings institutions to monitor between examinations. The supervisory analyst works closely with the Director of Corporate Activities and Planning to maintain a supervisory history, institution profile and supervisory plan for each institution. The analyst reviews examination reports, independent audit reports, applications and all correspondence with savings institutions included in their caseload. The analyst

drafts virtually all written correspondence with the institution and frequently responds to questions from the institution regarding requirements of the applicable statutes, regulations and policies of the agency. The analyst reviews quarterly call report submissions from each institution, makes follow-up inquiry for additional information and prepares quarterly supervisory reports summarizing the activities of all savings institutions under the agency's jurisdiction. The analyst also maintains various individual and aggregate tracking and analysis reports as required.

**Enforcement.** Enforcement actions are typically the result of examination and monitoring activities of the agency. All enforcement actions are coordinated with the FDIC and, whenever possible, the actions are taken jointly to ensure uniform regulatory action by both the state and federal agencies. Actions may be informal or formal depending on the nature and seriousness of the issue and management's past responsiveness to regulatory concerns. Enforcement actions usually involve at least one meeting with the institution's board of directors.

Informal actions are generally accomplished by written directive from the agency to take, or cease an action and may be used in circumstances where the institution is well capitalized and there are grounds for confidence that the management and directors of the institution will respond promptly and affirmatively to the directive.

Formal enforcement actions are orders of the commissioner enforceable in District Court and include: an order to cease and desist from a particular action, or to take an affirmative action, or both; an order removing or prohibiting a person from participating in the affairs of the savings institution or any other institution under the jurisdiction of the agency; an order requiring divestiture of control of a savings institution; an order requiring a person to pay an administrative penalty of up to \$25,000; or an order placing the affairs of the savings institution under the control of a conservator. Whenever possible, formal enforcement actions are issued jointly with the FDIC; however, more frequently the FDIC defers to the State to initiate enforcement actions because the agency is able to take action more quickly and with less administrative delay.

In less serious supervisory situations, a Memorandum of Understanding may be entered into as a signed agreement between the board of directors and the Commissioner with the board agreeing to take particular corrective action within a specified time period to address an unsafe and unsound condition. Such agreements are normally reached in consideration for the Commissioner's forbearance from the more formal issuance of a cease and desist order.

Provisions are available for appeal of an order to the Commissioner with a hearing and reconsideration; however, in such situations, the order is not stayed during any appeal process. Orders of the Commissioner are subject to judicial review in Travis County District Court.

**Application Processing.** The Savings and Loan Commissioner has authority to charter state savings banks and savings associations. Additionally, state chartered savings institutions are required to obtain approval of the Commissioner for certain corporate transactions such as: establishing an additional office, investing in a subsidiary corporation, merging with another institution, bulk sale or purchase of assets or deposits, or acquisition of control of a savings institution. Approval is obtained by submitting an application or notice to the agency with the prescribed application fee. The

application is reviewed and evaluated by the supervisory analyst responsible for the institution, and supplemental information is requested from the applicant if necessary. When the application is deemed complete, a hearing is set, if required. Notice of the application is given to the industry by the agency and the applicant is required to publish notice regarding the application to the general public. If no protest of the application is received, the Commissioner may waive the hearing. The application is also reviewed by Director of Corporate Activities and Planning, who works with the analyst to draft the order for approval or the letter of denial as appropriate. In either case, the recommendations of the analyst and director are made to the Commissioner for final determination of application approval or denial. Denials are subject to judicial review in District Court.

**Consumer Complaint Resolution.** Consumer complaints regarding state chartered savings institutions may be made in writing to the agency. When a complaint is received, it is reviewed by the analyst monitoring the institution and the complainant is sent an acknowledgment letter. The analyst refers the complaint to the managing officer of the institution against whom the complaint is made and requests a complete response within 30 days. After receiving the response from the institution, the analyst evaluates the response to determine whether additional information is needed. In rare cases, usually when possible fraud or safety and soundness issues are of concern, an on site investigation is performed. The analyst makes a final determination of whether applicable financial institution statutes or regulations have been violated. The analyst drafts a final written response to advise the complainant and the savings institution of the results of the agency’s review and forwards it to the Director of Corporate Activities and Planning for approval and signature. Normally, this complaint process results in the savings institution working aggressively to resolve its customer complaint.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency’s practices.**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT</b><br><b>(Regulation of the State Chartered Thrift Industry)</b><br><b>Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1997 and 1998</b> |         |         |
|---|---------|---------|
|   | FY 1997 | FY 1998 |
| <b>Number of complaints received</b>  | 25      | 21      |
| <b>Number of complaints resolved</b>  | 26      | 22      |
| <b>Number of complaints dropped/found to be without merit</b>   | 0       | 0       |
| <b>Number of sanctions</b>  | 0       | 0       |
| <b>Number of complaints pending from prior years</b>  | 2       | 1       |
| <b>Average time period for resolution of a complaint</b>  | 1 day   | 1 day   |
| <b>Number of entities inspected or audited by the agency</b>  | 19      | 25      |

|   |    |    |
|---|----|----|
| <b>Total number of entities regulated by the agency</b> | 24 | 25 |
|---|----|----|

The average period for resolution of a complaint is an agency performance measure and is calculated from the date that the agency has all information required to render a decision on the facts and merits of the complaint. Typically from the time the agency receives the complaint to completion of its review and the final correspondence to the complainant takes an average of 30 to 45 days.

**PROGRAM: Licensing and Regulation of Mortgage Brokers Doing Business in Texas  
(NEW PROGRAM BEGINNING IN FY2000)**

**A. Please complete the following chart.**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT<br/>Exhibit 13: Program Information — Beginning Fiscal Year 2000</b> |   |
|---|---|
| <b>Name of Program</b>  | Licensing and regulation of mortgage brokers doing business in Texas. |
| <b>Location/Division</b>  | Austin, Texas / Only Office   |
| <b>Contact Name</b>   | James L. Pledger  |
| <b>Number of Budgeted FTEs, FY 2000</b>   | 5.0   |

**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

Under the *Mortgage Broker License Act* enacted by the 76th Legislature, the agency received authority for a new program beginning September 1, 1999, with the program's key functions being to: (a) license Texas mortgage brokers and loan officers; (b) investigate consumer complaints; (c) initiate disciplinary action necessary to enforce the statute and protect consumers; (d) establish and monitor continuing education requirements; and (e) promulgate regulation pursuant to the statute.

**C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.**

Until the enactment of the *Mortgage Broker License Act* (Subtitle E, Title 3, Texas Finance Code), the mortgage broker industry was largely unregulated with respect to its primary business of originating first lien home mortgages. Mortgage brokers have been credited with originating more than half of the mortgage loans made nationwide and recent reports have indicated that this number could be as high as 70 percent. Texas consumers did not have a central facility for lodging complaints in these transactions and no

experience or educational standards existed in the state to ensure that mortgage brokers were competent or responsible. The statute establishes such standards and provides for the active investigation of complaints for the protection of Texas consumers. Other statutes related to this program and specifically to mortgage origination include: the Real Estate Settlement Procedures Act; Truth in Lending Act; and the Equal Credit Opportunity Act. All of these additional statutes applicable to mortgage brokers are federal statutes.

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

During the enactment of the statute, the two key trade associations promoting its enactment found themselves in disagreement about which agency should serve as regulator for mortgage brokers. The Texas Association of Mortgage Brokers supported the Office of the Consumer Credit Commissioner and the Texas Association of Realtors supported the Texas Real Estate Commission. Unable to resolve this disagreement, they each approached this agency because of its long standing experience in mortgage lending through savings institutions.

The regulation of mortgage brokers is an ongoing regulatory process designed to protect consumers in mortgage lending transactions related to brokers. It is not expected that this will reach a point of completion where it will no longer be necessary.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

Mortgage brokers originate more than half of the mortgage loans nationwide and although no data is available as to the percentage of mortgage loans originated by mortgage brokers in Texas, it is expected to be equally significant. Individuals who perform these activities for depository financial institutions such as savings and loan associations and savings banks operate in a highly regulated environment designed to protect consumers and ensure availability of credit to all consumers.

The mortgage broker licensing and regulation program extends this consumer protection to individuals who obtain first lien residential mortgages through mortgage brokers that are not employees of a depository financial institution. Because mortgage brokers collectively originate at least as many mortgage loans as the thrift industry, this program establishes standards of education and conduct and provides for active investigation of complaints as an important new element of protection for Texas consumers.

Potential mortgage broker licensees served by the program are estimated by the Texas Comptroller of Public Accounts to include 1,200 mortgage brokers and 3,000 loan officers. The qualifications to receive a license are set forth in the governing statute and include a combination of education, training and experience.

**F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.**

The program will be administered by a Director of Mortgage Broker Licensing who will report directly to the Commissioner. This manager will serve as the primary supervisor of an administrative staff (3.5 FTEs) and will receive support of the agency's General Counsel (.5 FTE), who will dedicate approximately half time providing legal advice regarding investigations and enforcement actions, hearings, and rule making related to this program. The other half of the General Counsel's time will be dedicated to regulation of the state chartered thrift industry. The program will be administered from the agency's headquarters office with occasional travel to various areas of the state to investigate complaints and disseminate information to licensees and consumers.

**G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

No direct involvement with local units of government is anticipated.

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

Funds for this program come from general revenue but, as for all Article VIII agencies, are reimbursed through fees and assessments paid by the regulated entities. Mortgage brokers will pay a biennial license fee of up to \$375 and loan officers required to be licensed by the act will pay a biennial license fee of up to \$175. Administrative penalty fines for violation of the statute and a fee for registering new branch office locations of mortgage brokers will provide supplemental funding to the program. Appropriations are provided in the agency's bill pattern by Rider 6: Contingency Appropriations for S. B. 1074. All fees and fines will be deposited to general revenue.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

As with the agency's program for regulating state chartered savings institutions, licensing fees will be set at a level adequate to cover all costs of administering the program. At present, the exact number of potential licensees under the Mortgage Broker License Act is not known. Further, the full extent of complaint investigation, administrative hearings and other actions required to enforce the provisions of the statute can only be estimated. While the upper limit of fees established in the statute was established based upon the agency's estimation of the costs to conduct this program, as the agency gains experience with the program and the actual number of licensees involved is ascertained, these statutory licensing fees will require reevaluation and may require revision to fully fund the program.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

Mortgage origination is an important business component of the thrift industry and as such is very familiar to the agency. Likewise many agency personnel are familiar with the federal statutes that are also applicable to mortgage brokers.

This program is similar to the regulation of home equity lenders and second lien lenders conducted by the Office of the Consumer Credit Commissioner (OCCC), although these programs are often likely to share more similarities with general consumer lending.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

Some mortgage brokers engage in the types of lending that require licenses from the OCCC. Background checks may have already been completed by OCCC for some of these mortgage brokers. In licensing mortgage brokers under this program, the agency will make the maximum use permitted by statute of criminal background checks already completed by OCCC to minimize duplication and cost for these Texas businesses.

To the extent possible, the agency has also been willing to accept data in formats other than the form it prescribes in order to reduce regulatory burden on savings banks and it will continue to do so, whenever possible, for mortgage brokers.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

No additional information required.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

Designation of the Savings and Loan Department as the licensing agency permits full utilization of the agency's experience in regulating residential real estate lending in Texas. Prior to the 1980's, state and federal savings and loan associations provided the majority of mortgage credit to borrowers requiring residential housing finance in Texas and the nation. With the advent of securitization of mortgage loans and the related national development of the secondary market for mortgage loans, the pool of available credit for housing was greatly expanded and it became possible for non-depository institutions to actively engage in mortgage origination. As a result of this transition, mortgage brokers became a significant source of residential housing credit.

Today, savings institutions continue to make almost 30% of first lien mortgage loans, directly or through their subsidiaries. The agency's experience in regulating these depository mortgage lenders gives its management and staff broad experience in this type of lending, resulting in a perfect fit with the state's new mortgage broker licensing program.

**Licensing.** Unless specifically exempted, mortgage brokers and the loan officers who work for them will be required to apply to and obtain a license from the agency. The statute contemplates the licensing of individual mortgage brokers rather than licensing of the corporate and other business entities through which they often operate. The agency will, however, maintain data regarding the names and addresses of business entities through which a licensee operates and all branch addresses of such entities.

The agency will determine whether an applicant for a mortgage broker or loan officer license meets the educational, training and experience requirements of the act and it will perform a criminal background check of the applicant. The agency will maintain records of all licensees and make information regarding which individuals are licensed available to the public.

Employees of a depository financial institution, its subsidiary or affiliate, an insurance company licensed or authorized to do business under the state Insurance Code, mortgage bankers, and 501(c)(3) organizations are exempt from the act and not required to obtain a license provided the employee is acting for the benefit of the employer.

**Continuing Education.** Under the program, the Commissioner will establish criteria for educational programs and courses that meet the statute's continuing education requirements for mortgage brokers and loan officers. Licensed mortgage brokers and loan officers must complete 15 hours of continuing education biennially to be eligible for license renewal. The agency will maintain continuing education records for each

licensee and maintain a list of qualifying course criteria. The agency will also approve course sponsors and specific courses for qualification under the continuing education requirement.

**Complaint Investigation.** Investigation of the activities of mortgage brokers is generally consumer complaint driven under the statute. There is no provision for regular examination of mortgage broker operations to ensure compliance with statutory and regulatory requirements. The consumer complaints will be actively investigated and corrective actions required for compliance with the statute. The agency will maintain a record of all consumer complaints made against a licensee.

The Commissioner may impose an administrative penalty of up to \$2,500 on a licensee who violates the statute, issue a cease and desist order, or after hearing, take disciplinary action against a licensee who violates the statute. A mortgage broker recovery fund is established by the statute and maintained by the agency from payments of \$20 with each license application and renewal. The purpose of the fund is to reimburse aggrieved persons to whom a court has awarded damages because of the actions of a licensee. The Commissioner may revoke a license issued under the statute in cases where such payment is made from the recovery fund.

**Rulemaking.** Under the Mortgage Broker License Act, rule making authority is vested in the Savings and Loan Commissioner, subject to review and direction of the Finance Commission, similar to the rule making authority of the Banking Commissioner in the funeral services industry and the Consumer Credit Commissioner's rule making authority for pawnshops.

Program policies, procedures and regulations are currently being developed for implementation after the statute becomes effective on September 1, 1999.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

**Exhibit 14: Complaints Against Regulated Entities** is omitted because the mortgage broker licensing program begins September 1, 1999, and, therefore, has no complaint history.

## ***VII. Agency Performance Evaluation***

**A. What are the agency's most significant accomplishments?**

**1. Rebuilding a Sound State Thrift System.** The most significant accomplishment of the agency is rebuilding a healthy and viable state chartered thrift system after the financial crisis of the 1980's. Since that time the state thrift system has shown a remarkable recovery. Every state chartered thrift institution is now considered well capitalized and rated "satisfactory" for year 2000 preparedness. 96 percent of the institutions are rated by both state and federal regulators in the two highest categories of the CAMELS rating system. Industry capital has continually improved and nonperforming assets have declined. In addition, during 1998, the regulated assets of the agency increased by 51 percent and now stand at \$12.9 billion.

**2. Development and Enactment of a New Competitive State Savings Bank Charter.** A cornerstone of the rebuilding of the state thrift system is the enactment of the Texas Savings Bank Act in 1993. This model legislation was developed based upon the Model Savings Bank Act adopted by the American Council of State Savings Supervisors (ACSSS). The Department was instrumental in the development of this model legislation on the national level through the Commissioner's participation on the committee that drafted the model act, which has been used as a foundation for all saving bank statutes throughout the country over the past decade.

In Texas, the Department was the key proponent of the enactment of the legislation which provides a savings institution charter with a competitive regulatory structure and the flexibility in powers to compete effectively in an increasingly competitive market. The act also provides strong regulatory and enforcement authority to ensure a safe and sound industry within a well regulated state thrift system.

The agency continues to attract interest in new savings bank charters and conversions from other charters with interest by applicants with both thrift and commercial banking experience. Currently four de novo charters are in various stages of organization under the application process and discussions continue almost daily with representatives of interested parties considering both new charters and conversions of existing institutions to the state savings bank charter.

**2. Improving Efficiency in Departmental Operations with Strong Budgeting and Expenditure Management.** Since the crisis of the 1980's, the size of the state thrift system has fluctuated dramatically. Through strong budgeting and management, the agency has been able to adjust its operations to match the demands of these changes. These adjustments have been possible through regular cross training and emphasis on internal operational controls.

**B. Describe the internal process used to evaluate agency performance, including how often performance is formally evaluated and how the resulting information is used by the policymaking body, management, the public, and customers.**

The primary measure of the agency's performance is the condition of the state chartered thrift industry and its ability to maintain a strong, cooperative working relationship with the Federal Deposit Insurance Corporation, the federal regulator for state savings banks. Another measure of the agency's performance is its effectiveness in communicating with the savings institutions under its jurisdiction and its responsiveness to the needs of the public and the institutions it regulates.

**Performance Measures.** The agency's performance measures, agreed to by the Legislative Budget Board and the Governor's Office of Budget and Planning, are key evaluative indicators. Measures regarding both the size of the industry and the percent of safe and sound institutions are key indicators of the success of the examination process and related monitoring and enforcement activities. Additionally, the performance measures relating to the timeliness of responses to applications filed by savings institutions and complaints received from the public are key indicators. The agency's progress in achieving these measures is evaluated quarterly in the formal process of reporting the measures.

**Management Participation and Review.** A key to assuring the effectiveness of the agency's performance in achieving qualitative measures is the commitment and action by management and other senior staff to ensure quality is maintained. The agency's work is cooperative and collaborative effort by management and staff. Everyone's work product is reviewed by someone else. No written correspondence (letter or report) leaves the office, whether prepared by Commissioner or staff, without a second review before the document is released. Additionally, all correspondence is circulated to Commissioner and staff to assure collaboration and a sharing of information. Work performed by examiners and supervisory analysts is in all cases reviewed by more senior personnel. Internal reports are prepared in connection with the quarterly analysis of call report financial data submitted by each institution. The Quarterly Supervisory Report to the Commissioner focuses not only on key measures of how regulated institutions performed during the quarter, but also reports on examination timeliness, history and follow-up on Y2K compliance, timely review of examination reports and independent audit reports, etc.

**Industry Satisfaction Survey.** Financial institutions have several charter alternatives to achieve their business objectives. While the agency must remain effective in addressing issues of regulatory compliance and matters affecting the safe and sound operation of state chartered savings institutions, the agency must communicate effectively with the industry and be responsive to questions and applications. The agency must be fair and consistent in applying policies, regulations and statutes, and must not be arbitrary in the regulation of an institution (i.e., the standards must be the same for all). To evaluate the agency's effectiveness in achieving these issues, the agency conducted a written survey of the chief executive officers of all state chartered thrifts in 1998. The survey was completed by 54% of the CEO's and clearly indicated the agency's success in achieving the desired performance. The full results of this survey are included in the agency's Strategic Plan for 1999-2003. The agency plans to make this survey a regular part of the biennial planning process.

**Survey of Organizational Excellence.** The agency has participated twice in the Survey of Organizational Excellence conducted by the University of Texas. The survey results are included in the agency's Strategic Plan for the 1999-2003 period and reflect a highly favorable view of the agency by its employees.

**Access to the Commissioner.** When warranted by important events or issues, the Commissioner has invited the chief executive officers of the savings institutions under the agency's jurisdiction to attend group discussion meetings with the Commissioner. Such a meeting was held as "A Day With the Commissioner" after enactment of the Texas Savings Bank Act to discuss changes in the agency and opportunities under the new act. In 1998, a meeting was held that included the Chairman and other interested members of the Finance Commission to discuss the Finance Commission's review of combining the agency's regulation with the Department of Banking. This meeting, which was well attended by some 30 CEO's from both state and federally chartered savings institutions, provided the agency and the Finance Commission a better understanding of the industry view of the importance of maintaining a state savings bank charter as a vital and distinctive financial institution charter to enhance the dual thrift system in Texas. As a direct result of this meeting with savings institution CEO's, the Finance Commission passed a resolution supporting the state savings bank as an independent and separately regulated state charter alternative needed to strengthen and expand the state's thrift system to serve the credit needs of citizens.

The Commissioner also issues a quarterly newsletter to industry CEO's to communicate important and timely issues at both the state and federal level that affect the regulation of the industry. This is combined with the Commissioner's regular attendance and presentations at selected industry meetings and conferences.

**Review of Commissioner's Performance.** On several occasions over the past few years, the Finance Commission has conducted formal reviews of the performance of the commissioners under their oversight. In 1999, the Finance Commission reinstated this review process. Each commissioner submitted a statement of goals and objectives that was reviewed and modified by the Finance Commission. See Exhibit B for a copy of the mid-year performance report.

The results of these surveys, meetings and performance measures are reported to the Finance Commission and considered by management in establishing policies and adapting agency procedures and regulations to better serve its constituents and ensure accomplishment of the agency's mission.

**C. What are the agency's biggest opportunities for improvement?**

**1. Continued Promotion and Expansion of the Dual System through the State Savings Bank Charter.** The state savings bank charter is viewed by many as the most progressive and innovative financial institution charter in the State. While growth in regulated assets has been significant over the past few years, the process of encouraging new charters and conversions of existing institutions is slow and tedious. Significant opportunity for expansion of the State's role in the thrift industry and the financial services industry in general exists with the savings bank charter. The existing thrift industry has indicated that it believes growth and expansion of this charter will be best accomplished with a regulatory and supervisory system separate from that for commercial banks.

**2. Attracting and Retaining the Best Personnel.** Another important opportunity for improvement is the challenge of continuing to bring the brightest, best qualified and most diverse personnel into the agency, ensuring that they are well trained and have opportunities to develop their skills and talents, and retaining them in the organization. This is an area the agency has been successful in over the past ten years in spite of significant down sizing. As the state chartered thrift system in Texas grows in numbers of savings institutions through new charters and conversions, the agency must continue to improve its recruitment and retention of such individuals and ensure they are provided with the best training and technical tools necessary to provide effective and efficient regulation of the industry.

**D. How does the agency ensure its functions do not duplicate those of other entities?**

Agency functions are directed specifically to the savings institutions it charters and for which it has primary regulatory responsibility. The only duplication that exists is between state and federal regulatory agencies under the dual system of state chartering of these institutions and federal insurance of deposits provided by the FDIC. By conducting examinations jointly with the FDIC, regulatory resources are efficiently pooled, both the common and diverse interests of both agencies are met, and the regulatory burden is minimized. This coordination and cooperation extends to joint supervisory and

enforcement actions and joint meetings with savings institution boards and management, whenever possible.

**E. Are there any other entities that could perform any of the agency's functions?**

The functions of this agency are similar to those performed by the Department of Banking in regulating the state's commercial banks and the Credit Union Department in the regulation of state credit unions. However, the thrift industry's historical emphasis on residential housing and real estate lending, securitization of mortgages for sale in the secondary markets, mortgage servicing, and investment in mortgage backed securities results in markedly different interest rate risk profiles for these institutions. As a result, for those institutions whose primary lending and investment strategies are focused on the industry's historical role, different operating and borrowing strategies are employed and similar but distinctively different training and experience with asset and liability management is required.

The industries are subject to a different body of state and federal statutes and regulations, different economic considerations, and their complexities vary as a result of the different investment and lending strategies of thrifts and commercial banks as they serve their respective borrower constituencies. At a minimum, these differences require examiners and other regulatory staff to have specialized training and experience to effectively understand and regulate these industries as they compete and innovate to provide credit and deposit alternatives to Texas citizens and businesses.

**F. What process does the agency use to determine customer satisfaction and how does the agency use this information?**

As described in Section B above, the agency has begun the policy of biennially surveying the CEO's of the savings institutions subject to its regulation for feedback. The most important constituency, the public, is more difficult. However, the agency receives input through the consumer complaint process and less frequently from elected officials. When received, these comments and inquiries are helpful as a measure of satisfaction and areas that must be addressed.

**G. Describe the agency's process for handling complaints against the agency, including the maintenance of complaint files and procedures for keeping parties informed about the process. If the agency has a division or office, such as an ombudsman, for tracking and resolving complaints from the public or other entities, please provide a description.**

One of the agency's supervisory analysts is designated as Ombudsman for the agency. Industry complaints are processed by the supervisory analyst responsible for the specific institutions as described elsewhere in this report. Complaints received against institutions chartered by other thrift and banking regulators are referred to those regulators. Complaints against the agency are seldom received but when they arise they are referred to the Chief Examiner, Director of Corporate Activities and Planning, and the Commissioner for appropriate resolution. Complaints involving the Commissioner are also forwarded to the Chairman of the Finance Commission.

**H. Please fill in the following chart. The chart headings may be changed if needed to better reflect the agency's practices.**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT</b>                                      |                |                |
|---|----------------|----------------|
| <b>Exhibit 15: Complaints Against the Agency – Fiscal Years 1997 and 1998</b> |                |                |
|   | <b>FY 1997</b> | <b>FY 1998</b> |
| <b>Number of complaints received</b>  | 0              | 0              |
| <b>Number of complaints resolved</b>  | 0              | 0              |
| <b>Number of complaints dropped/found to be without merit</b>                 | 0              | 0              |
| <b>Number of complaints pending from prior years</b>                          | 0              | 0              |
| <b>Average time period for resolution of a complaint</b>                      | 0              | 0              |

**I. What process does the agency use to respond to requests under the Public Information (Open Records) Act?**

Requests are routed to the agency's Records Administrator, researched, reviewed and appropriate response drafted. If it is unclear whether the information requested is confidential under the governing act, or subject to open records, the request is reviewed with the Office of the Attorney General. The Commissioner reviews the request and response for any comments and revisions.

**J. Please fill in the following chart:**

| <b>TEXAS SAVINGS AND LOAN DEPARTMENT</b>   |   |   |
|--|---|---|
| <b>Exhibit 16: Contacts</b>  |   |   |
| <b>INTEREST GROUPS</b>   |   |   |
| (groups affected by agency actions or that represent others served by or affected by agency actions) |   |   |
| <b>Group or Association Name/<br/>Contact Person</b>   | <b>Address</b>  | <b>Telephone Number<br/>Fax Number<br/>E-mail Address</b>             |
| Consumers Union<br>Robert F. Schneider,<br>Senior Staff Attorney                                     | Southwest Regional Office<br>1300 Guadalupe, Suite 100<br>Austin, Texas 78701 | Phone: 512-477-4431<br>Fax: 512-477-8934<br>Email: schno@consumer.org |
| <b>INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS</b>  |   |   |
| (that serve as an information clearinghouse or regularly interact with the agency)                   |   |   |

| <b>Group or Association Name/<br/>Contact Person</b>  | <b>Address</b>                                       | <b>Telephone Number<br/>Fax Number<br/>E-mail Address</b>                                      |
|---|--|--|
| Texas Savings & Community Bankers<br>- Eric Sandberg, President   | 910 Congress, 2nd Floor<br>Austin, Texas 78701       | Phone: 512-476-6131<br>Fax: 512-474-6240<br>Email: TSCBA@swbell.net                            |
| Texas Association of Mortgage<br>Brokers - Gary Akright, President  | P. O. Box 140647<br>Austin, Texas 78714              | Phone: 972-385-2152<br>Fax: 972-233-6816<br>Email: gakright@domin.com                          |
| Texas Association of Realtors -<br>Bill Stenson   | 1115 San Jacinto Blvd<br>Austin, Texas 78701         | Phone: 512-480-8200  |
| Texas Mortgage Bankers Association<br>- Dianne Hughes, Director<br><br>- Larry Temple, General Counsel  | 823 Congress, Suite 700<br>Austin, Texas 78701       | Phone: 512-480-8622<br>Fax: 512-480-8621<br>Email: dhughes@texasmba.org<br>Phone: 512-477-4467 |
| <b>LIAISONS AT OTHER STATE AGENCIES</b><br>(with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office) |  |  |
| <b>Agency Name/<br/>Relationship/<br/>Contact Person</b>  | <b>Address</b>                                       | <b>Telephone Number<br/>Fax Number<br/>E-mail Address</b>                                      |
| Legislative Budget Board - Budget<br>Analyst - David Pagan  | 105 W. 15th Street, Suite 300<br>Austin, Texas 78701 | Phone: 512-463-1200<br>Fax: 512-475-2902<br>Email: david.pagan@lbb.state.tx.us                 |
| Governor's Office of Budget and<br>Planning - Budget Analyst - Wayne<br>Kelley  | P.O. Box 12428<br>Austin, Texas 78711                | Phone: 512-463-1778<br>Fax: 512-463-1880<br>Email:<br>wayne.kelley@governor.state.tx.us        |
| State Auditor's Office - Analyst -<br>Barney Gilmore  | P.O. Box 12067<br>Austin, Texas 78711-2067           | Phone: 512-479-4785<br>Fax: 512-479-4884   |
| Office of the Attorney General -<br>David Mattax, Chief Financial<br>Litigation Section   | 300 W. 15th, 8th Floor<br>Austin, Texas 78701        | Phone: 512-463-2018<br>Fax: 512-463-2348<br>Email: david.mattax@oag.state.tx.us                |
| Comptroller of Public Accounts-<br>Revenue Estimation - Doug Freer  | P.O. Box 13528<br>Austin, Texas 78711-3528           | Phone: 512-463-4900<br>Fax: 512-475-1559<br>Email: doug.freer@cpa.state.tx.us                  |
| Comptroller of Public Accounts -<br>Financial Reporting Analyst -<br>Theresa Baney  | P.O. Box 13528<br>Austin, Texas 78711-3528           | Phone: 512-936-6280<br>Fax: 512-463-4965<br>Email: theresa.baney@cpa.state.tx.us               |
| Comptroller of Public Accounts-<br>Appropriation Control Officer-<br>Pat Sheehan  | P.O. Box 13528<br>Austin, Texas 78711-3528           | Phone: 512-463-4524<br>Fax: 512-475-0527<br>Email: pat.sheehan@cpa.state.tx.us                 |

**VIII. 76th Legislative Session Chart**

Fill in the chart below or attach information if it is already available in an agency-developed format. In addition to summarizing the key provisions, please provide the intent of the legislation. For example, if a bill establishes a new regulatory program, please explain why the new program is necessary (e.g., to address specific health and safety concerns, or to meet federal mandates). For bills that did not pass, please briefly explain the issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation).

|   |               |   |
|---|---------------|---|
| <b>TEXAS SAVINGS AND LOAN DEPARTMENT</b><br><b>Exhibit 17: 76th Legislative Session Chart</b> |               |   |
| <b>Legislation Enacted in the 76th Legislative Session</b>                                    |               |   |
| <b>Bill Number</b>  | <b>Author</b> | <b>Summary of Key Provisions/Intent</b> |

|                  |               |  |
|------------------|---------------|--|
| <p>S.B. 1074</p> | <p>Carona</p> | <p>Provides for the Licensing of Mortgage Brokers</p> <p>EFFECTIVE DATE: September 1, 1999<br/>         LICENSE REQUIRED: January 1, 2000</p> <p>MORTGAGE BROKER LICENSE QUALIFICATIONS: U. S. citizen over eighteen years of age with a designated physical office in the state who has a bachelor's degree in finance, banking or business administration from an accredited college or university and eighteen months mortgage or lending experience as a mortgage broker or loan officer with a mortgage broker or persons and entities exempted under the Act, or three years of experience if the individual is not degreed. The Act deems licensed and active real estate brokers, attorneys, or recording agents or insurance solicitors or agents for a legal reserve insurance company under Chapter 21 of the Insurance Code as meeting the education and experience requirement. Criminal background checks required.</p> <p>LOAN OFFICER LICENSE QUALIFICATIONS: Qualifications for a loan officer license are similar, including eighteen months of the previously defined experience and the specified degree, or license, or 15 hours of approved educational courses, or for applications received prior to 1/1/2000, a mortgage broker sponsorship and certification of appropriate education and training.</p> <p>LICENSE EXEMPTIONS: The Act exempts the following entities and their employees: depository financial institutions and their subsidiaries; insurance companies licensed or authorized to do business in the state; mortgage bankers; 501(c)(3) tax exempt organizations and certain other defined individuals and companies who make mortgage loans from their own funds, for their own portfolio.</p> <p>RENEWAL: The individual is required to have attended 15 hours of approved continuing education courses during the term of the current license or maintain an active license as a real estate broker or sales person, attorney, or previously described insurance agent or solicitor.</p> |
|------------------|---------------|--|

|                                  |               |  |
|----------------------------------|---------------|--|
| <p>S.B. 1074<br/>(continued)</p> | <p>Carona</p> | <p>EXAMINATION / INVESTIGATION OF RECORDS: <u>No authority for regularly scheduled examinations.</u> Authority to prescribe and examine records, but investigations / examinations will be complaint driven.</p> <p>ENFORCEMENT ACTIONS: Commissioner has authority to revoke a license for violation of the statute and related rules, issue cease and desist orders enforceable in Travis County District Court and administrative penalties of up to \$2,500 per day may be assessed for violation of the Act, a rule or an order of the Commissioner.</p> <p>RULEMAKING: Commissioner has rulemaking authority, subject to review of the Finance Commission. The Act establishes a six member advisory committee, four appointed by the Commissioner and two appointed by the Texas Real Estate Commission, to advise and assist with rulemaking, interpretation, implementation and enforcement of the Act.</p> |
|----------------------------------|---------------|--|

|                  |                 |   |
|------------------|-----------------|---|
| <p>H.B. 2066</p> | <p>Marchant</p> | <p>Interstate Banking Act</p> <p>EFFECTIVE DATE: September 1, 1999</p> <p>Provides interstate branching authority for state banks and savings banks consistent with the Riegle Neal Interstate Banking Act. Permits de novo interstate branching with reciprocity and provides for a system of registration of out of state financial institutions with the Secretary of State.</p> |
|------------------|-----------------|---|

| <p><b>Legislation Not Passed in the 76th Legislative Session</b></p> |                      |  |
|--|----------------------|--|
| <p><b>Bill Number</b></p>  | <p><b>Author</b></p> | <p><b>Summary of Key Provisions/Intent/Reason the Bill did not Pass</b></p>  |
| <p>H.B. 2068</p>   | <p>Marchant</p>      | <p>This bill would have repealed the Texas Savings and Loan Act and converted the remaining state savings and loan association charter to a state savings bank and changed the name of the agency to the Texas Savings Bank Department. After passing the House, the bill was referred to the Senate in the last month of the session and died in the Senate Economic Development Committee due to the press of other business and lack of a Senate sponsor.</p> |

## **IX. Policy Issues**

### **ISSUE 1. Should the Department be combined with other financial services regulatory agencies?**

#### **A. Brief Description of Issue**

For more than a decade, the issue of agency consolidation for financial institution regulators has been studied in Texas. Some believe that significant efficiencies would result from such a reorganization. Others have suggested that any cost savings would be absorbed by adding an additional layer of bureaucracy to the process.

The most important aspect of this issue is whether the state will be more effective in building and enhancing its dual system of financial institution chartering and regulation with a combined regulatory structure for all depository institutions or with a system similar to the present structure involving different charters with separate regulators.

#### **B. Discussion**

Texas benefits from statutory provisions that enhance the dual financial institution system of state and federal charters with a full range of competitive state charter alternatives. Unlike the constituencies of many state agencies, depository institutions have a choice in chartering a depository institution which in turn determines the regulatory agency. Because of federal preemption, nationally chartered institutions are not subject to state regulatory control and the state has little or no influence with these institutions.

In a 1998 review by the Finance Commission of the need for a separate savings and loan department, executives of state chartered thrift institutions expressed a strong desire to continue the present structure. They believe that with the separate department, their regulator better understands the unique aspects of their business. Separate regulatory agencies are available in the federal system and the existence of separate state regulatory agencies encourages acceptance and expansion of the state system because the agency is not dominated by the interests of their competitors. The choice of separate agencies remains available in the federal system.

It is very difficult to reach definitive conclusions about preferable financial institution regulatory structures by looking at other states. There are almost as many different structures as there are states. But the impact of those regulatory structure choices on non-commercial bank charters in various states is more revealing.

Several states that have merged financial institution regulatory agencies have not experienced growth in state thrift systems. Virginia, Florida, and Louisiana are excellent examples, all of which had significant state chartered thrift industries at one time. Each of these states has a progressive state savings bank charter similar to Texas but there have been no thrift conversions or de novo charters into their state thrift system.

Other states have seen some growth in their state thrift systems. Both Michigan and Missouri have experienced conversions from federal thrift charters: five in Michigan, one in Missouri. Several states have shifted from independent regulatory structures to a combined agency and based on information obtained from the American Council of State Savings Bank Supervisors these states, Illinois, Ohio and Wisconsin, experienced significant growth of their state systems when the regulatory structure was independent but it appears that the level of growth has declined since the agencies were combined.

Texas has experienced conversions to the state savings bank charter from national banks, state banks, and federal savings associations. After several years of significant decreases or no growth, regulated assets increased in calendar 1998 by 51 percent (see chart below). During FY1999, one application for conversion from outside the state system and three applications for de novo charters had been received by the Department at July 31, 1999. Based on this experience, the Department believes that the growth in the state chartered thrift industry in Texas has benefitted from the state’s variety in types of financial institutions, each with different powers and different regulators. Texas’ separate regulatory structure for thrift institutions is one of the only reasons that would support the difference that exists in the experience of similar states.

| August 31, | Number of Charters | Total Assets Supervised (millions) | Number of De Novo Charters | Number of Conversions to Savings Bank Charter |
|------------|--------------------|------------------------------------|----------------------------|---|
| 1988       | 189                | \$78,428                           | 0                          | 0   |
| 1989       | 123                | \$36,999                           | 0                          | 0   |
| 1990       | 67                 | \$17,214                           | 0                          | 0   |
| 1991       | 37                 | \$10,102                           | 0                          | 0   |
| 1992       | 31                 | \$ 8,324                           | 0                          | 0   |
| 1993       | 29                 | \$ 8,400                           | 0                          | 0   |
| 1994       | 27                 | \$ 9,483                           | 0                          | 6   |
| 1995       | 25                 | \$ 9,768                           | 1                          | 5   |
| 1996       | 25                 | \$10,633                           | 0                          | 3   |
| 1997*      | 24                 | \$ 8,224                           | 1                          | 5   |
| 1998       | 25                 | \$10,969                           | 1                          | 5   |
| 1999**     | 25                 | \$12,900                           | 1                          | 3   |

\* The decline in total assets regulated by the agency in FY1997 was due to the unexpected conversion of a \$2 billion state savings and loan association from the state system to take advantage of broader federal interstate branching opportunities.

\*\* August 31, 1999 amounts are based on actual numbers on the date of filing this evaluation report. In addition to the number of charters shown in the chart, the agency currently has three *de novo* charter applications and an application for conversion from a federal charter pending.

The Finance Commission has studied whether to consolidate the agencies under its jurisdiction numerous times over the past 10 years. None of those studies have resulted in recommendations favoring consolidation and, in the most recent study, completed in April 1998, the Finance Commission concluded that "the value of the state savings bank charter and the expansion of the dual banking system in Texas would be enhanced and encouraged by the maintenance of the state savings bank charter under a separate Saving and Loan Department, continuing to report to the Finance Commission."

For the complete resolution adopted by the Finance Commission in April 1998 and the minutes and list of attendees of the meeting between Finance Commission representative and thrift industry CEO's in January 1998, see Exhibit A.

### **C. Possible Solutions and Impact**

The current system offers clear opportunities for further expansion of the state's role and influence with respect to its depository institutions. Agency consolidation would diminish the state's ability to expand its state chartered financial institutions industry.

## **ISSUE 2. Should the Savings Bank and Credit Union Statutes be amended to clarify that state and federal credit unions can directly convert to or merge into a mutual state savings bank charter?**

### **A. Brief Description of Issue**

Over the past few years, an increasing number of credit unions around the country have converted to the mutual thrift charter. When the Texas Savings Bank Act was enacted in 1993, the Department proposed to include credit unions within the definition of a financial institution which would have permitted an institution to freely choose under which type of charter it would operate. This inclusion was opposed by the credit union trade association.

Since then, conversion among federal charters has become easier and several institutions have done so but Texas law does not specifically permit such a conversion involving state savings banks or state credit unions.

### **B. Discussion**

Until recently, federal credit union regulations made conversion by a federally insured credit union to a thrift charter extremely difficult and burdensome. At the insistence of Congress, those regulations have been modified but state law in Texas remains unclear and does not expressly authorize such a conversion.

Several credit unions in Texas have converted to the federal thrift charter and the Department has received inquiries about conversion to a state savings bank charter. The uncertainty of whether the

National Credit Union Administration would permit the merger of a credit union into a de novo or interim state savings bank (even though it would be functionally equivalent to a conversion) has thus far hindered such transactions.

### **C. Possible Solutions and Impact**

The Department believes that since such conversions are permitted to a federal thrift charter, state law should be modified to expressly authorize credit union conversions to a mutual state savings bank charter, allowing these institutions a free choice of type financial institution charter under which they operate.

### **X. Comments**

None.

## **ATTACHMENTS**

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The following supplemental data or documents with the hard copy of the Self-Evaluation Report. Attachments are labeled (e.g., Attachment 1, etc.) as requested and included in a separate binder.

### **Attachments Relating to Key Functions, Powers, and Duties**

1. A **copy** of the agency's enabling statute. If the enabling statute is too burdensome to attach, explain and list the citation of the statute.
  - ' **Texas Savings Bank Act - Provided in Separate Binder**
  - ' **Texas Savings and Loan Act - Provided in Separate Binder**
  - ' **Mortgage Broker License Act**
2. A **copy** of each annual report published by the agency from FY 1995 - 1999.
3. A **copy** of each internal or external newsletter published by the agency from FY 1998 - 1999.
4. A **list** of publications and brochures describing the agency.
  - ' **Web Page -- <http://link.tsl.state.tx.us/tx/TSLD/>**
5. A **list** of studies that the agency is required to do by legislation or riders adopted in the 76th Legislative Session.
  - ' **None.**

### **Attachments Relating to Policymaking Structure**

6. Biographical information (e.g, education, employment, affiliations, honors) or resumes of all policymaking body members.
7. A **copy** of the agency's most recent rules, or an explanation that the rules are too burdensome to attach.
  - ' **State Savings Bank Rules and Regulations - Provided in Separate Binder**
  - ' **State Savings and Loan Association Rules and Regulations - Provided in Separate Binder**

### **Attachments Relating to Funding**

8. A **copy** of the agency's Strategic Plan For the 1999-2003 Period.
9. A **copy** of the agency's Legislative Appropriations Request for FY 2000-2001.

10. A **copy** of each annual financial report from FY 1996 - 1998.
11. A **copy** of each operating budget from FY 1996 - 1998.

#### **Attachments Relating to Organization**

12. An organizational chart of the agency that includes major divisions and programs, and that shows the number of FTEs in each division or program.
13. If applicable, a map to illustrate the regional boundaries, headquarters location, and field or regional office locations.

‘ **Headquarters Office Only**

#### **Attachments Relating to Agency Performance Evaluation**

14. A **copy** of each quarterly performance report completed by the agency in FY 1997 - 1999.
15. A **copy** of any recent studies on the agency or any of its functions conducted by outside management consultants or academic institutions.
  - ‘ **Comparison of Authority: Credit Union Department, Banking Department & Savings and Loan Department.** (See Finance Commission Self-Evaluation Report)
  - ‘ **Survey of Organizational Excellence**  
(See Attachment 8, Agency Strategic Plan, Appendix 8)

16. A **copy** of the agency’s current internal audit plan.

‘ **The agency is not subject to internal audit requirement of the Texas Internal Audit Act (§2102.001 et seq., Government Code). The Finance Commission has directed the agency to contract with an independent accounting firm to perform a risk assessment for the agency.**

17. A **list** of internal audit reports from FY 1995 - 1999 completed by or in progress at the agency.

‘ **None. Internal Audit Risk Assessment Report will be provided when issued.**

18. A **list** of State Auditor reports from FY 1997 - 1999 that relate to the agency or any of its functions.

‘ **None.**

19. A **list** of legislative or interagency studies relating to the agency that are being performed during the current interim.

' **None.**

20. A **list** of studies from other states, the federal government, or national groups/associations that relate to or affect the agency or agencies with similar duties or functions.

' **None.**

## **EXHIBITS**

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- A. Finance Commission April 1998 Resolution Supporting the State Savings Bank Charter, a Separate Savings and Loan Department and the Dual Thrift System**
  
- B. Savings and Loan Commissioner's Interim Report on Goals and Objectives**
  
- C. Texas Savings and Loan Department Fee Assessment Schedule**

**FINANCE COMMISSION RESOLUTION**

**April 1998**

*(Copy from Minutes)*







