



DEPARTMENT of  
SAVINGS & MORTGAGE LENDING  
Caroline C. Jones, Commissioner

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May 10, 2018

Mr. Ken Levine  
Executive Director  
Sunset Advisory Commission  
PO Box 13066  
Robert E Johnson Bldg., 6<sup>th</sup> Floor  
1501 N. Congress Ave.  
Austin, TX 78711

RE: Sunset Review of the Finance Commission Agencies – Department of Saving and Mortgage Lending

Dear Mr. Levine,

Thank you for providing the Department the opportunity to submit written comments about the report issued by the Staff of the Sunset Advisory Commission. We would first like to commend your staff for their professionalism during the review process.

**Issue 1 – While Regulation of the Finance Industry Is Necessary, Texas Does Not Need Two Agencies Regulating Banks**

**Change in Statute**

**Recommendation 1.1** – Abolish the Department of Savings and Mortgage Lending as a separate state agency and transfer regulation of state savings banks and the mortgage industry to the Texas Department of Banking.

**Response** – The Department of Savings and Mortgage Lending disagrees and does not believe that the findings cited in the report support the recommendation of abolishment.

**Regulation of the Non-Depository Mortgage Industry Not Fully Considered**

The Department is effective in its regulation of the residential mortgage industry in Texas. The 2018 Sunset report fails to cite any example to the contrary.

Starting as far back as 1876, the State of Texas distinguished itself through its constitution in recognizing the premium value Texans place on their residence by limiting the ability of creditors to obtain consensual liens on a homestead. The Department was created in 1961 and today is the agency focused on the regulation and health of the residential mortgage industry in Texas.

Over half of the Department's employees are involved in the regulation of the mortgage industry, while the remainder of the Department's staff is dedicated to the regulation and health of the state savings bank industry, which is related to residential mortgage lending.

The Department's staff not only leads the State's efforts to ensure the proper level of regulation of the residential mortgage industry in Texas, but also helps lead the nation. As an example, the current President of the nationally recognized American Association of Residential Mortgage Regulators is a Department employee.

In 2011, the Department received accreditation through the American Association of Residential Mortgage Regulators' and the Conference of State Bank Supervisors' Mortgage Accreditation Program. The Department was the ninth state agency in the nation to receive accreditation for its non-depository mortgage supervision. The accreditation process involves an in-depth review of an agency's policies, procedures, and operations, in order to determine whether an agency meets the standards set forth by the Mortgage Accreditation Program's Performance Standards Committee.

In 2016, the Department received re-accreditation through the same Mortgage Accreditation Program for its continued meeting of standards, adherence to best practices, and efficient supervision of the residential mortgage industry.

The Department has been recognized by consumers and the media for its enforcement efforts concerning unlicensed residential mortgage loan origination activity and unregistered residential mortgage loan servicing activity in Texas.

The Sunset staff recognized the public need for the continuation of the Department's functions in its 2000 staff report, yet it recommended at that time that all of its functions be absorbed by the Department of Banking and Office of Consumer Credit Commissioner. That recommendation was not adopted by the Legislature. The 2018 Sunset staff report claims [top of page 23] that staff reviewed the structure and functions of the finance agencies with "fresh eyes"; however, it is questionable how this statement could be made in earnest for the following reasons:

- (a) The report devotes all of Issue 1, to the discussion of the thrift industry and concludes that the Department should be absorbed in its entirety by the Department of Banking. Throughout the entire discussion in Issue 1, Sunset staff devotes only a brief paragraph [bottom of page 24] to the transfer of mortgage licensees and the regulation of the mortgage industry to the Department of Banking.
- (b) In the single paragraph on mortgage lending, Sunset staff states in a conclusory manner that combining the Department's expertise in examining the mortgage industry with Department of Banking's expertise in examining mortgage lenders, would "allow for better oversight of the overall market". However, Sunset staff fails to provide a concrete example of why this would occur. Furthermore, the Sunset report does not cite any specific information demonstrating that the Department has in any way failed to provide oversight in the residential mortgage market. Lastly, the Texas Finance Commission already provides oversight to the three Finance Commission agencies, which in effect is oversight of the overall market.

#### **"One Regulator With A Full View" Not Achieved**

The 2018 Sunset report [page 23] makes the statement that "[w]ithout one regulator with a full view of community economies and needs, the state cannot quickly reallocate resources or regulatory attention when warranted."

Adopting the recommendation would not achieve the goal of "one regulator" for all financial industries in Texas. The Sunset report states that Texas is an outlier and there is a need for "one regulator", but is silent as to why other financial related regulatory agencies should not be consolidated or absorbed as well into a single regulatory agency. In its 2008-2009 report on the Credit Union Department, Sunset staff considered a merger of the Credit Union into the Finance Commission oversight. In determining not to recommend consolidation Sunset staff stated: "While such a merger could result in benefits for the State – such as coordination of similar functions, ability to address issues affecting all financial institutions, and possible administrative savings – it could also have negative results – including the loss of an independent regulator that has specific knowledge of credit unions." Sunset staff concluded that the benefits of transferring the credit union functions to the Finance Commission were not sufficient to justify such a significant change. The same is true today with regard to the Department of Savings and Mortgage Lending and its functions.

The Sunset report does not include an example of how the current structure under the Finance Commission has failed to provide a full view of economies and needs. The Department's status as a self-directed semi-independent agency allows for a quick reallocation of resources or regulatory attention, under the direction of the Finance Commission. The current structure was tested during the 2008 financial crisis and the Department, as the dedicated thrift and mortgage regulator, succeeded under the current structure. The Department was able to act quickly and keep the Finance Commission updated on the status of the industries as they progressed through the crisis.

### **Questionable Fiscal Impact and Possible Disruption of Communication**

Although, some savings might be realized from implementing this recommendation, the overall amount is negligible, and there will be a negative fiscal impact on the thrift industry as its costs will not be reduced.

In fiscal year 2017, the Department of Banking and the Department of Savings and Mortgage Lending collected \$24.7 million in assessments from the banking industry as a whole, and the Department of Savings and Mortgage Lending collected over \$4 million in mortgage licensing fees, for a total of \$28.7 million. The perceived \$1.39 million annual savings would represent only 4.8% reduction in costs to both of these industries. The savings will be insufficient to cover an average 17% increase, as calculated by the Sunset Commission staff, in assessments for the state savings banks due to the Department of Banking's higher assessment rates, assuming the current assessment rates do not change.

For the mortgage industry, the same 4.8% reduction in costs would represent a \$3.50 and a \$4.80 reduction of the license renewal fee for a residential mortgage loan originator and a mortgage company, respectively.

The Department is an established agency and is well known by the current regulated industries. The Department's functions are currently transparent, effective, and responsive and continue to be needed by Texans. The consolidation might lead to disruption in communication and the regulated industries would have a larger unfamiliar agency as a regulator, in exchange for minimal savings.

### **Consolidation Based on A Single Criterion and Conflicts with Legislative Confidence**

Texas Government Code §§ 325.011 and 325.0115 identify a list of 19 criteria to be considered by Sunset staff in evaluating the continuing need for a state agency or its functions. The recommendation of abolishment of the Department is only based a single criterion - duplication.

Since receiving regulatory authority over mortgage brokers and loan officers in 1999, the Legislature has had confidence in the Department and has granted additional authorities over mortgage companies, mortgage bankers, and mortgage servicers.

### **Findings Do Not Support Abolishment**

The 2018 Sunset report acknowledges there is a continuing public need for the performance of the Department's functions. Other issues in the report are specifically addressed below, many of which the Department intends to adopt. Only one contains a recommendation specifically relating to the Department. That recommendation relates to modifying a penalty matrix and can be implemented by the Department. Other recommendations are across-the-board requirements or recommendations impacting the Finance Commission and the agencies under its oversight. None of the recommendations rise to the level of necessitating the abolishment of the Department.

Although the Department is considered a small agency based on the number of employees, it still operates in an effective and efficient manner. Based on the State Auditor's Report 18-702 "A Summary Report of Full-Time Equivalent State Employees for Fiscal Year 2017", Texas has 51 agencies with fewer employees than the Department, ranging from 3.8 to 50.8 employees. Nineteen of these agencies are regulatory agencies. Even as a small agency, the Department supervises a thrift industry which is larger, either by count of institutions and/or by aggregate assets, than 15 other state regulatory agencies across the nation. Additionally, the Department supervises the third highest non-depository mortgage licensee population, which includes the largest mortgage entities in the nation.

The Department's mission is to supervise and regulate the residential mortgage lending and state savings industries in order to protect Texans, provide a healthy residential mortgage lending environment, and maintain safe and sound savings banks and savings associations.

The Department has supervised the Texas thrift industry (first as Savings & Loans and now as State Savings Banks) since 1961 and the non-depository mortgage industry since 1999. With this long history of supervision the Department has developed expertise in the mortgage arena.

At the end of the day, abolishment does not accomplish any concrete goals. The work of the Department still needs to be done. Neither the thrift, nor the mortgage industry is seeking lower fees. The Department has the knowledge, expertise, and long history of supervising the industries and reporting to the Finance Commission the condition of and issues facing the industries.

**Recommendation 1.2** – Continue the Texas Department of Banking for 12 years.

**Response** – The Department concurs with this recommendation.

**Recommendation 1.3** – Continue the Office of Consumer Credit Commissioner for 12 years.

**Response** – The Department concurs with this recommendation.

## **Issue 2 - The Agencies' Self-Directed Semi-Independent Status Calls for Greater Finance Commission Oversight and Coordination**

### **Change in Statute**

**Recommendation 2.1** – Require the finance agencies to remit all administrative penalties to the General Revenue Fund.

**Response** – The Department disagrees with this recommendation.

Prior to and since receiving self-directed semi-independent (SDSI) status the Department, consistent with the other financial regulatory agencies, has been a self-leveling, self-funding agency. Under the self-leveling, self-funding methodology, an agency does not or very minimally contributes to the General Revenue Fund, has no impact on the state budget, and sets fees and assessments to cover all its direct and indirect costs.

The Department uses administrative penalties as a deterrent for non-compliance with and violations of statutory requirements. Administrative penalties collected ultimately result in discounts of fees and assessments charged to the industries. Using this strategy allows the regulated entities that maintain compliance to potentially pay less and regulated entities with poor compliance to pay more. Remitting those penalties to general revenue would restrict the Department's ability to incentivize entities to be compliant with statutory requirements and could potentially lead to increases in the fees assessed to the industries as a whole. Additionally, remitting administrative penalties to general revenue would be contrary to the existing self-leveling, self-funding statutory requirement.

However, notwithstanding the above, the Department offers an alternative to remitting penalties to general revenue, and suggests contributing excess administrative penalties, as deemed appropriate, to the Finance Commission's Texas Financial Education Endowment (TFEE).

TFEE is a statutory endowment (Finance Code §393.628) that is administered by the Finance Commission. Its purpose is to support statewide financial education and consumer credit building activities and programs. The Finance

Commission is allowed by statute to solicit gifts, grants, and donations for the endowment, and partner with state agencies.

The Department has previously contributed funds to the TFEE and is planning to continue to do so with Finance Commission approval. A Department staff member serves on the TFEE Grants Committee.

Contributing funds to the TFEE provides one of the few available means of managing cash reserves. In so doing, these funds provide a positive impact to Texas consumers and the Finance Commission's efforts in financial education.

### **Management Action**

**Recommendation 2.2** – Direct the Finance Commission to evaluate and update the agencies' key performance measures.

**Response** – The Department agrees with this recommendation.

The Department will work with the Finance Commission, the Department of Banking, and the Office of Consumer Credit Commissioner to implement this recommendation as deemed appropriate.

**Recommendation 2.3** – Direct the Finance Commission to develop a budget policy that fosters more straightforward budgeting and fee setting.

**Response** – The Department disagrees with this recommendation.

The Finance Commission already has a policy in place and approves a budget that is as accurate as the Department can predict after an open, public budget process. To aid in transparency and predictability of fees, any discounts or waivers are planned and discussed during the budgetary process and at the budget public hearing.

The industries have the opportunity to review and provide feedback on the Department's budget before presenting it to the Finance Commission for final decision. Industry representatives, both thrift and mortgage, have provided letters of support every year for the Department's proposed budgets.

**Recommendation 2.4** – Direct the Finance Commission to update its fund balance policy to limit growth.

**Response** – The Department disagrees with this recommendation.

The Finance Commission already has a policy in place which limits the total size of unreserved cash balances.

The Finance Commission's policies are regularly reviewed and updated to reflect changes in best practices and to provide for more transparency and accountability.

**Recommendation 2.5** – Direct the Finance Commission to develop standard policies regarding tracking and reporting travel expenditures.

**Response** – The Department agrees with this recommendation.

The Department currently tracks travel expenditures by type and reports the information as required. If new policies are developed and adopted, the Department will adhere to them.

**Recommendation 2.6** – Direct the Finance Commission to minimize duplication of agency functions and promote more cost efficient administration of the finance agencies.

**Response** – The Department agrees with this recommendation.

The Department will work with the Department of Banking and the Office of Consumer Credit Commissioner, under the direction of the Finance Commission, to study additional opportunities for sharing resources.

### **Issue 3 – Three Finance-Related Regulatory Programs Are Not Necessary to Protect the Public**

#### **Change in Statute**

**Recommendation 3.1** – Discontinue licensure of pawnshop employees.

**Response** – The Department has no comment on this recommendation.

**Recommendation 3.2** – Discontinue registration of cemetery brokers.

**Response** – The Department has no comment on this recommendation.

**Recommendation 3.3** – Discontinue registration of private child support enforcement agencies.

**Response** – The Department has no comment on this recommendation.

### **Issue 4 – Elements of the Department of Banking’s Statute and Rules Do Not Conform to Common Licensing Standards**

#### **Change in Statute**

**Recommendation 4.1** – Authorize the agency to establish license terms in rule for death care service licensees.

**Response** – The Department has no comment on this recommendation.

**Recommendation 4.2** – Update the agency’s complaint processing provisions to meet the Sunset Commission’s standard across-the-board requirements.

**Response** – The Department has no comment on this recommendation.

**Recommendation 4.3** – Update outdated appeals provisions to align with the Administrative Procedure Act.

**Response** – The Department has no comment on this recommendation.

#### **Management Action**

**Recommendation 4.4** – Direct DOB and the Finance Commission to develop an updated complaint process in rule.

**Response** – The Department has no comment on this recommendation.

### **Issue 5 – Key Elements of the Office of Consumer Credit Commissioner’s Statute and Rules Do Not Conform to Common Regulatory Standards**

#### **Change in Statute**

**Recommendation 5.1** – Remove subjective licensure provisions for pawnshops and pawnshop employees.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.2** – Authorize the agency to provide biennial license renewals for its licensees and registrants.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.3** – Update the agency’s complaint processing provisions to meet the Sunset Commission’s standard across-the-board requirements.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.4** – Authorize the OCCC to disclose summary complaint resolution information to a complainant.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.5** – Authorize the OCCC to open investigation immediately upon reasonable suspicion of a violation.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.6** – Remove an outdated, overly restrictive burden of proof for proving regulatory violations.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.7** – Give OCCC standard authority to take action against crafted precious metal dealers violating state regulations.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.8** – Authorize OCCC to deny renewal applications for noncompliant licensees and registrants when appropriate.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.9** – Standardize OCCC’s burden of proof for ordering restitution in all regulatory programs.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.10** – Authorize OCCC to order crafted precious metal dealers to pay consumer restitution.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.11** – Update outdated appeal provisions to align with the Administrative Procedure Act.

**Response** – The Department has no comment on this recommendation.

#### **Management Action**

**Recommendation 5.12** – Direct OCCC and the Finance Commission to develop and updated complaint process in rule.

**Response** – The Department has no comment on this recommendation.

**Recommendation 5.13** – Direct the agency to make enforcement orders available online.

**Response** – The Department has no comment on this recommendation.

## **Issue 6 – Elements of the Department of Savings and Mortgage Lending’s Statute and Procedures Do Not Conform to Common Regulatory Standards**

### **Change in Statute**

**Recommendation 6.1** – Remove unnecessary, subjective licensure provisions for residential mortgage loan originators.

**Response** – The Department agrees with this recommendation.

**Recommendation 6.2** – Update the agency’s complaint processing provisions to meet the Sunset Commission’s standard across-the-board requirements.

**Response** – The Department agrees with this recommendation.

### **Management Action**

**Recommendation 6.3** – Direct SML and Finance Commission to develop an updated complaint process in rule.

**Response** – The Department agrees with this recommendation.

**Recommendation 6.4** – Direct the agency to modify its penalty matrix to ensure consistent application of administrative penalties.

**Response** – The Department agrees with this recommendation.

The Department will review its matrix for enhancements where appropriate.

## **Issue 7 – The Finance Agencies’ Statutes Do Not Reflect Standard Elements of Sunset Review**

### **Change in Statute**

**Recommendation 7.1** – Update the standard across-the-board requirement related to Finance Commission member training.

**Response** – The Department agrees with this recommendation.

The Department will work with the Finance Commission, the Department of Banking, and the Office of Consumer Credit Commissioner to apply the Sunset’s standard across-the-board requirements related to Finance Commission member training.

**Recommendation 7.2** – Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the finance agencies.

**Response** – The Department agrees with this recommendation.



The Department will work with the Finance Commission, the Department of Banking, and the Office of Consumer Credit Commissioner to develop and implement the Sunset's across-the-board recommendation regarding alternative dispute resolution.

**Recommendation 7.3** – Authorize the finance agencies to establish advisory committees in rule as needed.

**Response** – The Department agrees with this recommendation.

**Recommendation 7.4** – Continue the finance agencies' required reports.

**Response** – The Department agrees with this recommendation.

Again thank you for providing the Department the opportunity to submit written comments about the report.

Sincerely,

A handwritten signature in cursive script that reads "Caroline C. Jones". The signature is written in black ink and is positioned to the left of the printed name and title.

Caroline C. Jones  
Commissioner