Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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May 10, 2018

Ken Levine
Director
Sunset Advisory Commission
P.O. Box 13066
Robert E. Johnson Bldg., 6th Floor
1501 N. Congress Ave.
Austin, Texas 78711

RE: Sunset Review of the Texas Department of Banking

Dear Mr. Levine:

Thank you for providing the Texas Department of Banking (Department) the opportunity to submit written comments regarding the Sunset Advisory Commission Staff Report. The Department is firmly committed to ensure that Texas has a safe, sound, and competitive financial services system. We fully support measures included in the Staff Report that enhance this process and will work to implement any recommendations or statutory changes that become final.

The Staff Report identifies seven primary issues and key recommendations. Our executive staff has reviewed, evaluated, and discussed each of the proposed recommendations, as well as the effects of each recommendation upon Texas consumers and the financial services industries regulated by the Department. Our comments are as follows:

Issue 1 Recommendations

Change in Statute

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 Department of Banking*.

If this recommendation becomes law, the Department is prepared and capable of coordinating with the Department of Savings and Mortgage Lending to merge its operations and functions into the Department to maintain effective and efficient supervision of the state financial services industries. This merger would create a single, responsive regulatory agency with increased expertise and resources. All efforts would be made to ensure a smooth transition for consumers, the affected industries, and staff, while continuing the support for the state savings bank charter.

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

The Department concurs with this recommendation.

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

This recommendation does not apply to the Department.

Issue 2 Recommendations

Change in Statute

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

The Department respectfully disagrees with the recommendation to remit fines and penalties (penalties) to General Revenue. Over the past ten years, the Department has collected on average $184,000 in penalties annually. These penalties are used to first cover the cost of investigations and then to reduce assessments to the applicable regulated industry.

A significant amount of examiner, administrator, and legal staff time and resources are necessary to investigate allegations of wrongdoing, which can include violations by license holders and unlicensed entities operating illegally. The investigative process can also include third party charges such as expert witness fees, court costs, administrative law judge fees, outside investigator fees and Attorney General fees. Investigations are a critical component of the Department's regulatory oversight as they encourage industry compliance and curtail criminal activity.

Most of the penalties collected by the Department are derived from unlicensed entities. Generally, the results of the Department's investigations into these unlicensed entities can be categorized as follows: 1) the entity ultimately obtains a license and pays a penalty for the time it operated without the required license; 2) the entity discontinues offering its services to Texas customers and pays a penalty; or 3) the matter is referred to a law enforcement agency for criminal prosecution. In a criminal referral, it is highly unlikely the Department will have the opportunity to assess or collect a penalty even though a significant amount of time and resources are spent on these investigations.

The Department also disagrees with Sunset's inference that there is an appearance of using penalties to self-support operations or increase fund balances. Penalties are used to offset the cost of investigations, which correlates to a reduction in assessments to the applicable regulated industry. Budgets and fund balances are not increased. Further, this recommendation is not consistent with the legislative mandate for the Department to be self-leveling and self-funding, i.e., being responsible for all direct and indirect costs to carry out the purpose of the Department through the collection of fees, penalties, or other charges.

If the Department is unable to retain the penalties collected, compliant entities will pay higher assessments. This recommendation, if adopted, could be a disincentive for compliant entities to report unlawful activity to the Department, which may result in financial harm to consumers. We believe that our current process produces results that are fair and effective for consumers and the regulated industries alike.

Management Action

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

The Department will work with the Finance Commission to enhance the agency's key performance measures, if approved.

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

The Department believes this recommendation is not necessary as our current budgeting and fee setting processes are straightforward. Moreover, the assessment system used by the Department is tailored to the financial services industries. The quarterly collection of bank assessments was initiated about 25 years ago and is similar to the process used by other state banking departments and the Office of the Comptroller of the Currency.

The Department's fee setting processes are simple to understand and transparent. State-chartered banks are charged an assessment, levied quarterly, and are based on a bank's total assets as reported each March. Assessments are recalculated each year as the assets of banks change. The assessment calculation is authorized by rule, publicly available, and provides for industry input and comment. Contrary to the Staff Report, the assessment rule does set the maximum fees that an entity may be charged, and the annual revenue budget does not set fees to be collected at an amount higher than the cost of regulation.

Each state bank is notified at the beginning of every fiscal year of the amount of its annual assessment. Any assessment reduction is made in the fourth quarter after a determination is made of the exact revenues needed to cover the actual expenditures for that fiscal year. Over the last seven years, the assessment reduction on average has been 4.3%. Bankers are appreciative of the clarity of the process, and no negative comments have been received.

The Department's budget process begins each May. The expenditure budget process is both straightforward and transparent. The draft budget is discussed in a public hearing before being presented to the Finance Commission for review and approval in August of each year. Accurate and complete budgeting must include all anticipated expenditures including filling vacant positions. Adopting an annual budget that does not include all anticipated and necessary expenditures would be fiscally irresponsible and impede the Department's ability to fulfill its mission of ensuring a safe, sound, and competitive financial services industry. Department budgets over the past several years have only shown modest increases. These increases have been due to growth in the size and complexity of the industries regulated.

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

The Department believes this recommendation is not necessary. The Department has prudently managed its fund balance. The Department's fund balance reserve has always been within policy guidelines established by the Finance Commission and best practices recommended by the Government Finance Officers Association and the Conference of State Bank Supervisors.

After careful review of several policies and industry standards, in February 2018 the Finance Commission adopted an updated liquidity/fund balance policy. The new policy sets total allowable fund balance reserves and measures progress towards the established goals. With these new parameters, a maximum annual growth limit is unwarranted. We agree with the Sunset staff's finding that the new policy has not been in effect long enough to judge its impact. Time should be allowed for the impact of the new policy to be assessed before its strength and usefulness are discounted.

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

The Department will work with the Finance Commission to expand our tracking and reporting of travel expenditures, if approved.

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

The Department believes the Staff Report understates the significance of the shared resources listed and does not include a complete list of all shared resources, such as the staff services officer, the inventory supply clerk, security surveillance, telecommunication infrastructure, and multiple contracts.

The Department certainly agrees with the intent of the cost saving recommendation, and if approved, we will work with the Finance Commission to conduct a cost analysis to determine the extent to which consolidation contributes to cost efficiency without detracting from the staff expertise needed for the individual areas of agency responsibility as required by Texas Finance Code §11.204(a). However, the 10 percent reduction in administrative costs has not been validated and should not be mandated.

The Department respectfully disagrees with the recommendation as it relates to complaint intake. Each regulated or registered entity is governed by specific state and federal statutes and rules. For example, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 required formal rules be adopted by 11 different regulatory agencies. The Act and related rules affected each finance agency differently and requires employees to be versed in the provisions for their applicable industries. Subject matter specialists are necessary to provide accurate comprehensive and timely consumer complaint services and to ensure regulatory compliance. Training and retaining complaint staff to become subject matter specialists in all industries regulated by the finance agencies is unrealistic and not economically feasible.

Further, having one intake system would require an increase in staff to perform this function. Currently, the toll-free consumer complaint telephone numbers are routed directly to the complaint staff. With this direct access, no receptionist is involved; the complainant speaks to a complaint staff specialist immediately. Incorporating a complaint intake system would increase the number of persons the consumer must speak with before their complaint can be assessed, which we believe is inefficient, inconvenient for the complainant, and an unnecessary expense. This consolidation recommendation would garner no cost savings.

If the recommendation regarding financial literacy is approved, the Department will work with the Finance Commission and the Office of Consumer Credit Commissioner to coordinate financial literacy efforts to achieve maximum results with the understanding that our budget in this area has historically been less than $100,000.

Issue 3 Recommendations

Change in Statute

3.1 *Discontinue licensure of pawnshop employees.*

This recommendation does not apply to the Department.

3.2 *Discontinue registration of cemetery brokers.*

The Department has no comment regarding this recommendation.

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

The Department has no comment regarding this recommendation.

Issue 4 Recommendations

The Department will work with the Finance Commission to implement the recommendations and statutory changes that become final.

Issue 5 Recommendations

These recommendations do not apply to the Department.

Issue 6 Recommendations

These recommendations do not apply to the Department.

Issue 7 Recommendations

The Department will work with the Finance Commission to implement the statutory changes that become final.

The Texas Department of Banking extends its gratitude to the Sunset Advisory Commission and staff in completing a cooperative, thorough review of our agency. We look forward to continuing to work with the Sunset Advisory Commission and staff, as well as all stakeholders to ensure that Texas continues to be the model for financial regulation.

Respectfully submitted,

Charles G. Cooper
Banking Commissioner