

SELF-EVALUATION REPORT
TO THE SUNSET ADVISORY COMMISSION

FINANCE COMMISSION OF TEXAS
AUGUST 1999

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Executive Director (Acting)

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INSTRUCTIONS

Each agency under Sunset review is required by law to complete a Self-Evaluation Report on its operations. The Self-Evaluation Report is designed to provide the Sunset Commission members and staff with a general background description of each agency being reviewed. The report also gives each agency an opportunity to provide the Commission with a preview of issues and suggested improvements regarding the agency and its functions.

The Self-Evaluation Report contains ten sections. Agencies should record their responses to each question directly on this electronic form. Answers should be typed in the white space beneath each question box. Use as little or as much room as needed to answer each question. In charts, add or delete rows, or change column widths as necessary. In addition, chart headings can be renamed to better reflect agency practices. If the information requested does not apply to the agency, please either provide similar information to reflect agency practices, or enter "N/A" in the space provided.

Once the report is complete, please fill in the appropriate page numbers on the table of contents. The Instructions, Attachments, and Examples sections can be deleted from the Self-Evaluation Report that the agency submits to the Sunset Commission.

This document contains examples for certain sections of the Self-Evaluation Report, both in the hard copy and in the electronic version. In the electronic version, links are provided to jump directly from one part of the document to another, and can be accessed by clicking on the underlined text where the links appear.

Reviewing the background and issues sections of recent Sunset staff reports may also be helpful in preparing certain sections of the Self-Evaluation Report. Recent Sunset staff reports are available on the Sunset website at www.sunset.state.tx.us. Hard copies can also be obtained by calling the Sunset Commission office at (512) 463-1300.

Finally, please notify Sunset of any major changes or updates to the information provided in the Self-Evaluation Report that occur between submission and January 2001 (e.g., new board members, changes in the organizational structure).

By August 15, 1999, please submit:

- C the electronic version of the Self-Evaluation Report to: sunadmin@sunset.state.tx.us
- C four hard copies of the Self-Evaluation Report on 8½ x 11-inch paper, three bound and one left unbound, to:

Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711

Please contact Ginny McKay or Lisa Mogil of the Sunset staff at (512) 463-1300 with any questions, or you can e-mail them at ginny.mckay@sunset.state.tx.us or lisa.mogil@sunset.state.tx.us. Every effort will be made to minimize the additional workload this report places on an agency.

FINANCE COMMISSION OF TEXAS 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.

A. Provide an overview of the agency's mission, key functions, powers, and duties. Specify which duties are statutory.

The mission of the Finance Commission of Texas is to ensure that the banks, savings institutions, consumer credit grantors, and other regulated entities chartered or licensed under state law, operate as sound and responsible institutions that enhance the financial well-being of the citizens of Texas. This mission is accomplished through the oversight of the Texas Department of Banking, the Texas Savings and Loan Department, and the Office of the Consumer Credit Commissioner (see the agency's strategic plan, Exhibit I).

The key powers and duties of the Finance Commission are:

- C The appointment of the banking commissioner, savings and loan commissioner, and consumer credit commissioner. FC §§ 12.101, 13.002, 14.051
- C The adoption of rules with respect to the operation and regulation of:
 - C Entities under the Department of Banking:
 - C State-chartered commercial banks. FC §§11.301, 31.003
 - C State-chartered trust companies. FC §181.003
 - C Check sellers. FC §152.102
 - C Businesses engaging in currency exchange, transmission, & transportation. FC §153.002
 - C Bank holding companies, interstate branches of state banks, and foreign banks. FC §201.003
 - C Entities under the Savings and Loan Department:
 - C State-chartered savings associations and savings banks. FC §11.302
 - C Entities under the Consumer Credit Commissioner:
 - C Consumer finance companies. Texas Credit Title, 3A, Subchap. E
 - C Small loan companies. Texas Credit Title, 3A, Subchap. F
 - C Secondary mortgage lenders/brokers. Texas Credit Title, 3A, Subchap. G
 - C Retail installment sellers. FC Ch. 345
 - C Manufactured housing installment sellers. FC Ch. 347
 - C Motor vehicle installment sellers. FC Ch. 348
- C Review oversight of rulemaking (at the agency level) for pawn shops, first lien mortgage brokers, and prepaid funeral licensees.
- C The appointment of an administrative law judge (ALJ) reporting directly to the Finance Commission to hear cases arising under the legislation administered by the Department of Banking, Savings and Loan Department, and Office of Consumer Credit Commissioner. FC §11.202

C Conducting research on:

- C The availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state; and the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state (Phase I - Consumer Depository and Cash Services; Phase II - Home Equity Lending). FC §11.305. and,
- C The practices of business entities in the state that provide home equity loans. Tex. Const., Art. 16, Sec. 50(s)

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

Yes, the agency's enabling law, Chapter 11 of the Finance Code, correctly reflects its mission, key functions, powers, and duties.

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

The Finance Commission provides consolidated, independent oversight, that includes industry and public participation in the supervision and regulation of certain financial providers in Texas. The Commission ensures consistency in the regulation and supervision of the entities licensed under its agencies, and savings are achieved through the consolidated oversight of the agencies. The majority (five) of the Commission's nine-member body are public members, which ensures that the interests of the public - not the regulated entities - are foremost in the agencies' operations.

There are no federal laws that require the functions performed by the Finance Commission.

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

Most states have a form of centralized oversight of depository chartering authorities (including credit unions), either through a single agency or under an umbrella oversight board, such as the Finance Commission.

The structure of oversight over credit regulators and authorities over death care services, check selling, and money transmission services is generally unique to each state. (See a full discussion in the Policy Issues Section.)

E. Describe any major agency functions that are outsourced.

The Finance Commission has contracted with a certified public accounting firm to perform internal audit functions for the agencies, focusing on identified areas of risk. An independent consultant has been contracted to perform the mandated study of financial services. The Finance Commission uses the services of the Attorney General's Office to advise on matters dealing with open meetings and other legal matters.

Support services for the Commission's ALJ and executive director, including accounting and computer services, are provided by the Texas Department of Banking through an interagency agreement with the Finance Commission, the Savings and Loan Department, and the Office of Consumer Credit Commissioner.

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

Although possible changes in federal law may affect the size, volume, and activities of the entities regulated by the Finance Commission agencies, it is not anticipated that the key functions of the Commission will be impacted.

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. Do not include general state statutes that apply to all agencies, such as the Open Records Act, the Open Meetings Act, or the Administrative Procedure and Texas Register Act. Provide the same information for Attorney General opinions from FY 1995 - 1999, or earlier significant Attorney General opinions, that affect the agency's operations.

Finance Commission of Texas Exhibit 1: Statutes/Attorney General Opinions	
Statutes (as effective September 1, 1999)	
Citation/Title	Authority/Impact on Agency
Tex. Const. Art. XVI, Section 16(a)	Authorizing a system of licensing of state banks and trust companies.
Tex. Const. Art. XVI, Section 50(s)	Requirement to prepare an annual report regarding research on financial services in this state.
Fin. Code, Tit. 2, Chap. 11	General enabling statute.
Fin. Code §11.202	Authority to employ a hearings officer for the three subsidiary agencies and consequent inapplicability of Chapter 2003, Government Code (relating to the State Office of Administrative Hearings).
Fin. Code §§11.302, 66.002, and 96.002	Authority to adopt rules affecting state savings associations and savings banks.
Fin. Code §1.304	Authority to adopt rules to supervise the consumer credit commissioner and ensure compliance with Title 4.
Fin. Code §11.305	Requirement to prepare an annual report regarding research on home equity lending in this state.

Citation/Title	Authority/Impact on Agency
Fin. Code §11.306	Authority to supervise rules adopted and actions taken by the savings and loan commissioner in regulating mortgage brokers under Chapter 156.
Fin. Code §12.101	Authority to appoint the banking commissioner.
Fin. Code §12.105	Limitation of liability for members of Finance Commission that is broader than under the Government Code.
Fin. Code §13.002	Authority to appoint the savings and loan commissioner.
Fin. Code §14.051	Authority to appoint the consumer credit commissioner.
Fin. Code §14.108	Requirement to review and approve certain interpretations issued by the consumer credit commissioner.
Fin. Code § 15.103	Requirement to review state laws and authorities governing all financial institutions in the state in conjunction with the Credit Union Commission.
Fin. Code §31.003	General authority to adopt rules affecting state banks.
Fin. Code §31.203	Authority to hear appeals of banking commissioner orders affecting state banks.
Fin. Code §59.310	Requirement to adopt rules regarding security requirements at ATMs.
Fin. Code §152.102	Authority to adopt rules implementing the Sale of Checks Act.
Fin. Code §153.002	Authority to adopt rules implementing the Currency Exchange Act.
Fin. Code §181.003 and V.T.C.S. Article 342a-1.003(a)	Authority to adopt rules affecting state trust companies, including rules regarding multistate trust business.
Fin. Code §181.203	Authority to hear appeals of banking commissioner orders affecting state trust companies.
Fin. Code §201.003	Authority to adopt rules implementing regulation of bank holding companies, interstate bank operations, and foreign banks.
Fin. Code §§342.201(e), 342.308(c), and 345.157(d)	Fee provisions constituting the source of funding for research mandated by Fin. Code §11.305.
Bus. & Comm. Code §26.02(g)	Requirement to specify language for notice that loan agreements must be in writing.

Attorney General Opinions	
Attorney General Opinion No.	Impact on Agency
Letter Opinion No. 92-70 (October 29, 1992)	Neither article XVI, section 40 of the Texas Constitution nor the common-law doctrine of incompatibility would prevent the commissioner of a department subordinate to the Finance Commission from also serving as executive director of the Finance Commission. The executive director of the Finance Commission has no statutory powers, and the Finance Commission may not delegate governmental powers to that position.
Letter Opinion No. 92-46 (September 4, 1992)	A public member of the Finance Commission appointed under Fin. Code §11.102(c) will become disqualified for office and subject to removal if the member becomes a banking executive during the member's term of office.
JM-1175 (1990)	Because hiring decisions of the banking commissioner are not subject to the control of the Finance Commission, the nepotism statute does not prohibit the Department of Banking from hiring the son of a member of the Finance Commission.

H. Please fill in the following chart:

Finance Commission of Texas Exhibit 2: Agency Contacts			
	Name	Address	Telephone Number Fax Number E-mail Address
Agency Head	W. D. Hilton, Jr., Chair	NGC Settlement Trust Services, Inc. 2608 Eastland Ave. Suite 202 Greenville, TX 75402	903-454-3700 (voice) 903-455-5830 (fax) dhilton@trustservices.org
Agency's Sunset Liaisons	Cynthia Shea Banking Department Director of Admin. Services and Policy	2601 N. Lamar Blvd. Austin, Texas 78705	512-475-1333 (voice) 512-475-1313 (fax) cynthia.shea@banking.state.tx.us
	Randall S. James Acting Executive Director	2601 N. Lamar Blvd. Austin, Texas 78705	512-475-1323 (voice) 512-475-1313 (fax) randall.james@banking.state.tx.us

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:

- C the date the agency was established;
- C the original purpose and responsibilities of the agency;
- C major changes in responsibilities or statutory authority;
- C agency/policymaking body name and composition changes;
- C the impact of state/federal legislation, mandates, and funding;
- C the impact of significant state/federal litigation that specifically affects the agency's operations; and
- C 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).

See History and Major Events Examples or [click here to link directly to the examples](#).

In 1943, the 48th Legislature enacted The Texas Banking Code of 1943 and created the Finance Commission of Texas to oversee the operations of the Banking Department, which had responsibility for the regulation and supervision of banks, savings institutions, and credit unions. The banking commissioner was appointed by the Finance Commission, with the advice and consent of the Senate. The Commissioner served at the pleasure of the Finance Commission, and was statutorily labeled as both an employee of the Finance Commission, subject to its orders and directions, and the chief executive officer of the Banking Department, a pre-existing agency. The nine members of the Finance Commission were appointed by the governor to six-year terms, one-third of which expired every two years. The Finance Commission consisted of two sections, a six-member Banking Section, and a three-member Building and Loan Section. The Banking Section had four banking executives as members and two members appointed by the governor on the basis of recognized business ability. The Savings and Loan Section had two savings and loan executives as members and one member appointed by the governor on the basis of recognized business ability. These sections were at least "quasi-state agencies" in that each section had rulemaking authority over its related industry. The Banking Section was given rulemaking authority for the purposes of limiting concentrations of loans and investments, assuring that banks had adequate fidelity and casualty insurance, and providing for records retention for the Banking Department and state banks. The Savings and Loan Section was given rulemaking authority for the purposes of ensuring that state building and loan associations could invest funds in the same manner as if organized under federal law, and limiting concentrations of loans and investments. (Art. 342-101 et seq., Vernon's Texas Civil Statutes.)

In 1963, the 58th Legislature passed the Texas Regulatory Loan Act, creating the Office of Regulatory Loan Commissioner to license, examine, and regulate the business of consumer lending. The regulatory loan commissioner was appointed by and served at the pleasure of the Finance Commission, and was statutorily labeled an employee of the Finance Commission subject to its orders and directions. Full regulatory discretion and rulemaking authority was reserved to the regulatory loan commissioner, but the Finance Commission was charged with overseeing the finances of the agency. (Art. 6165b, Vernon's Texas Civil Statutes.) A regulated loan was essentially a secured or unsecured loan involving a cash advance of \$1,500 or less, provided that a licensed lender could not secure a regulated loan with real estate.

In 1963, the 58th Legislature enacted the Texas Savings and Loan Act, creating the Texas Savings and Loan Department to license, examine and regulate savings and loan institutions. The savings and loan commissioner

was appointed by and served at the pleasure of the Finance Commission, and was statutorily labeled as both an employee of the Finance Commission, subject to its orders and directions, and the chief executive officer of the Savings and Loan Department. (Art. 852a, Vernon's Texas Civil Statutes.)

In 1963, the 58th Legislature granted rulemaking authority to the Finance Commission under the new Sale of Checks Act, a statute authorizing the banking commissioner to license, examine, and regulate sellers of money orders, travelers checks, and similar instruments. (Art. 489d, Vernon's Texas Civil Statutes.)

In 1965, Governor John Connally requested the Finance Commission to study the entire field of consumer credit in the State of Texas, with a view toward developing comprehensive legislation which would protect the public from abuses and provide a fair, competitive climate for all lenders of consumer credit.

In 1966, the Finance Commission conducted a series of public hearings to gather information to make a recommendation in response to Governor Connally's request regarding consumer credit.

In 1967, the Finance Commission issued a report that recommended the passage of a comprehensive body of laws governing consumer credit transactions.

In 1967, the 60th Legislature repealed the Texas Regulatory Loan Act and a number of other statutes dealing with usury and permissible interest rates, and replaced them with a new regulatory system popularly called the Texas Credit Code. (Art. 5029-1.01 et seq., Vernon's Texas Civil Statutes.) The Office of Consumer Credit Commissioner was created and succeeded the Office of Regulatory Loan Commissioner. The consumer credit commissioner was appointed by and served at the pleasure of the Finance Commission, and was statutorily labeled an employee of the Finance Commission under its direction and control. Significant regulatory discretion was committed to the consumer credit commissioner, except that the Finance Commission was granted rulemaking authority. Regulated loans involved cash advances of \$2,500 or less, and a regulated loan license was also required to make secondary mortgage loans.

In 1969, the 61st Legislature created the Texas Credit Union Commission and transferred responsibilities over credit unions from the Banking Department. This was a complete split, with no continuing role for the Finance Commission. (Art. 2461-1.01 et seq., Vernon's Texas Civil Statutes.)

In 1983, the 68th Legislature changed the number of members and composition of the Finance Commission from nine to 12, by adding the three members of the new Consumer Credit Section, all appointed by the governor to six-year terms. The Consumer Credit Section had as members two individuals who held either lending or pawnshop licenses and one member of the general public.

In 1984, the Finance Commission and its agencies were put under the General Appropriations Act. Until this time, the agencies had operated semi-independently in terms of revenue generation and expenditures. The agencies maintained their special funds (which allowed them to maintain fund balances between bienniums).

In 1988, a Gubernatorial Task Force on the Savings and Loan Industry issued a report 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 agency; elimination of the salary cap on the commissioner's salary; and improved coordination between state and federal thrift regulators.

In 1989, the 71st Legislature eliminated the Banking Section, Savings and Loan Section, and the Consumer Credit Section as subdivisions of the Finance Commission of Texas, and the appointments of their members were terminated on January 1, 1990. Membership was reduced to nine, comprised of two banking executives, two savings and loan executives, and five members of the general public appointed by the Governor on the basis of recognized business ability. One of the public members is required to be a certified public accountant. The governor appointed nine new members with six-year staggered terms (initially, three members had two-year terms and three members had four-year terms.) Rules adopted by the sections continued as if adopted by the Finance Commission. (This structure is the same as exists in 1999.)

In 1989, the Finance Commission Salary Administration Plan was established which allowed the Finance Commission to set the salaries and determine the number of employees for the Finance Commission agencies, subject to the limits of each agency's total appropriations under the General Appropriations Act. The Plan was in response to the report of the 1988 Gubernatorial Task Force which found that examiners' salaries lagged behind the industry and federal regulators.

In 1991, the 72nd Legislature granted rulemaking authority to the Finance Commission under the Currency Exchange Act, which empowered the banking commissioner to license, examine, and regulate currency exchange and transmission businesses. (Art. 350, Vernon's Texas Civil Statutes.)

In 1991, the 72nd Legislature passed H.B. 2802 which required that the Finance Commission approve interpretations issued by the consumer credit commissioner for the interpretations to be considered a "safe harbor."

In 1993, the 73rd Legislature enacted the Texas Savings Bank Act (Subtitle C, Title 3, Texas Finance Code), establishing a complete system of laws governing the chartering and regulation of state savings banks, and removing a duplicative layer of federal regulation by the Office of Thrift Supervision. The Finance Commission was given rulemaking authority to interpret the Act. (The majority of state savings and loans have subsequently converted to savings bank charters.)

In 1993, the 73rd Legislature consolidated all the special funds maintained by state agencies. Beginning at the end of FY 95, the Finance Commission and its agencies have had all remaining balances in their special funds swept into the General Revenue Fund.

In 1994, the Finance Commission adopted a rule to outline the procedural requirements of "safe harbor" interpretations issued by the consumer credit commissioner under art. 5069-2.02A(10) V.T.C.S.. (7 TAC 1.305)

In 1995, the 74th Legislature enacted the modernized Texas Banking Act and repealed the Texas Banking Code of 1943 (except for Chapter 11, relating to trust companies). Finance Commission structure was unchanged. Finance Commission rulemaking authority was significantly broadened and its appellate jurisdiction with respect to orders of the banking commissioner was expanded. A bank was permitted to elect to go directly to district court or to pursue an intermediate administrative appeal to the Finance Commission before resorting to district court. (Art. 342-1.001 et seq., Vernon's Texas Civil Statutes.)

In 1995, the position of Finance Commission ALJ was created as part of the new Banking Act to hear contested cases arising under all laws administered by the Finance Commission agencies. Because the 74th Legislature created, but did not appropriate funds for the Finance Commission ALJ position, the cost of the position was funded through an interagency contract among the Finance Commission agencies from fiscal years 1996-1997.

(The Legislature moved funding from the Banking Department funding pattern to the Finance Commission level in the next session.)

In 1995, the 74th Legislature added a requirement in the Texas Banking Act that the Finance Commission perform annual research on financial services in Texas, and file a report each December 1 with the Legislature, detailing its findings and making recommendations to improve the availability, quality, and pricing of financial services. (Art. 342-1.011(f), Vernon's Texas Civil Statutes.) Because no funds were available, a comprehensive study was not conducted in fiscal years 1996 or 1997.

In 1997, the 75th Legislature enacted the Texas Trust Company Act, a complete system of laws governing state trust companies. Finance Commission rulemaking authority was significantly broadened and its appellate jurisdiction with respect to orders of the banking commissioner was expanded. A trust company was permitted to elect to go directly to district court or to pursue an intermediate administrative appeal to the Finance Commission before resorting to district court. (Art. 342a-1.001 et seq., Vernon's Texas Civil Statutes.)

In 1997, the 75th Legislature enacted the Texas Finance Code, a nonsubstantive codification of financial regulatory statutes. The enabling statutes for the Finance Commission were codified to Chapter 11, Title 2, Finance Code. The Texas Banking Act, the Savings and Loan Act, and the Savings Bank Act were codified as Subtitles A (Chapters 31-39, 59), B (Chapters 61-67, 89), and C (Chapters 91-98, 119) of Title 3, Finance Code, respectively. The Credit Title was codified as Title 4, Finance Code.

In 1997, the 75th Legislature authorized that 50 cents of a new \$25 fee allowed for certain consumer loans be allocated to the Commission for the purpose of funding research under former Art. 342-1.011(f), Vernon's Texas Civil Statutes, codified as Section 11.305, Finance Code. (Arts. 5069-3.15(8) (certain cash advance loans), 5069-4.01(7) (installment loans), and 5069-5.02(7) (secondary mortgage loans), Vernon's Texas Civil Statutes.)

In 1997, the Finance Commission was appropriated an FTE and funds to cover the cost of the ALJ.

In 1997, the 75th Legislature abolished all special salary programs, including the Finance Commission Salary Administration Plan. Beginning September 1, 1998, most positions at the agencies were brought under the state's classification system.

In 1997, voters approved a Constitutional Amendment authorizing loans on home equity, and containing a provision for a required study of home equity lending activity in Texas. Tex. Const. Art 16, Sec. 50(s)

In 1997, following the enactment of a home equity amendment to the state constitution, the three Finance Commission agencies joined with the Credit Union Department to issue a Joint Regulatory Commentary on Home Equity Lending.

In 1998, the Consumer Depository and Cash Services Study, the first phase of a study required under Finance Code § 11.305, was completed. The Finance Commission studied the quality, availability and pricing of depository and cash services to consumers in Texas and filed a report with the Legislature, as required by Section 11.305, Finance Code.

In 1999, the 76th Legislature enacted the Mortgage Broker License Act providing the Finance Commission with authority to review the rules and actions by the savings and loan commissioner in the licensing and regulation of mortgage brokers, and direct the commissioner with respect to such rules and actions.

In 1999, the 76th Legislature adopted H.B. 744 which provided that an additional 50 cents out of fees collected on credit card accounts would go to the Finance Commission to conduct study on the financial services in Texas and conduct consumer education. No funds were appropriated for the latter item.

In 1999, the 76th Legislature passed H.B. 2066, enabling interstate mergers, branching, and fiduciary activities for financial institutions, including trust companies, effective September 1, 1999. The bill added Finance Commission rulemaking authority related to interstate acquisitions of bank, interstate mergers between banks, interstate branching of banks, and foreign bank branching in Texas, effective September 1, 1999. Regulation is committed to the banking commissioner with rulemaking authority and appellate jurisdiction vested in the Finance Commission. The bill also amended trust company statutes to authorize interstate fiduciary activities, and revised other laws regarding public deposits, probate, and civil process to conform to an interstate bank operating environment.

In June 1999, the Finance Commission initiated a study on home equity lending in Texas, under Section 11.305 of the Finance Code, and in compliance with Art. 16, Sec. 50(s) of the Texas Constitution.

III. Policymaking Structure**A. Please complete the following chart:**

Finance Commission of Texas Exhibit 3: Policymaking Body				
Member Name	Term/ Appointment Dates/ All appointed by the Governor	Qualification (e.g., public member, industry representative)	Address	Telephone Number Fax Number E-mail Address
W. D. Hilton, Jr. Chair	Term: 2/1/02 Apptmt. date: 10/11/95	Public member	NGC Settlement Trust Services, Inc. 2608 Eastland Ave. Ste.202 Greenville, TX 75402	903/454-3700 903/455-5830 dhilton@trustservices.org
Jeff Austin, Jr.	Term: 2/1/00 Apptmt. date: 5/3/94	Banking executive	Austin Bank, Texas N.A. P.O. Box 951 Jacksonville, TX 75766	903/586-1526 903/586-0643 austin16@ballistic.com
Steven C. Hastings, Jr.	Term: 2/1/00 Apptmt. date: 5/3/94	Public member CPA	Medcare Financial Solutions, Inc. 600 Six Flags Dr., #524 Arlington, TX 76011	817/695-1122 817/695-1228 shastings@medcarefin.com
Deborah H. Kovacevich	Term: 2/1/04 Apptmt. date: 5/29/98	Banking executive	State Bank of Jewett P.O. Box 125 Jewett, TX 75846-0125	903/626-4483 903/626-5816 sboj@risecom.net
Marlene Martin	Term: 2/1/02 Apptmt. date: 6/28/96	Public member	Attorney at Law 6243 W. IH 10, Ste 840 San Antonio, TX 78201	210/737-3997 210/737-3990 mmmjdcpa@aol.com
Manuel J. Mehos	Term: 2/1/02 Apptmt. date: 6/28/96	Savings executive	Coastal Banc ssb 5718 Westheimer, Ste 600 Houston, TX 77057	713/435-5315 713/435-7878 mehos@coastalbanc.com
Victor (Buddy) Puente, Jr.	Term: 2/1/04 Apptmt. date: 6/28/96	Public member	Southwest Office Systems P.O. Box 612248 Dallas-Ft. Worth Airport, TX 75261-2248	817/255-8602 817/255-8640 bpuente@sostexas.com
John Snider	Term: 2/1/00 Apptmt. date: 5/29/98	Savings executive	Shelby Savings Bank, SSB P.O. Box 1806 Center, TX 75935-0706	409/598-5688 409/598-5350 ssbank@sat.net
Robert V. Wingo	Term: 2/1/04 Apptmt. date: 5/29/98	Public member	Sanders Wingo Galvin & Morton Advertising 4050 Rio Bravo, Ste 230 El Paso, TX 79902	915/533-9583 915/533-3601 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 officer.

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 (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, 1999.

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 of the Finance Code, 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 Office of Consumer Credit Commissioner.

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 (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 (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 (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 (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 Commission.

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 meetings and the rulemaking process. Notice for Finance Commission and committee 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 budget of the Finance Commission is comprised of the salaries of its 1.5 FTEs, and the funds appropriated for the execution of the mandated study. The cost of the study is limited by legislative appropriations. Therefore, the budgeting process for the Commission itself is not extensive.

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.

Finance Commission of Texas Exhibit 5: Sources of Revenue — Fiscal Year 1998 (Actual)	
Source	Amount
Loan Administration Fees - General Revenue	\$100,000.00
Sale of Goods and Services - Appropriated Receipts (interagency reimbursements)	\$110,043.02
TOTAL	\$210,043.02

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

Finance Commission of Texas Exhibit 6: Federal Funds — Fiscal Year 1998 (Actual)				
Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
NA				0
TOTAL				0

D. Show the agency's expenditures by strategy.

Finance Commission of Texas Exhibit 7: Expenditures by Strategy — Fiscal Year 1998 (Actual)	
Goal/Strategy	Amount
Goal A. Ensure Safety and Soundness	\$209,773.02
Grand Total:	\$209,773.02

E. Show the agency's expenditures and FTEs by program.					
Finance Commission of Texas					
Exhibit 8: Expenditures and FTEs by Program — Fiscal Year 1998 (Actual)					
Program	Budgeted FTEs, FY 1998	Actual FTEs as of August 31, 1998	Fed. Funds Expended	State Funds Expended	Total Actual Expenditures
Ensure Safety and Soundness	1.5	1.5	\$0.00	\$209,773.02	\$209,773.02
TOTAL	1.5	1.5	\$0.00	\$209,773.02	\$209,773.02

F. If applicable, please provide information on fees collected by the agency.				
Finance Commission of Texas				
Exhibit 9: Fee Revenue and Statutory Fee Levels — Fiscal Year 1998				
Description/ Program/ Statutory Citation	Current Fee/ Statutory maximum	Number of persons or entities paying fee	Fee Revenue	Where Fee Revenue is Deposited (e.g., General Revenue Fund)
Loan Administration Fees / Ensure Safety and Soundness/ Article 5069-3.15(8) VTCS, Article 5069-4.01(7) VTCS and Article 5069-5.02(7) VTCS (until 8-31-99); Texas Finance Code 342.201(e), 342.308(c) and 345.157(d) (effective 9-1-99)	.50 per loan fee /.50 per loan fee	Unknown; however, \$132,261.55 was collected by the Comptroller in FY 98.	\$100,000	General Revenue

G. Please fill in the following chart.				
Finance Commission of Texas				
Exhibit 10: Purchases from HUBs				
FISCAL YEAR 1996				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	0	0	0%	11.9%
Building Construction	0	0	0%	26.1%
Special Trade	0	0	0%	57.2%
Professional Services	0	0	0%	20.0%
Other Services	0	0	0%	33.0%
Commodities	0	0	0%	12.6%

TOTAL	0	0	0%	
FISCAL YEAR 1997				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	0	0	0%	11.9%
Building Construction	0	0	0%	26.1%
Special Trade	0	0	0%	57.2%
Professional Services	0	0	0%	20.0%
Other Services	0	0	0%	33.0%
Commodities	0	0	0%	12.6%
TOTAL	0	0	0%	
FISCAL YEAR 1998				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	0	0	0%	11.9%
Building Construction	0	0	0%	26.1%
Special Trade	0	0	0%	57.2%
Professional Services	\$99,730	\$99,730	100%	20.0%
Other Services	0	0	0%	33.0%
Commodities	0	0	0%	12.6%
TOTAL	\$99,730	\$99,730	100%	

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

As stated in its strategic plan (Exhibit I), it is the intention of the Finance Commission to transact business with historically underutilized businesses (HUBs) as much as possible, through the purchases, contracting, and HUB plans of the agencies under its supervision.

V. Organization

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

Finance Commission of Texas Exhibit 11: FTEs by Location — Fiscal Year 1998			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, FY 1998	Number of Actual FTEs as of August 31, 1998
Headquarters	Austin	1.5	1.5
TOTAL		1.5	1.5

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

1.5 FTEs

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

The Finance Commission had no temporary employees as of August 31, 1998.

The agency had contracts related to the execution of the internal audit (services related to and paid directly by the Department of Banking), and the mandated financial services studies. However, these contracts are for specific services/products, not personnel.

D. Please fill in the chart below.

Finance Commission of Texas 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	1	0%	5%	0%	8%	100%	26%
Professional	0	NA	7%	NA	7%	NA	44%
Technical	0	NA	13%	NA	14%	NA	41%
Protective Services	0	NA	13%	NA	18%	NA	15%
Para-Professionals	0	NA	25%	NA	30%	NA	55%

Administrative Support	0	NA	16%	NA	17%	NA	84%
Skilled Craft	0	NA	11%	NA	20%	NA	8%
Service/Maintenance	0	NA	19%	NA	32%	NA	27%
Finance Commission of Texas Exhibit 12: Equal Employment Opportunity Statistics (cont.)							
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	1	0%	5%	0%	8%	100%	26%
Professional	1	0%	7%	0%	7%	0%	44%
Technical	0	NA	13%	NA	14%	NA	41%
Protective Services	0	NA	13%	NA	18%	NA	15%
Para-Professionals	0	NA	25%	NA	30%	NA	55%
Administrative Support	0	NA	16%	NA	17%	NA	84%
Skilled Craft	0	NA	11%	NA	20%	NA	8%
Service/Maintenance	0	NA	19%	NA	32%	NA	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 %
Officials/ Administration	1	0%	5%	0%	8%	100%	26%
Professional	1	0%	7%	0%	7%	0%	44%
Technical	0	NA	13%	NA	14%	NA	41%
Protective Services	0	NA	13%	NA	18%	NA	15%
Para-Professionals	0	NA	25%	NA	30%	NA	55%
Administrative Support	0	NA	16%	NA	17%	NA	84%
Skilled Craft	0	NA	11%	NA	20%	NA	8%
Service/Maintenance	0	NA	19%	NA	32%	NA	27%

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

The Finance Commission does not have an EEO policy which is separate from those of its agencies. The Commission supports equal employment opportunity by approving the equal employment opportunity policies of the agencies that it oversees.

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.

Administrative Hearings

A. Please complete the following chart.	
Finance Commission of Texas Exhibit 13: Program Information — Fiscal Year 1998	
Name of Program	Administrative Hearings
Location/Division	Austin Headquarters
Contact Name	Larry Craddock, Administrative Law Judge
Number of Budgeted FTEs, FY 1998	1
Number of Actual FTEs as of August 31, 1998	1

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

This program conducts all of the administrative hearings for the Finance Commission and its agencies. Hearings may be held to protest the decisions of the agencies' commissioners, to appeal administrative penalties or enforcement actions imposed by the agencies, or to challenge a licensing application. The Finance Commission ALJ is intended to benefit all three agencies and the docket is expected to change with changes in regulatory problems confronting the three agencies.

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

There is no record of when a hearing officer began to be used in the hearings of the Finance Commission agencies, but the case law indicates that they were already in use well before the enactment of the Administrative Procedure Act of 1975 (APA).

In 1992, the hearing officer function for the Savings and Loan Department and the Office of Consumer Credit Commissioner was transferred to the then newly-created State Office of Administrative Hearings (SOAH). Also in 1992, at the request of the banking commissioner, the hearing officer for the Department of Banking began reporting to the Finance Commission instead of to the banking commissioner. These changes were to assure that the ALJ would be independent of improper influences from the agencies that appear before the ALJ.

In September 1995, as part of the new Banking Act, the ALJ function for the Savings and Loan Department and the Office of Consumer Credit Commissioner was transferred from SOAH to the Finance Commission and consolidated with the hearing officer function for the Banking Department (which was also permanently transferred to the Finance Commission by statute). This was done to assure consistency of application of Finance Commission policy in the hearings affecting all Finance Commission agencies and also to assure that the hearings were conducted by a person with extensive experience both in conducting hearings and in financial regulatory law. The Finance Commission ALJ position is codified in §11.202 of the Texas Finance Code.

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?

In general, the nature and volume of hearings reflects the condition of the regulated industries. Over the last several years, hearings have been dominated by challenges to actions taken against currency exchange and death-care licensees, and challenges to new applications for pawn shop licensees. The basis for most pawn shop challenges has been the statutory requirement in counties with a population of 250,000 or more that the Consumer Credit Commissioner make a finding of public need for a pawnshop at the proposed location. The 76th Legislature has removed this requirement from the law, and effective September 1, 1999, a minimum distance will be imposed between pawnshops in counties with a population of 250,000 or more. The 76th Legislature also imposed a new licensing requirement for mortgage brokers, to be administered by the Savings and Loan Department. Denials of broker licenses may be contested by applicants, and appeals of disciplinary action under this statute may be to the savings and loan commissioner, who must set a hearing to consider the appeal. Such hearings are typically conducted by the ALJ, who submits a proposal for decision to the commissioner for final action.

It is anticipated that the Finance Commission and its agencies will continue to need the services of an ALJ who is experienced in the review of complex financial cases. The financial services industry is highly competitive and the penalties for irresponsible behavior are stiff. It is in the public interest to ensure that actions affecting these services are heard in a prompt and proficient venue.

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 Finance Commission agencies, the entities regulated by the Finance Commission agencies, and the public by providing them a prompt, efficient, and impartial means to mediate disputes.

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

The ALJ conducts hearings on behalf of the commissioners of the Finance Commission agencies, or in some instances, on behalf of the Finance Commission itself. The ALJ hears the witnesses, reviews the evidence and briefs of the parties, and issues a proposal for decision which is circulated to the parties. The affected parties are allowed to file exceptions and reply briefs before the proposal for decision is submitted to the agency or Finance Commission for approval or revision. The agency head or the Finance Commission may accept the proposal for decision as written, modify it, or send it back to the ALJ for additional work, which may or may not involve

taking additional evidence. The commissioner may revise the proposal for decision on facts, law or policy at any time after it is initially submitted to the commissioner for approval.

The losing party on banking matters may appeal to the Finance Commission or may take their appeal directly to Travis County District Court. Generally, matters relating to the Savings and Loan Department and Office of the Consumer Credit Commissioner are appealable to Travis County District Court. Appeals to the Finance Commission are on the record made before the agency if the case is one in which a hearing has already been held. If additional evidence is needed, the Finance Commission refers the case back to the agency for the ALJ to take the additional evidence. If the decision is allowed to become final with no appeal, it is binding on all parties and the decision may prevent them from relitigating the same issues that were decided.

Hearings are conducted under the Texas Rules of Evidence and the Hearing Rules of the Finance Commission (which track the Texas Rules of Civil Procedure). Ex parte prohibitions and the Rules of Judicial Conduct are strictly observed.

The ALJ maintains his own calendar and selects and attends training at his own discretion, although the latter is subject to internal and legislative spending limits. The Audit Committee of the Finance Commission evaluates the ALJ's performance annually.

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.

N.A.

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).

The ALJ's costs are currently billed to the individual agencies at \$70 per hour. The costs of administering a hearing (such as the court reporter) are paid directly by the agency sponsoring the hearing. When authorized by law, the agencies may pass these costs back to the litigants who appear before the ALJ.

In the first three quarters of FY 1999, the ALJ has billed a total of \$76,295 to the Finance Commission agencies. To the extent that billings do not cover expenses, the remainder of the program's budget is funded by the Department of Banking.

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

Billings for ALJ hours are the most appropriate source of revenue for the program. An increase in the billing rate from \$70 to \$90/hour will be considered, consistent with SOAH rates.

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

The State Office of Administrative Hearings (SOAH) provides hearings for many other state agencies. The process is basically identical to that provided by the Finance Commission ALJ. The Finance Commission ALJ may subpoena witnesses and documents; apparently, SOAH judges do not have that authority. (See discussion of the difference between SOAH and agency ALJs in RONALD L. BEAL, TEXAS ADMINISTRATIVE PRACTICE AND PROCEDURE (1999), §7.1.2).

Because of the knowledge of financial regulation and the limited docket before the Finance Commission ALJ, hearings are able to move much more rapidly than would be expected if the ALJ were unfamiliar with the statutes and regulations administered by the Finance Commission agencies or with the financial regulatory issues involved.

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.

SOAH does not handle hearings for any of the Finance Commission agencies.

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

The Finance Commission hearings are conducted in accordance with the APA, the Texas Rules of Evidence, and the Finance Commission Hearing Rules (7 TAC §§9.1 et seq.), which largely follow the Texas Rules of Civil Procedure. A brochure explaining the hearing process is provided parties appearing before the ALJ and is on the agency's website.

In addition to other work, the ALJ is the Ethics Advisor for the Finance Commission agencies and may conduct rulemaking hearings. The ALJ drafted the hearing rules and is responsible for any revisions to them, and sits on task forces pertaining to the drafting of legislation related to the Finance Commission agencies as time constraints allow.

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.

N.A.

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.

N.A.

Finance Commission of Texas Administrative Law Judge Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1997 and 1998		
	FY 1997	FY 1998
Number of complaints received	Not applicable.	
Number of complaints resolved		
Number of complaints dropped/found to be without merit		
Number of sanctions		
Number of complaints pending from prior years		
Average time period for resolution of a complaint		
Number of entities inspected or audited by the agency		
Total number of entities regulated by the agency		

VII. Agency Performance Evaluation

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

< Capable Staffing of Commissioner Positions and Oversight of Agency Activities

One of the most important roles of the Finance Commission is the selection of the commissioner for each of the agencies under its jurisdiction. The agencies and regulated entities have benefited from the selection of well-qualified professionals who were both capable administrators as well as experts in the field of the agency. Over the last several years, the Commission, working with the commissioners, has developed annual goals for each of the agency heads which reflect the priorities of the oversight body. Achievement of the goals is considered in the commissioners' annual performance reviews. The Commission has also exercised diligence in ensuring that rulemaking and regulatory policies are consistent among the agencies. The increased use of committees has leveraged the effectiveness of the board by allowing more focused and informed analysis of specific issues.

< Maintenance of an Independent Administrative Law Judge to Conduct Hearings

The Finance Commission has ensured that the agencies under its oversight have access to an informed and accessible hearings officer. This has assisted the agencies in the accomplishment of their respective missions. The agencies hold important regulatory and enforcement powers. Their ability to carry out these powers, and the public's interest, is best served when appeals and challenges can be heard in a prompt and informed court. None of the decisions issued by the Finance Commission ALJ which have been appealed have been overturned by the court system.

< Successful Completion of the Consumer Depository and Cash Services Study

In December 1998, the Finance Commission issued a study analyzing the availability, quality, and pricing of consumer depository and cash services in different regions of Texas. The study, which was performed by an independent contractor, was based on approximately 2000 telephone and face-to-face interviews with consumers in eight distinct locations around the state. The study concluded that consumer education is needed, especially in the area of personal financial management. This study represents the first step in fulfilling the legislative mandate to assess the availability, quality, and prices of financial services, including lending and depository services, offered in this state.

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 Finance Commission has established goals for each of the commissioners, and their performance is evaluated annually based upon achievement of these goals. The performance of the ALJ is also evaluated annually by the Commission.

The Finance Commission has two performance measures which are submitted to the Governor and Legislative Budget Board: "number of meetings convened" and "number of hearings set" (the latter is effective FY 00). Since most regulatory and examination activity occurs at the agency level, the subordinate agencies' measures provide a more meaningful assessment of the Finance Commission's performance.

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

< Establishment of Comprehensive Finance Commission Website

The agency has only recently developed a website independent from those of its supervised agencies (*www.fc.state.tx.us*). Once the website is fully operational, it is the Commission's goal to have, among other public records, a full catalog of ALJ decisions posted for public review. A Finance Commission website will also be a more direct source for the public to research proposed rules and rulemaking decisions of the agency and to obtain information on the legislative studies.

< Implement Document Imaging

The Finance Commission agencies have been appropriated funds to develop and administer a document imaging process. The system will facilitate the storage, access, and sharing of documents. Full implementation of an effective and efficient imaging process is an immediate goal of the Commission and its agencies.

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

There is no other agency in the state that is charged with performing the same functions or supervising the same industries as the Finance Commission.

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

The state has other oversight boards whose function is similar to the Finance Commission's in terms of providing public accountability and supervision of state agency activities. However, the structure of the Finance Commission is uniquely consistent with its mission.

Hearings for the Finance Commission and its agencies could be heard by an ALJ at SOAH, however it would require increased time and resources for the agencies to brief the ALJ on the technical complexities of the law.

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

The Finance Commission monitors the customer satisfaction efforts of its agencies through the receipt of feedback solicited from the regulated entities by the agencies.

In addition, in 1996 and 1998, the ALJ issued a customer feedback form to all attorneys who had appeared before him in hearings. Responses to the questionnaire were fairly complete the first time surveyed; however on the second usage, an inadequate number of responses was received to form the basis of any conclusions. In 1996, most of the evaluators that had participated in these hearings when conducted by SOAH indicated greater satisfaction with the way the hearings were conducted after they had been transferred to the Finance Commission. The ALJ now holds a general docket call to discuss cases that have been pending for some time without resolution and to discuss procedures that might expedite the flow of cases. All of the Finance Commission agency heads are invited to attend this session. The Finance Commission agency heads are also invited to comment on the ALJ's annual evaluation.

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.

N.A. Complaints against the Finance Commission would generally be waged to the Governor or Legislature. The agency does not have a separate procedure for monitoring complaints made against it, nor is it aware of any such complaints being filed.

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

N.A.

Finance Commission of Texas Exhibit 15: Complaints Against the Agency – Fiscal Years 1997 and 1998		
	FY 1997	FY 1998
Number of complaints received	none	none
Number of complaints resolved		
Number of complaints dropped/found to be without merit		
Number of complaints pending from prior years		
Average time period for resolution of a complaint		

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

The staff of the Department of Banking would respond to the request using its own procedures as guidance, or the ALJ will respond if the request was directed to the hearing process.

J. Please fill in the following chart:

Finance Commission of Texas Exhibit 16: Contacts		
INTEREST GROUPS (groups affected by agency actions or that represent others served by or affected by agency actions)		
Group or Association Name/ Contact Person	Address	Telephone Number Fax Number E-mail Address
<i>See:</i> Items listed in Exhibit 16 for the three Finance Commission agencies - Texas Department of Banking, Office of Consumer Credit Commissioner and Texas Savings & Loan Department		
INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS (that serve as an information clearinghouse or regularly interact with the agency)		
Group or Association Name/ Contact Person	Address	Telephone Number Fax Number E-mail Address
<i>See:</i> Items listed in Exhibit 16 for the three Finance Commission agencies - Texas Department of Banking, Office of Consumer Credit Commissioner and Texas Savings & Loan Department		
LIAISONS AT OTHER STATE AGENCIES (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)		
Agency Name/ Relationship/ Contact Person	Address	Telephone Number Fax Number E-mail Address
Legislative Budget Board/ Greta Rymal, Assistant Director	105 W. 15th, Ste 300 Austin, TX 78701	Phone: 512/ 475-2927 Fax: 512/475-2902 Email: greta.ryumal@lbb.state.tx.us

Agency Name/ Relationship/ Contact Person	Address	Telephone Number Fax Number E-mail Address
Comptroller of Public Accounts/ Pat Sheehan, Appropriations Control Officer	P.O. Box 13528 Austin, TX 78711-3528	Phone: 463-4524 Fax: 475-0527 Email: pat.sheehan@cpa.state.tx.us
Office of the Governor/ Wayne Kelley, Budget and Planning	P.O. Box 12428 Austin, TX 78711	Phone: 512/463-1778 Fax: 512/463-1880 Email:wayne.kelley@governor.state .tx.us
Office of the Attorney General/ David Mattax, Chief Financial Litigation Section Jack Hohengarten, Asst. Atty. Gen.	300 W. 15th, 8th Floor Austin, TX 78701	Phone: 512/463-2018 Fax: 512/477-2348 Email: david.mattax@oag.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). See Exhibit 17 Example or [click here to link directly to the example](#).

Also, see the analyses provided by the Department of Banking, Savings and Loan Department, and Office of the Consumer Credit Commissioner.

Finance Commission of Texas Exhibit 17: 76th Legislative Session Chart		
Legislation Enacted in the 76th Legislative Session		
Bill Number	Author	Summary of Key Provisions/Intent
H.B. 2066	Marchant	H.B. 2066 is a 193 page bill that passed both houses by a unanimous record vote. The Act implements interstate banking and branching in Texas, foreign bank branch and agency authority to the fullest extent permitted by federal law, and multistate trust business for corporate fiduciaries. In addition, the Act amends laws regarding public deposits, civil process, and trust, to conform these laws to the new interstate bank and trust environment. The Finance Commission is granted rulemaking authority to aid in implementing the Act. A complete summary is included in Exhibit III.
S.B. 1368	Harris	A 784 page bill, this Act relates to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes, and to conforming codifications enacted by the 75th Legislature to other Acts of that legislature. Extensive additions and amendments to the Finance Code are contained in Article 7 of the Act. In particular, Section 7.16 in Part 2 of Article 7 codifies the Texas Trust Company Act (simultaneously amended by H.B. 2066), and Part 3 amends Title 4 to include 1997 enactments regarding consumer credit.
H.B. 2320	Cuellar	This Act relates to the licensing and regulation of currency exchange, transmission, and transportation businesses. Because the bill increases the number of potential licensees to a currently unknown extent, the Finance Commission is granted rulemaking authority to create exemptions from licensing to eliminate classes of persons that do not need to be regulated for public safety and monitored for money laundering violations.

Bill Number	Author	Summary of Key Provisions/Intent
S.B. 1074	Carona	This Act establishes licensing and regulation of mortgage brokers by the savings and loan commissioner. Although the Finance Commission is not given direct regulatory or rulemaking authority, the Commission is authorized to review any action or rule adopted by the savings and loan commissioner, and direct the savings and loan commissioner to adopt, repeal, or amend any rule or other action taken, with respect to mortgage broker regulation (Fin. Code Chapter 156).
H.B. 744	Eiland	Provides for an additional 50 cents of fees collected on credit card accounts to go to the Finance Commission for the study of financial services and to conduct public education.
H.B. 1878	Averitt	Eliminates the “show need” requirement for pawn shop applications, and their hearings before the ALJ.

Legislation Not Passed in the 76th Legislative Session		
Bill Number	Author	Summary of Key Provisions/Intent/ Reason the Bill did not Pass
H.B. 1830	Elkins	The bill would have changed the number and qualifications of members of the Finance Commission. The bill would have increased the number of members from nine to 12, (but not changed the requirement that two members be bank executives and two be savings executives), added a requirement that two members be “pawnshop executives” and two be “finance executives,” reduced the number of public members from five to four, and eliminated the CPA requirement for one public member. The intent of the bill was to provide representation on the Finance Commission for industries regulated by the consumer credit commissioner to the same extent as the banking and thrift industries are represented. The bill received a hearing but died in committee.
H.B. 2068	Marchant	The main intent of the bill was to convert state savings and loan associations to savings banks by operation of law and rename the savings and loan commissioner and department as the “savings bank” commissioner and department. In that connection, the qualifications of the savings executives on the Finance Commission would have been amended accordingly to “savings bank” executives. The bill passed the House and was referred to the Senate, where the bill died for lack of a sponsor.
S.B. 48	Carona	The bill would have given the Finance Commission interpretive rulemaking authority regarding home equity lending provisions of the Constitution (Art. XVI, §50(a)(6), (e)-(j)), subject to passage of an enabling constitutional amendment. The bill died in committee without a hearing.
S.J.R. 8	Carona	Authorizing the legislature to delegate to a state agency the authority to adopt rules interpreting home equity lending law. The resolution died in committee.

IX. Policy Issues

The purpose of this section is to briefly describe any potential policy issues that would help the agency operate better and improve service delivery. This section is intended to give the Sunset Commission a basic understanding of the issues so staff can develop more information during our detailed research on the agency. Some questions to ask in preparing this section may include: (1) How can the agency do a better job in meeting the needs of clients or in achieving agency goals? (2) What barriers exist that limit the agency's ability to get the job done?

Emphasis should be given to major policy issues and issues appropriate for resolution through changes in state law. Issues related to funding or actions by other governmental entities (federal, local, quasi-governmental, etc.) may be included, but the Sunset Commission has no authority in the appropriations process or with other units of government. If these types of issues are included, the focus should be on solutions which can be enacted in state law. Focus should also be given to areas where the agency can improve its interaction with other state agencies.

The policy issues presented should not be limited to issues the agency supports, and inclusion of issues in this document will not be interpreted as an endorsement by the agency.

This section contains three components:

1. **Brief Description of Issue.** Often, the issue is best presented as a question, e.g., "Should the agency be required to . . . ?"
2. **Discussion.** Include enough background information to give context for the issue. Information helpful in building context includes:
 - C What is the general scope of the issue?
 - C What is the agency's authority (statutory or other) related to the issue?
 - C What is the current practice or situation related to the issue?
 - C Any previous legislative action related to the issue?
3. **Possible Solutions and Impact.** Provide specific recommendations to solve the problem. Keep in mind each issue may have multiple and/or competing solutions. Feel free to include a more detailed discussion of each proposed solution. This section should also include the impact of the proposed solution, including:
 - C Will the proposed change impact any entities or interest groups?
 - C How will the performance of the agency be impacted by the proposed change?
 - C What are the benefits of the recommended change?
 - C What are the possible drawbacks of the recommended change?
 - C What is the fiscal impact of the proposed change?

Please complete this section for each policy issue. Copy and paste boxes A through C as many times as needed to discuss each issue. See Policy Issue Example or [click here to link directly to the example.](#)

I.A. Brief Description of Issue.

What is the proper form and structure of the state's financial regulatory agencies?

I.B. Discussion

Review of Oversight Structures

The current structure of the state's oversight function of financial regulatory agencies is as follows:

Oversight Function	Structure	Supervised Financial Regulatory Agency(s)
Texas Finance Commission	Nine member board appointed by the Governor (Separate Agency)	Department of Banking Savings and Loan Department Office of the Consumer Credit Commissioner
Texas Credit Union Commission	Nine member board appointed by the Governor (Oversight Board)	Credit Union Department
State Securities Board	Three member board appointed by the Governor (Oversight Board)	State Securities Department
Insurance Commissioner	Commissioner appointed by the Governor (Chief Executive Officer)	Department of Insurance

The regulation of financial institutions also occurs on the federal level. In this regulatory system, the following agencies regulate these respective institutions:

Regulator	Reports to:	Supervised Entity
Comptroller of the Currency	Secretary of Treasury	National banks
Office of Thrift Supervision	Secretary of Treasury	Federal savings associations, state savings and loans, savings and loan holding companies
National Credit Union Administration	National Credit Union Administration Board	Federal credit unions and State credit unions
Federal Reserve System	Federal Reserve Board of Governors	State member banks (including savings banks) and bank holding companies
Federal Deposit Insurance Corporation	FDIC Board of Directors	State nonmember banks (including savings banks). Secondary federal regulator for national banks.

The current federal regulatory structure for financial institutions has been in existence since the 1930's. Numerous studies and reorganization proposals have been considered. In 1989, Congress shifted the deposit insurance responsibilities for savings and loan associations to the FDIC, and restructured the chartering and supervisory responsibilities of the Federal Home Loan Bank Board into the Office of Thrift Supervision. With this exception, there has been no significant restructuring of the federal depository institution regulatory system.

The organizational structure of state financial institution supervisors varies between the states. However, in general, there is greater centralization of regulation among the depository regulators in other states than in the Texas system. The 1998 Profile of State-Chartered Banking issued by the Conference of State Bank Supervisors (excerpts provided as Exhibit II) indicates that the supervision of banks is frequently combined with the supervision of savings and loans (in 75% of the states), savings banks (in 85% of the states), and credit unions (in 72% of the states).

There is limited federal supervision and enforcement of laws relating to consumer credit transactions, trust company transactions, sale of checks transactions, currency exchange transactions, or preneed or perpetual care cemetery transactions. This is a matter generally reserved to the states. However, some enforcement of the federal lending laws and funeral industry functions may occur through the Federal Trade Commission.

Prior Studies

Several studies have occurred on the issue of organization of the state's financial regulatory agencies. These studies are summarized below as they relate to the restructuring issue:

Year	Report	Recommendation re: Restructuring	Action
1988	Special Committee on Organization of State Agencies/Texas Advisory Commission on Intergovernmental Relations: Report to the Governor and Members of the 71 st Legislature (Exhibit IV)	The Finance Commission supervise the creation and maintenance of a single body of state auditors and examiners of financial institutions.	None taken.
1990	Office of the State Auditor: Financial Services in the 90's: Need for Comprehensive Regulatory View (Exhibit V)	Place the oversight of all financial services providers (deposits, credit, and ancillary services such as financial advice and check cashing) under a single agency.	None taken.

Year	Report	Recommendation re: Restructuring	Action
1990	Finance Commission Committee on Agency Consolidation: Agency Consolidation Report (Exhibit VI)	Consolidation of the three agencies would provide no practical benefits to the process of regulation or the regulated industries. However, the Finance Commission should be expanded to consolidate administrative functions.	No legislative authority was given to add or transfer FTEs to the Finance Commission. The Finance Commission directed the agencies to optimize coordination of admn. functions. Mail room, supply, and copying functions subsequently merged.
1993	Finance Commission Consolidation Review Committee (Exhibit VII)	Do not consolidate the Finance Commission agencies.	None taken
1994	Finance Commission Consolidation Review Committee (Exhibit VIII)	Do not consolidate the Finance Commission agencies.	None taken
1996	Sunset Staff Recommendations of the Credit Union Commission (Exhibit IX)	Continue Credit Union Department for four years to complete analysis of placing the Credit Union Department within the Finance Commission structure.	Credit Union continued for 12 years.
1998	Finance Commission Review of Savings and Loan Department Organization and Function (Exhibit X)	Do not merge the Savings and Loan Department with the Banking Department. There is no need to further study consolidation of the S&L Department and the Department of Banking.	Finance Commission resolution adopted.

Interested Parties

The trade groups representing the regulated entities have weighed in heavily on the subject of any restructuring of the regulatory agencies. Generally, the trade groups representing the banking industry have been in favor of some type of restructuring. At hearings during the sunset review of the Credit Union Commission, at least one bank trade group voiced active support for the proposal to bring the Credit Union Department under the Finance Commission. The trade groups representing the thrift industry, the credit union industry, and the consumer finance industry have all opposed any type of restructuring that has involved the loss of their independent regulatory agency.

Issues Affecting Restructuring

1) What cost impact would be involved in any restructuring?

All of the regulatory agencies are funded through fees generated and collected by the regulated entities. Thus, any increased costs or derived savings would be directly borne by, or benefit to, those entities. Many of the prior studies have attempted to discern the financial impact of potential restructuring. In response to prior studies, the Finance Commission agencies have worked on a cooperative basis to share resources in certain administrative areas. Any final cost impact is almost impossible to definitively determine and is greatly affected by the form and structure mandated.

Proponents of restructuring say:

Merging administrative functions reduces duplication of effort and results in cost savings and increased efficiencies to the industries supervised. Maintaining multiple separate agencies results in the need for an accounting and administrative component within each agency. For example, the Finance Commission and each of its three agencies must each maintain separate accounting records and systems. Additionally, smaller agencies have a more difficult time in obtaining sufficient technical resources, such as in information management.

Opponents of restructuring say:

There will be little or no savings with any restructuring. In fact, costs may increase if an additional layer of administration is added in the process of restructuring. Some of the regulated entities, specifically the thrifts, credit unions, and consumer finance companies, have stated that even if the costs of maintaining the current structure are higher, they are prepared to shoulder those costs to maintain independent, autonomous agencies.

2) Is regulatory expertise minimized or sacrificed in a restructuring plan?

Expertise in financial regulation is a critical consideration to ensuring the safety, soundness, and level of compliance of the state's financial service providers. Any study of restructuring must thoroughly consider the impact and continuation of a high level of expertise within each regulatory area.

Proponents of restructuring say:

The functions and elements of a regulatory program are so similar in the depository environment that there is no substantial difference in the regulatory expertise required to adequately supervise all of the state's depository institutions. Banks, as well as thrifts, make, hold and sell all manner of loans, including long term mortgages, and FDIC examiners examine both banks and state savings banks. While consumer credit and the other nondepository regulatory functions require a different type of expertise, the functions are not so dissimilar as to warrant any different structure. Speciality examination staffs could be maintained to the extent necessary to ensure expertise in each examined area.

Opponents of restructuring say:

The expertise of the regulator is highly specialized and specific to the industry type. Expertise would be lost through the pooling of examination forces. Opponents express concern that examinations and supervisory issues would be handled by inexperienced or improperly trained regulators. This may result in inefficiencies as institutions have to unnecessarily contest examination findings or other more serious harm that may occur to the institution. Essential characteristics of a regulator's expertise include a sound understanding of an industry's unique lending and investment strategies. For example, due to the concentration of mortgage lending in state savings institutions, these institutions have historically used sophisticated investment techniques to control the interest rate risk in their investment portfolio. In the nondepository areas, the

expertise of the regulator is focused upon the statutory compliance concerns of the regulated industry and protection of the public. This consumer compliance expertise is not currently available within the state's depository regulatory agencies.

3) Does restructuring adversely affect the state's system of multiple charters?

A restructured system may eliminate the independence of the chartering authorities, diminishing the attention granted to a certain charter type and creating a "step-child" class of regulated entities.

Proponents of restructuring say:

Differences that the public observes between the different types of depository charters have been reduced by the expansion in powers and growth of parity provisions in laws affecting the different charters. The legal concepts surrounding the operation and regulation of these institutions are very similar. The similarities are such that a singular regulatory supervisor can adequately address all types of charters without impairing the value of any singular charter. There are a variety of regulatory structures in existence today among the various states. Most states use a single agency to supervise all depository institutions and some nondepository financial institutions. Some states that have all depository charters supervised by one department reflect thriving bank, thrift and credit union industries. Those states with small numbers of assets or one charter type or another, with or without all depository institutions being under a single state supervisor, are reflective of factors other than the regulatory combination (such as local economies). The full array of charters would still be available; they would simply be available from a singular regulatory agency. Additionally, having a regulator that supervises multiple industries provides a more balanced regulatory response overall.

Opponents of restructuring say:

The independent status of separate financial service provider regulators has encouraged and fostered the growth of each industry, and expanded the dual system by focusing on the benefits of each charter type. This independent regulation provides a more distinct choice of charter options, all of which are available within the federal system. Opponents express concern about being regulated by their competition, and, in a combined regulatory environment, about the regulator favoring one industry to the detriment of other industries or, at best, giving only fragmented attention to the different industries. This would not only deter conversions to state charters, but it could also lead toward conversions away from state charters and into federal charters, resulting in decline in the dual state/federal system.

4) Is there a conflict between the missions of safety and soundness for depository institutions and compliance and consumer protection for nondepository businesses?

Agencies regulating depository institutions are primarily focused upon the safety, solvency, and liquidity of the financial institutions. On the other hand, regulation of the nondepository institutions is geared exclusively toward statutory compliance and consumer protection functions.

Proponents of restructuring say:

These missions do not conflict. The compliance/consumer protection function is merely a subcategory of safety and soundness.

Opponents of restructuring say:

There is an inherent conflict between the missions of safety and soundness and the protection of consumers through compliance regulation. If a regulator is primarily focused upon the liquidity and soundness of an institution, those concerns predominate over any issue of consumer protection or compliance. The job of

protecting consumers through compliance examinations is easily overlooked in light of concerns about solvency in the depository system. Yet, the impact of consumer protection is very large to the general public and vigilance is required to ensure that transactions are conducted in accordance with state law.

5) Will there be a reduction in information reported to the oversight board or the Legislature in a restructured organization?

In the existing structure, the Legislature and the oversight boards hear from each agency in detail about the operations and events affecting each regulated industry.

Proponents of restructuring say:

The Legislature and the oversight board would be entitled to receive the same information as they currently receive, or adjust the amount as they deem appropriate.

Opponents of restructuring say:

Even though the Legislature and the oversight board are entitled to receive the same amount of information, as a practical matter if a single agency is appearing before the body, the overall amount of detailed information that is relayed would be reduced. Additionally, the number and amount of performance measure data that may be used for making policy decisions would likely be reduced as well. Important, and perhaps controversial, industries or innovations could be stifled by the dominant industry interests and not raised to the oversight board level for consideration.

6) Would there be increased consistency in regulation by a single regulator or a single umbrella oversight board?

In formulating appropriate public policy for the state, it is generally believed that consistency in treatment among regulated entities is a worthy objective. The Finance Commission provides consistency in the regulation of the entities supervised by its agencies and such consistency would be enhanced were it applicable to all depository institutions. A comparison of statutes and rules between the Credit Union Commission, the Finance Commission, and their respective agencies, was performed at the request of the Sunset Advisory Commission, and is attached as Exhibit XI.

I. C. Possible Solutions and Impact
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i. Maintain the structure as it currently exists.

ii. Create a comprehensive financial services agency with an executive director appointed by the Governor, similar to the structure proposed by the State Auditor in 1990. This structure would combine all financial services agencies beneath a single agency head. Agencies to be included would be Insurance, Securities, Banking, Savings and Loan, Credit Union, and Consumer Credit. Other financial industries such as debt collection firms, mortgage bankers, check cashers, and rent-to-own businesses might also be included.

iii. Create a department of financial institutions that is one agency, most likely comprised of separate divisions representing the currently existing agencies. There would be an agency head who would most likely report to a new Commission of Financial Institutions. The Finance Commission and the Credit Union Commission could be combined. The three depository regulatory agencies and Office of the Consumer Credit Commissioner would likely be merged into this new structure.

iv. Maintain the umbrella function of the oversight board but restructure the Finance Commission, while merging it with the Credit Union Commission. Place the three depository regulatory agencies and Office of the Consumer Credit Commissioner under the new oversight board.

v. Roll up the administrative functions of the agencies at the oversight board level while maintaining the independent status and nature of the individual agencies' regulatory programs. Consolidate the agencies' administrative services (such as MIS, purchasing, human resources, and legal) at the Finance Commission level. Maintain separate agencies, commissioners, and examiners over each group of depositories.

vi. Any combination or merger of one or more of the agencies, but less than all, is also a possible structure. An alternative could explore functional areas of regulation: all depository institution regulation and non-depository institution regulation.

II. A. Brief Description of Issue

Should the Finance Commission of Texas be given some interpretive or rulemaking authority over the constitutional home equity lending provisions?

II. B. Discussion

The Texas Constitution protected homesteads from forced sale for 158 years and permitted loans only for limited purposes. The 75th Legislature passed House Joint Resolution 31 (HJR 31), adopted by the voters on November 4, 1997, which amended Section 50 of the Texas Constitution to provide for an equity loan and a reverse mortgage on a homestead. When the Texas Legislature embarked down the path of creating home equity lending, they enacted a lengthy set of exacting conditions to alleviate some of their concerns about the manner in which a lender would engage in the transaction.

Section 50 addresses only the elements necessary to create a valid lien on a homestead. Other statutes and constitutional provisions govern the legality of credit transactions. The fact that most provisions regarding implementation of home equity lending reside in the constitution creates a dilemma for providing interpretations of particular provisions. Inherent with any complex transaction like home equity are details that cannot be fully addressed within the text of the amendment. The consumer credit commissioner has had interpretation authority over the provisions of consumer credit laws for many years. Additionally, the Finance Commission of Texas has broad rulemaking authority over all of the consumer credit laws to provide definition and implementation of the credit laws. This process has worked well for resolving ambiguities and providing certainties for parties entering into a credit transaction.

The state regulatory agencies with authority over authorized lenders determined it was important to follow the will of the citizenry and the Legislature and foster a workable environment for equity loans. The regulators determined it was their responsibility to provide for reasonable implementation of home equity lending and inform the regulated community of the guidelines to be used to enforce the provisions of HJR 31. Additionally, those policies should provide guidance to lenders and consumers concerning the regulatory views of the meaning and effect of HJR 31. The regulators produced a commentary of the opinions of the state administrative agencies responsible for regulating the entities making those loans and stated that those views would be used to evaluate compliance with the constitutional requirements in examination and enforcement situations. However, a court may or may not defer to that interpretation in resolving a dispute between a borrower and a lender.

It is good public policy to provide clarity and guidance to lenders who are trying to construct consumer credit transactions in accordance with state law. Providing increased certainty of compliance benefits borrowers and lenders alike. It is well settled within administrative law and case law that the construction and application of a statute by the agency charged with its administration is entitled to substantial deference. This is a major incentive for lending institutions to comply with consistent administrative interpretations of law.

Should a court rule that a lender engaged in a transaction that did not comply with the constitutional provisions, the penalties are: the lien is held invalid, the lender forfeits principal and interest, and pursuant to the terms of the amendment the lender will have no other recourse against a borrower. Thus a lender who has a transaction declared invalid could face substantial liability if a violation was replicated in other transactions. The concept of providing an affirmative defense and limited liability for complying with formal interpretations and rules has been around for some time. Probably the first of these statutes was the *Truth-In-Lending Act* of 1968 and immunity provisions were added in 1977 into the *Texas Credit Code*.

II. C. Possible Solutions and Impact

- i. **Grant rulemaking authority over the home equity lending constitutional provisions to the Finance Commission of Texas.** Granting rulemaking authority to the Finance Commission would provide a vehicle for resolving ambiguities and uncertainties that surround the home equity lending amendment. While other solutions are available, this one would provide the most flexible method for dealing with the regulation of new products and procedures developed and introduced in Texas. This solution also removes the need for a constitutional amendment every time a new question arises over the amendment that can be resolved in harmony with the existing language. One potential disadvantage of this solution is that the Legislature may desire to debate each point of the amendment (e.g., how to count days for the 12 day waiting period and the three day right of rescision); this method would not provide that opportunity except through the customary procedures for rule adoption.
- ii. **Enact an enabling statute that will clarify the home equity lending constitutional provisions.** Enacting an enabling statute could provide clarity to the amendment and allow the legislature to address their concerns about the manner in which lenders engage in the transactions. This solution would give the Legislature full control in addressing ambiguities or needed clarifications; however, it requires a much longer reaction time to address any problems, as the Legislature only meets every two years. New issues arise continuously.
- iii. **Rely on case law development to create the interpretations of the home equity lending constitutional provisions.** This seems to be the conventional wisdom of the current situation. Many of our state usury laws have been developed by court decisions, especially in the commercial arena. This solution would result in interpretations and the appropriate determination for application of law being formulated over decades and could have detrimental effects on the industry if the courts hold certain practices to be in violation of the law. This procedure seems to carry a greater degree of risk to consumers and lenders in assuring that transactions comply with the law.

III. A. Brief Description of Issue

Should membership of the Finance Commission be realigned to include representation of other industries currently regulated by the Finance Commission agencies?

III. B. Discussion

Membership on the Finance Commission has generally reflected the regulated entities, although representation has varied. When it was first created in 1943, the Finance Commission had nine members: four banking executives, two savings and loan executives, and three appointed citizen members. Although the predecessor of the consumer credit commissioner was established under the Finance Commission in 1963, it wasn't until 1983 that the Legislature changed the number of members and composition of the Finance Commission from nine to 12, by adding three members in a Consumer Credit Section, (two individuals who held either lending or pawnshop licenses and one member of the general public). In 1989, the 71st Legislature reduced membership on the Finance Commission to nine and structured a public-dominated board, comprised of two banking executives, two savings and loan executives, and five members of the general public appointed by the Governor on the basis of recognized business ability. One of the public members is required to be a certified public accountant. This is the current structure.

The argument in favor of industry representation on the oversight board notes that inclusion provides industry expertise and participation in rulemaking, and ensures that industry interests are heard and considered. Currently, the Finance Commission has indirect oversight over several industries which are not represented on the Commission: pawn shop operators (1,542 licensees), consumer finance companies (835 licensees), small loan companies (1,719 licensees), secondary mortgage lenders (1,025 licensees with \$2.5 billion in total assets), retail installment sellers (8,372 licensees), manufactured housing installment sellers (934 licensees), motor vehicle installment sellers (5,381 licensees), sellers of prepaid funerals (447 licensees with \$1.8 billion in total assets), perpetual care cemeteries (226 licensees with \$118 million in total assets), sale of check operators (29 licensees with \$382 billion in total assets), currency transmitters (80 licensees with \$35 million in total assets) and trust companies (33 charters doing business with the public with \$54 billion in total assets). While these industries are generally of a smaller size than the state banking (397 charters with \$58 billion in total assets) and thrift industries (26 charters with \$12.5 billion in total assets), their exclusion may be challenged.

If the Finance Commission were to include representation of all regulated entities and still maintain a majority of public members, its size would become unmanageable. Public policy endorses a board majority of citizen members. Inclusion of all regulated entities and a majority of citizens would increase the board's size to at least 15, providing one seat per industry. One seat for each regulated entity may not resolve the representation issue, since this would provide equal representation for industries of widely varying size. To the extent that the Finance Commission does not have rulemaking authority over some of the entities (prepaid funerals, pawn shops, first lien mortgage brokers), representation on the board may not be necessary.

Many issues coming before the Finance Commission are very technical. If more members were added, it may become more difficult for the board to have an informed discussion and vote on highly technical subjects.

III. C. Possible Solutions and Impact

Consider as a prerequisite for all possible solutions listed below the continuation of a public member majority and whether more than nine members impacts the efficiency of the Commission.

i. Create a rotating seat to be shared by the smaller regulated entities. While this provides an opportunity for the unrepresented industries to participate in the board, it does not provide constant representation. The represented industry may not have a seat during a period of intense policy or rulemaking in which it would have an interest.

ii. Include all regulated entities on the board, maintaining a public majority. While this would provide all regulated entities representation, it could create a board whose size would make it difficult to manage. The board may also find it more difficult to tackle highly complex issues due to a greater diversity of backgrounds among board members.

iii. Allow the Governor discretion to appoint board members from the different regulated industries in the manner he or she thinks appropriate, rather than locking him or her into a specific number from each industry. Eliminate the provisions in the statute that specify the industry-association of non-public members. This solution would allow for more frequent review of the Commission's regulated industries and provide for possible adjustments to the governing board. However, membership on the Commission could become increasingly politicized. And, consistency in representation and supervision would not be guaranteed.

iii. Reallocate the seats among the agencies the Finance Commission oversees.

Maintain a total of nine members, but redistribute the four chairs allocated to industry representatives among the agencies overseen by the Commission. Although some industries would still not receive direct representation, there is an opportunity for more diverse representation.

iv. Leave the number and composition "as-is."

Although this perpetuates some degree of regulation without representation, the current composition includes the most highly visible industries under the Commission, is of a manageable size, and maintains a citizen majority.

IV. A. Brief Description of Issue

Should the Finance Commission Administrative Law Judge be maintained as an independent function of the Finance Commission?

IV. B. Discussion

In all of the states that have central administrative hearing panels such as SOAH, some ALJs have been left outside the central panel. The main argument usually given in favor of the central panel is that there is a greater appearance and perception of fairness than when the ALJ works for the agency head whose enforcement cases come before the ALJ for decision. The main arguments given in favor of retaining the ALJ at the agency usually pertain to the need in some agencies to have ALJs who, in addition to being trained in the law, are also trained to deal with highly specialized regulatory problems.

The Finance Commission ALJ was moved from the Department of Banking to the Finance Commission in 1995 to insulate the ALJ from any real or perceived problems associated with direct supervision by the banking commissioner, who appears before the ALJ as a litigant. At the same time, the hearings of the Savings and Loan Department and the Office of the Consumer Credit Commissioner were also transferred to the Finance Commission ALJ from SOAH. While many ALJ positions had already moved to SOAH at that time, a deliberate decision was made by the Legislature to allow retention of this position at the Finance Commission. Senator John Montford, who sponsored the creation of SOAH, was also the chief senate sponsor of the Texas Banking Act, which placed the ALJ at the Finance Commission. While aware that some efficiencies were available under a central hearing panel, the positioning of the ALJ at the Finance Commission ensured greater consistent expertise and expediency on cases arising under the Finance Code than would be anticipated if the docket were rotated among central panel judges. The more restructuring of depository regulatory agencies is considered, the greater the need to retain the ALJ at the Finance Commission.

The Finance Commission agencies currently generate a sufficient docket to justify a full time ALJ. There would be no increase in efficiency to use a SOAH ALJ, since an additional position would have to be created at SOAH to carry the agencies' caseload. Nor could savings be realized by the elimination of support staff, since support for the Finance Commission ALJ is included in the other duties of existing administrative staff of the agencies. To the extent that the ALJ position is located in the same building as the agencies it serves, efficiencies are realized through the use of mutually convenient hearings sites.

IV. C. Possible Solutions and Impact

i. Retain the ALJ at the Finance Commission. It is to the advantage of the agencies, the public, and regulated entities to have an informed, accessible, and consistent arbitrator of highly important financial matters. The position is efficiently utilized, and a move to SOAH may actually decrease efficiency.

ii. Move the ALJ to one of the Finance Commission agencies. The agencies would continue to have access to an informed hearings officer; and, some efficiencies would be provided in terms of administration of the position. However, as an employee of the agency whose action is being appealed/challenged, aggrieved parties may perceive a less impartial hearing.

iii. Transfer the ALJ to SOAH and let any Finance Commission agency needs for ALJ services be filled out of the SOAH central panel. If SOAH were to handle the agencies' caseload, there would be more flexibility in the future to respond to a varying case load. However, no immediate efficiencies are evident to the extent that the current caseload requires a full time ALJ. Any potential or perceived concern regarding a conflict of interest between the Finance Commission ALJ and the Finance Commission agencies would be resolved through a move to SOAH. However, the quality of legal work and responsiveness in a crisis may suffer due to the potential lack of familiarity with the complex subject matters. To the extent that the financial regulatory agencies have power to temporarily seize the public assets which are being mismanaged by regulated entities, it is important that challenges to this authority be heard in an informed and immediate venue.

iv. Transfer the ALJ to SOAH and require SOAH to assign a separate judge or judges to financial regulatory matters as was done when PUC and TNRCC hearings were transferred to SOAH. This achieves the advantages of Solution iii., while also providing an additional degree of expertise. However, the immediacy of the venue and briefing time would still likely be less favorable than the retention of an ALJ at the Finance Commission or one of its agencies.

V. A. Brief Description of Issue

Should the Finance Commission and its agencies become self-directed, semi-independent agencies?

V. B. Discussion

The 76th Legislature passed a bill establishing a pilot project allowing certain state agencies, with well-defined missions and well-run boards and administrations, to adopt semi-independent, self-directed status. These agencies remain accountable to the Legislature, but they are exempt from many of the controls imposed on other state agencies.

The Finance Commission agencies are entirely funded through fees and assessments paid by the regulated industries. The agencies have specific missions and are accountable to the public and regulated entities through the Finance Commission. The agencies have historically demonstrated their ability to execute their mission without the controls imposed by legislative appropriations.

Until 1993, the Finance Commission and its agencies operated under special funds. These funds were eliminated by the 73rd Legislature. Beginning August 31, 1995, unexpended funds of the agencies were swept into General Revenue, contrary to statutes authorizing the agencies to assess their regulated industries only for the cost of supervision.

From 1989 to 1997, the majority of the Finance Commission agencies' professional positions were "exempt" from the state's Classification Plan due to their classification under a separate Finance Commission Salary Administration Program. The program was established after the financial crisis in the 1980's, in recognition of the need of the financial regulatory agencies to compete with the industry and federal banking authorities to attract and retain competent employees. The program allowed the Finance Commission to set the salaries and determine the number of employees for the Finance Commission agencies, subject to the limits of each agency's total appropriations under the General Appropriations Act. The Finance Commission Salary Administration Program was not renewed by the 75th Legislature due to a movement to recapture all agency positions into the state's Classification Program. Currently, all personnel in the agencies except the commissioners are classified under the state classification system, and FTEs are capped in agency appropriations.

It is difficult for the agencies to perform their mission without adequate and competent staffs. The inability to attract and retain qualified applicants has impacted the agencies' ability to meet their examination mandates and performance targets.

The agencies currently pay less than both the industry and the federal bank and thrift regulators for employees with similar experience in a market increasingly competitive for their expertise and experience. An informal survey of federal banking regulators as of July 1999 (see Exhibit XII) indicates that the Banking Department's starting annual salary for examiners (\$27,000) is \$700 - \$10,000 below that being offered by the federal agencies. At the four years of experience, the Banking Department at \$36,000, is approximately \$6,000 to \$15,000 below the amounts being paid for the comparable position with the federal regulators. Experienced examiners (ten or more years of experience) can get \$10,000 to \$28,000 more in salary with the federal regulators, and these personnel are actively recruited by those other agencies. The Savings and Loan Department faces similar salary differentials with examiners at the FDIC and OTS.

The regulated industries also generally offer substantially better pay than the Finance Commission agencies. After several years spent in travel status, many examiners leave the agencies at a time when training benefits are just being realized.

The Department of Banking experienced 25% turnover in FY 1998, with 30% turnover among the bank examination staff. While there has been some slowing in turnover in FY 1999, the agency continues to have difficulty maintaining full and properly experienced staffing. Consequently, achievement of performance measures has suffered.

Further compounding problems is the 1.7% merit pay cap imposed by the 75th Legislature and carried forward by the 76th. The Department of Banking ties an annual performance appraisal to a formal merit pay matrix, with merit increases tied to the employee's overall performance. In the past, annual appraisals and merit increases have been deferred for some staff in order to manage within the cap. Although the agencies were able to comply with this cap in fiscal year 1998 through careful management of personnel actions, this was largely due to high attrition and sustained job openings.

The agencies have had difficulty meeting performance measures while operating under FTE caps. Due to the high attrition and expanding scope of supervision, the cap recommended by the Legislative Budget Board has historically not been reflective of the agencies' needs. In 1997, the Office of the Consumer Credit Commission had to request a variance in order to meet new responsibilities under the home equity law.

In addition to providing greater freedom in the administration of staff, self-directed status could also reduce some of the duplicative reporting that occurs at the Finance Commission level. Currently, all four agencies must submit each of the twenty-two administrative reports required by the Legislature.

V. C. Possible Solutions and Impact
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i. Work with the Finance Commission and its agencies to structure a self-directed, semi-independent status. The agencies would have more flexibility to structure their operations and staffing to be responsive to the changing economic environment and condition of regulated entities. There would be no impact to the General Revenue Fund because the agencies minimize the amount of assessments and fees swept. Although agency expenditures would not be controlled by appropriations, expenses would be held within assessments. Assessments are set by rule, allowing the regulated entities and public to review and comment on proposed changes in assessments. This ensures that the agencies act responsibly in their expenditures. Any decision to go into self-directed, semi-independent status would need to provide sufficient time to assure program success. The argument against allowing self-direction is that this is a pilot program whose current participants are smaller agencies with a narrower mission than the Finance Commission agencies. The Legislature may prefer to have the Finance Commission agencies be more accountable as other agencies.

ii. Reinstate the Finance Commission Salary Administration Program, exempting the agencies from FTE caps, the merit pay cap, and professional employees from the state classification plan. This would provide the agencies greater flexibility to compete for well-qualified staffs. The agencies would be better able to manage their staffing levels to ensure compliance with statutory mandates. While salary costs would increase, any increase would be borne entirely by the regulated entities, which directly benefit from a high caliber of professionalism within examination staff. Total costs would be contained under overall appropriations levels. Arguing against agency specific salary programs is the inability of the Legislature to standardize and control the salary of state positions. However, to the extent that the financial examiner job classification series is primarily

used by the Credit Union Department and the Finance Commission agencies, the same mission could be served through the Finance Commission Program.

iii. Maintain the status quo. Agency staffs have established the necessary reporting systems and controls to function as nonindependent state agencies. To the extent that the agencies are able to adequately project the number and condition of supervised entities several years in advance, adequate appropriations can be requested to ensure adequate supervision. However, frequently the appropriations process tends to appropriate agencies at historic levels rather than anticipated needs. Funding, salary caps and FTE levels can severely hamper the agencies' ability to respond to changes in a rapidly evolving financial services industry. While access to contingency appropriations riders covers unpredicted needs in appropriations and FTEs, access does not allow the Savings and Loan Department and Banking Department to increase salaries levels to attract and retain competent examination staff or to act quickly enough to changing circumstances.

X. Comments

Please provide any additional information needed to gain a preliminary understanding of the agency.

N.A.

