TEXAS OFFICE OF CONSUMER CREDIT COMMISSIONER

May 10, 2018

Mr. Ken Levine
Director
Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711-3066

Dear Mr. Levine:

Thank you for the opportunity to respond to the issues and recommendations presented in the Sunset Staff Report on the Finance Commission and its agencies, including the Office of Consumer Credit Commissioner (OCCC). The OCCC appreciates the careful consideration by the Sunset Staff and welcomes recommendations that support the agency's efforts to fulfill its mission of regulating financial services and educating consumers and creditors, to foster a fair, lawful, and healthy financial services marketplace that grows economic prosperity for all Texans.

On behalf of the OCCC, I would like to thank the Sunset Advisory Commission Staff for its professionalism on this review over the last seven months. Sunset Staff has been thorough and thoughtful in analyzing issues. We have already identified some internal improvements based on the review. We believe that the State of Texas, Texas consumers, and the financial services industries benefit when we are continually improving and striving to be the best we can be.

This response addresses Sunset Staff's recommendations that apply to the OCCC. This response does not address the recommendations that apply only to the Department of Banking or the Department of Savings and Mortgage Lending.

ISSUE 1
While Regulation of the Finance Industry is Necessary, Texas Does Not Need Two Agencies Regulating Banks.

Recommendations

Change in Statute

1.3. Continue the OCCC for 12 years.

The OCCC agrees with this recommendation. The OCCC appreciates the Sunset Staff's careful consideration and acknowledgement that the agency has found an appropriate balance between protecting consumers and fostering a competitive business environment for lenders and other financial service providers.

ISSUE 2

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

Recommendations

Change in Statute

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

The OCCC respectfully disagrees with the recommendation. Currently, the OCCC credits administrative penalties against the revenue budget of each industry, resulting in a discount to the assessment rate of an applicable industry. This strategy, supported by the regulated industries, allows companies with high rates of compliance to pay less and requires companies with low rates of compliance to pay more. By ensuring that any penalties collected provide a direct credit to the applicable regulated industry, the OCCC transparently counters any appearance that penalties are agency revenue generators. Diverting these funds into the General Revenue fund would hinder the agency's ability to incentivize the "good players." Further, it would result in a greater cost to the respective regulated industries.

Management Action

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

The OCCC generally agrees with recommendation to evaluate and update key performance measures. The OCCC supports the use of best practices and improvements to performance measurement, while ensuring appropriate regard for historical legislative directives and consistency that supports trend evaluation. Sunset Staff acknowledges that the agencies appropriately retained the former legislative performance measures, but recommends that now is an appropriate time to reassess the performance measurement system. While the OCCC may differ on whether particular measures comply with Sunset Staff's best practices, the OCCC does not oppose a thorough evaluation and will work with its sister agencies and the Finance Commission to update performance measures. The OCCC recognizes that the Finance Commission should have every performance measure necessary to comprehensively monitor the agency's performance and identify opportunities for improving outcomes.

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

The OCCC agrees in part with this recommendation. The OCCC supports accurate budgeting and transparent fee setting. The OCCC collects revenues to fully support the cost of its operations. The OCCC has always completely covered its costs and matches its revenues with its projected expenditures, as required by the self-leveling methodology.[1] Under self-leveling methodology, the agency adjusts its assessments to the regulated industries to approximate the expenditures associated with the respective

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[1] Tex. Fin. Code §14.107 and §16.003.

industries. For an agency that is self-leveling, predictability and flexibility are important in the exercise of good financial stewardship.

The OCCC supports the policy goals of accurately forecasting expenditures and revenues for upcoming fiscal years, and setting assessments on regulated industries as accurately as possible at the beginning of a fiscal year. However, the OCCC is concerned about the recommendation to limit discounts on annual assessments. Assessment rates and discounts are part of the assumptions when the Finance Commission adopts the OCCC's budget. One of the agency's most important tools is the ability to adjust discounts applied to assessments if revenue targets have been exceeded or if expenditures have been less than projected. Typically, regulated industries support these discounts, viewing them as a benefit. Discounts enable the OCCC to fairly and equitably adjust assessments so that each group pays its fair share, and facilitate better budgeting and fund balance management. Discounting has not resulted in wide unpredictability to licensees. The OCCC has continued to refine its budgeting process over the last few years and believes that the improvements contribute towards enhanced accuracy in budgeting and fee setting.

While the OCCC agrees with accurate budgeting and transparent fee setting, the OCCC is concerned about limiting the use of discounts that reduce a regulated industry's assessments. Restricting the use of this tool increases the difficulty in managing the fund balance and seems inconsistent with the recommendation to restrict fund balance growth as identified in 2.4. In addition, financial industry segments can expand and contract rapidly, which makes accurate forecasting difficult.

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

The OCCC agrees in part with the recommendation. The OCCC supports a fund balance policy that appropriately sets requirements for liquidity and reserves for other purposes. The Finance Commission has had such a policy since 2011 and in 2013 began routinely monitoring the agencies' performance and the fund levels. The OCCC has substantially complied with the Finance Commission's policy since this monitoring began. Most recently, the Finance Commission modified its policy in February 2018. The OCCC believes that the new policy amendments address the concerns identified in the Sunset Staff report and that the new policy should be given time to work.

The report's recommendation requires the Finance Commission to identify the maximum allowable level of change to the fund balance each year. The Finance Commission's current policy already sets a minimum and maximum target for fund balance. A further requirement of an annual rate of change does not seem useful. This requirement is not practical when considering 10 different revenue streams and rapidly changing industry patterns. The OCCC's cash flow has peaks and valleys over a year due to staggered renewal dates of licensee types, resulting in wide variations on a quarterly reporting basis. As long as the fund balances comply with the policy through its minimum and maximums over time, it seems that the current policy, as recently amended, should address any concern about unlimited growth in fund balances.

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

The OCCC agrees with the recommendation. The agency has no objection to providing expanded reporting on travel expenditures and will work with its sister agencies and the Finance Commission to develop standard policies regarding tracking and reporting travel expenditures.

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

The OCCC agrees in part with the recommendation. The statute provides that the agencies shall share costs to the extent that sharing contributes to cost efficiencies without detracting from the staff expertise needed for individual areas of responsibility.[2] The OCCC agrees that the agencies should work together to promote cost efficient administration as long as that does not detract from staff expertise and customer service. The Finance Commission agencies have worked collaboratively to share many administrative functions. Some of those additional shared services include: phone system, security system, procurement expertise, telecommunications, office supplies inventory control, offsite locations for meetings, and multiple contracts (Texas Facilities Commission, building maintenance, engineering, architecture, outside attorney services, and utilities).

The agency will work with its sister agencies and the Finance Commission to conduct a study of the identified areas to assess the potential costs and benefits of consolidation. The OCCC is concerned that consolidating certain areas may require significant capital costs, especially information technology costs, or result in an additional layer of staff that detracts from staff expertise. The staff report states that the consolidation should result in a 10% cost reduction, and seems to suggest that multiple areas could be consolidated without additional costs or impairing staff expertise. The OCCC is not opposed to reviewing opportunities to share resources, but the issue warrants further study to determine whether a 10% cost reduction is feasible.

As for the financial education programs, the OCCC agrees with this recommendation and looks forward to reviewing opportunities with the Finance Commission and Department of Banking. An essential consideration is that both of these programs are very small. In the OCCC's case, the financial education program is less than 1% of the agency's budget, and the program also supports industry education and the Texas Financial Education Endowment grant program. While all of these functions are essential, the OCCC believes that it is important to remain mindful of the current statutory mandates and intent for financial education, and not to expand broadly beyond that required unless new direction is provided by the Legislature.

ISSUE 3

Three Finance-Related Regulatory Programs Are Not Necessary to Protect the Public.

Recommendations

Change in Statute

3.1. Discontinue licensure of pawnshop employees.

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[2] Tex. Fin. Code §11.204.

The OCCC neither agrees nor disagrees with the recommendation. Rather, the OCCC believes that this issue deserves greater context and background, before the Sunset Commission determines whether to eliminate this program. The policy question is whether the program continues to achieve the statutory intent or whether it has outlived its usefulness.

When the Legislature adopted this license program in 1983, it solved some significant issues and brought order along with more positive reputations to pawnshops. This statute has served the State of Texas well over the last 35 years and has bolstered the ability to achieve the stated purposes of the Texas Pawnshop Act to:

"(1) prevent fraud, unfair practices, discrimination, imposition, and abuse of state residents;
(2) exercise the state's police power to ensure a sound system of making pawn loans and transfers of personal property by and through pawnshops;
(3) prevent transactions in stolen property and other unlawful property transactions by licensing and regulating pawnbrokers and pawnshop employees;
(4) provide for licensing and investigation fees;
(5) provide minimum capital requirements for pawnbrokers;
(6) ensure financial responsibility to the state and its residents and compliance with federal, state, and local law, including rules and ordinances; and
(7) assist local governments in the exercise of their police power."[3]

The licensing program for pawnshop employees, along with the regulation of pawnshops, has been successful in deterring stolen property from entering pawnshops, consistent with the intent of the Texas Pawnshop Act. The OCCC's gatekeeping function under the current statute deters individuals who may have a questionable background from entering into the pawn business. Although the report notes a low rate of denials, the OCCC experiences a high withdrawal rate of pawnshop employee applications, frequently following a request for fingerprints or a request for supplemental criminal history information. In FY2017, 423 applicants withdrew before completing the process. A 10% sample of these withdrawn applications reflects that at least 30% of the applicants who withdrew their applications had criminal history and did not complete the process. It appears that a number of these applicants would not have been able to meet the eligibility qualifications and were appropriately deterred from engaging in the business.

Many pawnshops have come to depend on the OCCC to vet and background check employees through the pawnshop employee licensing program. One reason is cost. Some pawnshops have expressed concern that they experience difficulty in obtaining sufficient criminal history information at a reasonable cost. If the program is discontinued, it is a concern that many pawnshops will not perform a robust review of their employees.

It is important to consider unintended consequences of eliminating the program. The OCCC's current regulation of pawnshop employees during examinations is significantly more than checking for employee licenses. During examinations, the OCCC reviews whether pawnshop employees are adequately recording transactions and monitoring pledged goods, to ensure that the pawnshop is not trading in stolen

[3] Tex. Fin. Code §371.002.

merchandise. If Sunset Staff's recommendation is adopted and enacted, it would be important to specify in statute that pawnshops are responsible for conduct of employees. In the agency's experience of pursuing cases against pawnshops and pawnshop employees for improperly engaging in transactions involving stolen merchandise, certain pawnshops have disclaimed responsibility because of the actions of a rogue employee. Specifying that the pawnshop is legally responsible for the actions of the employee will be important to ensure compliance with the Texas Pawnshop Act.

Eliminating this license will likely result in increased enforcement activity against pawnshops, at least initially. The OCCC anticipates that the projected savings will be offset by additional examination and enforcement costs, as we believe that pawnshops will not perform an adequate job of vetting employees, resulting in a higher rate of violations and more protracted enforcement cases against the pawnshops.

Again, the agency neither agrees nor disagrees with the recommendation. The OCCC believes that it is important to consider the purpose and intent of the program and the potential consequences that may come from its discontinuation. If the Sunset Advisory Commission and the Legislature make a fully informed determination to discontinue the program, the OCCC is prepared to respond accordingly.

ISSUE 5

Key Elements of the Office of Consumer Credit Commissioner's Statute and Rules Do Not Conform to Common Regulatory Standards.

Recommendations

Change in Statute

5.1. Remove subjective licensure provisions for pawnshops and pawnshop employees.
5.2. Authorize the agency to provide biennial license renewals for its licensees and registrants.
5.3. Update the agency's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.
5.4. Authorize OCCC to disclose summary complaint resolution information to a complainant.
5.5. Authorize OCCC to open an investigation immediately upon reasonable suspicion of a violation.
5.6. Remove an outdated, overly restrictive burden of proof for proving regulatory violations.
5.7. Give OCCC standard authority to take action against crafted precious metal dealers violating state regulations.
5.8. Authorize OCCC to deny renewal applications for noncompliant licensees and registrants when appropriate.
5.9. Standardize OCCC's burden of proof for ordering restitution in all regulatory programs.
5.10. Authorize OCCC to order crafted precious metal dealers to pay consumer restitution.
5.11. Update outdated appeals provisions to align with the Administrative Procedures Act.

The OCCC agrees with recommendations 5.1 – 5.11. Three of the recommendations address licensing issues, three are related to complaint processing, and the remaining five pertain to enforcement procedures. The recommendations generally modernize language, create consistency with other regulatory statutes, or implement typical Sunset recommendations. In some cases, the recommendations assist the agency in dealing with inconsistencies or challenges with outdated statutes.

Management Action

5.12. Direct OCCC and the Finance Commission to develop an updated complaint process in rule.
5.13. Direct the agency to make enforcement orders available online.

The OCCC agrees with recommendation 5.12 and will work with its sister agencies and the Finance Commission to develop an updated complaint process to be promulgated in rule. The OCCC agrees with recommendation 5.13 and has already taken action to implement the recommendation. The OCCC has compiled its enforcement orders for the two previous fiscal years and is preparing to publish these orders online. New enforcement orders will be added in a routine manner.

ISSUE 7

The Finance Agencies' Statutes Do Not Reflect Standard Elements of Sunset Reviews.

Recommendations

Change in Statute

7.1. Update the standard across-the-board requirement related to Finance Commission member training.
7.2. Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the finance agencies.
7.3. Authorize the finance agencies to establish advisory committees in rule as needed.
7.4. Continue the agencies' required reports.

The OCCC agrees with these recommendations. The OCCC has no objection to the amendment of applicable Finance Code sections to reflect the standard across-the-board elements of Sunset reviews.

Overall, we appreciate the work of the staff and the recommendations that support a better regulatory framework, so that the agency may operate more efficiently and effectively, with appropriate flexibility, accountability, and transparency. The OCCC looks forward to working with the Sunset Advisory Commission and the Legislature to complete the Sunset process while ensuring a competitive, transparent, and fair financial marketplace in Texas for both businesses and consumers. Thank you for this opportunity to provide comments on the Sunset Staff Report on the Finance Commission and the Office of Consumer Credit Commissioner.

Respectfully submitted,

Leslie L. Pettijohn
Commissioner