

# Faith Leaders *for* Fair Lending

June 12, 2017

Opinion Committee  
Office of the Attorney General  
P.O. Box 12548  
Austin 78711

Dear Opinion Committee,

Faith Leaders for Fair Lending is a coalition led by the Texas Catholic Conference of Bishops and the Christian Life Commission of the Baptist General Convention of Texas. Our congregations and those of other partners in our coalition witness the high costs of payday and auto-title lending in Texas. We are writing to submit the attached comments on the AG opinion request by Rep. Dan Flynn.

Over the last decade, the Texas bishops have been very active in supporting local reform on payday lending. These lenders trap Texans in a cycle of debt which leaves borrowers worse off than before they applied for the loan. At the same time, we have found through our ministry that borrowers make good faith attempts to repay these loans, and that lenders continue to collect payments from borrowers who have already paid 2, 3, or 4 times as much as they borrowed. This is unjust.

In short, Rep. Flynn's request would allow for long-term payday and auto title loans. The request contends that long-term installment loans will result in lower interest rates for borrowers, but this is not supported by recent events in our state. Over the last 5 years, short term (2 weeks to 1 month) loans had an APR of 449% to 463%, while mid-term (180 day) installment payday and auto title loans had an APR of 522% to 738%. In other words, increasing the duration of the loan has resulted in higher, not lower, rates.

The request also contends that long term loans will not have balloon payments. In our ministry, we have found that these types of loans trap working families in debt, and are very harmful to our communities. We are happy to search for ways to shift away from this loan structure, but the opinion request does not do so in a helpful way: as long as our state allows lenders to charge uncapped rates, there is no guarantee that a long-term installment/amortizing loan structure will benefit borrowers.

We encourage the State Legislature to adopt a more compressive strategy to support a lending market that encourages borrower and lender success.

Respectfully Submitted,



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**Comments of Texas Faith for Fair Lending on  
Request for Texas Attorney General Opinion RQ-0162-KP**

Question: Whether the 180-day restriction in subsection 393.201(b)(2) of the Finance Code creates a time frame only for obtaining a loan or a time frame for completing a loan and related security and servicing?

Answer: The only conclusion supported by the plain language of the statute and legislative history is that the 180-day restriction creates a time frame for all related security and servicing of the loan.

Texas Faith Leaders for Fair Lending submits the following response:

1. The plain language of the statutes clearly states that CSO services must be completed within 180 days, without exception.
2. The services provided by CSOs to consumers extend beyond the moment that the extension of credit is obtained.
3. Further loosening Texas law to allow CSO services to extend beyond 180 days will enable expensive loan products with high rates of defaults, thus further damaging a borrower's credit report.

**1. The plain language of the statutes clearly states that services must be completed within 180 days, without exception.**

The language at issue clearly states that CSOs (including CABs) must in their contract with a consumer, "fully describe the services the organization is to perform for the consumer, including each guarantee and each promise of a full or partial refund and the estimated period for performing the services, not to exceed 180 days."<sup>1</sup>

In Texas, a CSO is defined as a person that:

provides, or represents that the person can or will provide, for the payment of valuable consideration any of the following services with respect to the extension of consumer credit by others:

- (A) improving a consumer's credit history or rating;
- (B) obtaining an extension of consumer credit for a consumer; or
- (C) providing advice or assistance to a consumer with regard to Paragraph (A) or (B).<sup>2</sup>

According to the plain language of the statute, CSOs services are not limited to simply obtaining the extension of credit, but also include providing advice or assistance to a consumer in regards

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<sup>1</sup> Texas Fin. Code § 393.201(b)(2)

<sup>2</sup> Texas Fin. Code § 393.001(c)

to it, and that all of these services must not exceed 180 days. The CSO does not provide any exception for CSO services that are permitted to extend beyond this 180-day timeframe.

A fundamental principle of statutory construction in Texas is the primacy of language of the statute in determining its intent. The Texas Attorney's General Office has upheld this principle in its own opinions. As best articulated in *Luberman's Underwriters v. State Bd. of Insurance*, "When the legislature plainly has expressed its intent in language of statute, intent must be effectuated without attempting to construe or interpret law."<sup>3</sup> In many of its opinions, including its 1994 Opinion to uphold the legislative exemption of independent mortgage brokers from the CSO act, the Texas Attorney General held, that when the language is clear it "need not rely on extrinsic materials to determine what the legislature intended..."<sup>4</sup> The principal was further affirmed and articulated in a 2016 Texas Court of Appeals Ruling:

Our holding is reinforced by a fundamental principle of statutory construction. It is well established that a court should seek out the intent of a statute in construing it. However, such intent must be found in the language of the statute and not elsewhere. It is of course appropriate for a court to reach beyond statutory language in an ambiguous statute by reviewing the legislative history to ascertain intent. However, a court may not look to extraneous reasons merely to justify its own interpretation of legislative intent not expressed in the statute. When legislative intent is as unambiguous and clearly expressed in a statute as it is in the Act we now consider, we will not attempt to interpret or construe the law beyond the language of the statute.<sup>5</sup> (internal citations omitted)

To resolve any ambiguity or inconsistency, though there is none in this instance, Texas principles of statutory construction determine that it is appropriate to look at the legislative history to derive intent. In this case, the legislative intent further upholds the limitation that all CSO services, without exception, must be completed within 180 days. Any interpretation to the contrary not only contradicts the plain language, but the history and intent of the statute itself.

The Texas CSO Act was enacted in 1987 to protect consumers from scams promising credit relief but in reality provided the opposite.<sup>6</sup> The legislature subsequently determined that an explicit time frame was needed in order to protect against the endless extraction of payments from consumers for promises of improving their credit. As such, in 1989, the legislature further

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<sup>3</sup> *Lumbermen's Underwriters v. State Bd. of Ins.*, 502 S.W.2d 217, 219 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) (citing 53 Tex. Jur. 2d Statutes § 125, at 182 n.17)

<sup>4</sup> See Tex. Atty. Gen. Op. LO-94-029 (Tex. A.G.), Letter Opinion No. 94-029, March 24, 1994. See also, Tex. Atty. Gen. Op. DM-457 (Tex. A.G.), Opinion No. DM-457, November 26, 1997; Tex. Atty. Gen. Op. LO-96-055 (Tex. A.G.), Letter Opinion No. 96-055, May 23, 1996; Tex. Atty. Gen. Op. LO-94-048 (Tex.A.G.), 1994, Letter Opinion No. 94-048, May 19, 1994.

<sup>5</sup> *William S. Banowsky, Jr. v. Brian Schultz*, No. 05-14-01624-CV, Feb. 10, 2016, 2016 WL 531573

<sup>6</sup> V.T.C.A., Bus. & C. § 18.01, et. seq.

amended the statute to explicitly provide a 180-day end to the CSOs' services, again, without exception.<sup>7</sup>

Each subsequent amendment to the CSO act has been to further strengthen the protections against CSO potentially harmful practices, and did so in a manner providing more explicit definition to regulated practices under the Act.<sup>8</sup> An interpretation of the 180-day limit to allow CSO services to extend beyond the 180-days would not only directly contradict the explicit legislative history, but also the legislative intent of the Act to increase consumer protections. Just as the court refused to do in *Banowsky v Schultz*, the Texas Attorney General must “not usurp a legislative function by interpreting legislation” in order to achieve a differing result and hold that “any defects or deficiencies defects or deficiencies in [an Act] must be corrected by the legislature and not by this or any other court.”<sup>9</sup>

## **2. The services provided by CSOs extend beyond the moment that the extension of credit is obtained.**

Again, according to the plain language of the statute, CSOs services are not limited to simply obtaining the extension of credit, but also include providing advice or assistance to a consumer in regards to it, and that all of these services, without exception, must not exceed 180 days.

From our experiences with borrowers who obtain payday loans, car title loans, and other extensions of consumer credit from CSOs, borrowers repeatedly return to the CSO storefront or website throughout the loan term. It is at the CSO storefront or website where borrowers are required to make payments, make inquiries about amount owed, or eventually pay off the loan. Borrowers have no interaction with the third-party lender from whom the CSO obtains the extension of credit. It is solely through the ongoing services of the CSO which enable the borrower to actually make payments on the loan. As such, it clear that the extension of credit obtained by CSOs is made possible only through the ongoing relationship that CSOs maintains with the borrower. Without these CSO services to the borrower, the third-party lender would not be willing to provide the extension of credit which the CSO obtains. It is illogical to exempt these security and servicing or any other services from the 180-day limitation, even if the CSO or affiliated entity has additionally obtained a bill pay license.

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<sup>7</sup> Prior to the legislature's decision to explicitly include the 180-day limit, this provision simply stated that the contact provide “the estimated date by which the services are to be performed or estimated length of time for performing the services.” V.T.C.A., Bus. & C. § 18.07 (1987). The provision was amended in 1989 through HB 1450, and its associated committee report stated it amends Section 18.07 (prior version of 393.201) “by requiring contracts to state that services to be performed by the credit service organization for the buyer are not to exceed 180 days for the performance of those services.”

<sup>8</sup> See, e.g., Acts 2011, 82nd Leg., ch. 1301 (H.B. 2592), § 1, eff. Jan. 1, 2012

<sup>9</sup> No. 05–14–01624–CV, Feb. 10, 2016, 2016 WL 531573

### **3. Further loosening Texas law to allow CSO services to extend beyond 180 days will enable expensive loan products with high rates of defaults, thus further damaging a borrower's credit report.**

Again, any interpretation that allows CSOs to extend their services beyond 180 days contradicts the plain language, legislative history, and intent of the CSO Act. Furthermore, further loosening the CSO Act to remove this protection against CSO scams will increase the possibility that borrower's credit report reports will be harmed, which is the exact opposite purpose of the CSO Act.

The overwhelming majority of CSOs offer some combination of payday loans, car title loans, and high-cost installment loans with no limits on the costs of their services. This results in CSOs enabling loans with excessive interest rates, reaching between 200% and 700% APR. We see day in and day out the pain inflicted in our communities caused by CSOs' exploitation of poor people through the offering of usurious loans. Proverbs 22:22 extols, "Do not rob the poor because they are poor, nor crush the needy at the gate." As such, we have felt called, for many years, as congregations, pastors, and faith-based charitable organizations to work to curb these practices by calling on Texas legislature, expanding our ways of providing financial education and emergency relief, and increasing protections in the market.

Allowing CSOs to disregard the 180-day limit on services will deepen the very exploitation of struggling families and members of faith congregations across Texas that we have been working hard to prevent for many years. As indicated in the letter requesting the Attorney General's Opinion on this question, an interpretation that allows CSOs to extend any of their services beyond the 180-day limit is for the purpose of enabling CSOs to obtain extensions of credit with loan terms beyond this window. Currently, CSOs obtain extensions of credit with loan terms of less than 180 days. While we are very familiar with the harm of these loans in their current form in our communities today, we know the devastation that loans with terms longer than 180 days will have because it is already present elsewhere. For example, in one state that permits uncapped installment loans with terms exceeding 180 days, a \$2,400, with a loan term of more than three years (42 months), costs the borrower over \$11,000 to pack back.<sup>10</sup> **As shown below, removing the 180-day limit will cause Texas borrowers to pay back substantially more than they do today. There would be with no limit to the financial damage these usurious loans can cause.**

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<sup>10</sup> Speedy Cash, Online Installment Loan in California, <https://www.speedycash.com/rates-and-terms/california?g=1>

Lender	State	Loan Amount	Loan Term	APR	Total Payback
Advance America	Texas	\$1,200	168 days	297%	<b>\$2,263</b>
Advance America	Wisconsin	\$1,250	12 months	324%	<b>\$4,251</b>
Advance America	Texas	\$1,000	168 days	297%	<b>\$1,886</b>
Advance America	Delaware	\$1,000	10 months	447%	<b>\$2,189</b>
CashNetUSA	Texas	\$800	168 days	457%	<b>\$1,970</b>
CashNetUSA	South Carolina	\$800	10 months	341%	<b>\$2,476</b>
Elevate	Texas	\$2,000	5 months	275%	<b>\$3,336</b>
Elevate	Missouri	\$2,000	24 months	274%	<b>\$5,921</b>
Speedy Cash	Texas	\$500	168 days	536%	<b>\$1,383</b>
Speedy Cash	Ohio	\$500	18 months	385%	<b>\$2,675</b>

*Source: Lender websites accessed on June 12, 2017*

Furthermore, the experience of the Military Lending Act is informative here. In 2006, Congress passed with bi-partisan support and then-President George W. Bush signed into law a rate cap of 36% for consumer credit extended to active duty military families because the effects of predatory lending undermined our military readiness.<sup>11</sup> The original implementing regulations limited the scope of the rate cap to payday loans with terms of less than 90 days, car title loans of less than 180 days, as well as refund anticipation loans.<sup>12</sup> Over the next decade, lenders shifted to offer loans to military with terms longer terms than what was covered by the regulations.<sup>13</sup> Due to the resulting, well-documented harms of these longer-term loans to military families, the U.S. Department of Defense enhanced its rate cap regulations in 2015 to ensure that the 36% rate cap covers loans beyond these 90 and 180 day terms.<sup>14</sup>

Furthermore, industry and regulator data show that these longer-term loans go bad at incredibly high rates. This puts borrowers at significant risk of further damage to the financial stability, which is the exact opposite intent of the CSO Act. Data show how at least one lender's business model benefits from large amounts of its longer-term installment loans going bad.

<sup>11</sup> 10 U.S.C. § 987; See also, U.S. Dep't of Defense, "Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents," Aug. 2006 (stating "predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all volunteer fighting force.") [http://archive.defense.gov/pubs/pdfs/Report\\_to\\_Congress\\_final.pdf](http://archive.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf)

<sup>12</sup> Feltner, Thomas, Laura Udis, and Jean Ann Fox. Policy Brief: Gaps in the Military Lending Act Leave Many Service Members Vulnerable to Abusive Lending Practices, Consumer Federation of America, July 2013, <http://www.consumerfed.org/pdfs/130725-policybrief-mla-cfa.pdf>

<sup>13</sup> Id.

<sup>14</sup> U.S. Dep't of Defense, Press Release, "Department of Defense Issues Final Military Lending Act Rule," July 21, 2015, <https://www.defense.gov/News/News-Releases/News-Release-View/Article/612795/departement-of-defense-issues-final-military-lending-act-rule>; See also, U.S. Dep't of Defense, Report, Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents. Washington, DC: Department of Defense, April 2014. [http://consumerfed.org/pdfs/140429\\_DoD\\_report.pdf](http://consumerfed.org/pdfs/140429_DoD_report.pdf)

The lender reported to investors that both this year in last, the amount of debt deemed to be uncollectible equaled more than half of its domestic revenues, and that the lender intends to maintain that high-level of bad debt by expanding its consumer base, rather than making strides to reduce the number of loans by adjusting its underwriting or loan terms.<sup>15</sup> In other words, its business model is explicitly based on having an extraordinary number of its loans default.

Data from the Consumer Financial Protection Bureau (CFPB) indicate that these high-default rates for these longer term loans are not isolated to a single company. For example, CFPB data shows that online payday installment loans with 12-month loan terms have default rates reaching between 40% and 60%.<sup>16</sup> Default on loans triggers a cascade of consequences, such as aggressive debt collection practices and bank account closures, as well as negative reporting to a borrower's credit report for missed payments. As such, removing or providing exception to the 180-day limit on services will increase borrowers' exposure to these harmful loans to be offered through CSOs, which will further harm their credit, and thus is directly contrary to the intent of the CSO Act.

On behalf of congregations, faith leaders, and the people we serve across the state of Texas, thank you for your consideration of this information. We urge you to uphold original intent and plain language of the statute by finding that the 180-day limitation creates a time frame for all related security and servicing of a loan obtained by a CSO.

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<sup>15</sup> Elevate Credit, Inc., Amendment No. 7 to Form S-1, Registration Statement, p. 96 (Apr. 6, 2017). When discussing the net charge-offs as a percentage of revenue, the company stated: "...we do not intend to drive down this ratio significantly below our historical ratios and would instead seek to offer our existing products to a broader new customer base to drive additional revenues."

<sup>16</sup> Consumer Financial Protection Bureau, Supplemental findings on payday, payday installment, and vehicle title loans, and deposit advance products (2016), [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Supplemental\\_Report\\_060116.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf)