



October 29, 2019

Honorable Ken Paxton  
Attorney General of Texas  
300 W. 15th Street  
Austin, TX 78701

**Re: Opinion Request RQ-0300-KP Credit Service Organizations.**

Dear Attorney General Paxton:

On behalf of the American Financial Services Association (AFSA),<sup>1</sup> I thank you for the opportunity to discuss opinion request RQ-0300-KP, submitted by the Chairman of the House Committee on Pensions Investments and Financial Services, Representative Murphy, on July 30, 2019. In his request, Representative Murphy asks two questions:

1. Does Chapter 393 authorize a credit services organization, as defined in Section 393.001(3) of the Texas Finance Code, to assist a consumer with obtaining an extension of consumer credit in a form other than a deferred presentment transaction or motor vehicle title loan (each as defined in Section 341.001 of the Texas Finance Code)?
2. If so, does Chapter 393 allow a credit services organization to assist a consumer with obtaining an extension of consumer credit in the form of a "signature loan," whereby no security is obtained from the consumer in exchange for the extension of consumer credit or cash advance (including, without limitation, a motor vehicle title) and no personal check or authorization to debit a deposit account is obtained from and the consumer for the extension of consumer credit or cash advance?

AFSA believes that the answer to these two questions should be “no” and any affirmative response would represent a new interpretation of the Texas Finance code that would foster unlicensed lending activity, increasing the risk to consumers of predatory lending and undermining fair competition for licensed regulated Texas lenders, including some AFSA members.

Section 393.221 of the Texas Finance Code states that the only forms of extensions of consumer credit a credit access business (CAB) may obtain for or assist a consumer in obtaining are a deferred presentment transaction or a motor vehicle title loan. Since extensions of consumer credit

---

<sup>1</sup> Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

in any other form are not expressly discussed, it is clear that the legislative intent is to limit the allowed transactions to only those explicitly authorized in Chapter 393.

This longstanding interpretation of the Texas Finance Code is critical to protecting consumers from unlicensed lenders who would, as a consequence of a new interpretation, be in a position to conduct unlicensed lending, opening up the possibility that desperate customers would be exposed to loans with extremely high interest and fees. In short, if credit services organizations are permitted to provide unregulated loans, there will be an increased incidence of predatory lending practices in Texas.

In addition, Section 393.303 prohibits credit services organizations from charging fees for obtaining or assisting a consumer in obtaining an extension of consumer credit that is substantially similar to that which is otherwise available to the public. This restriction indicates the clear intention of the legislature to limit the types of services and products a CSO or CAB may offer. If a CSO were to offer an extension of consumer credit in a form other than a deferred presentment transaction or motor vehicle title loan, this would be an evasion of the regulatory requirements of Chapter 393 and represent a circumvention of the law.

This would not only put consumers at risk, but also create a competitive disadvantage for regulated lenders in Texas. AFSA members in the state have a long history of regulatory cooperation and compliance, are licensed and examined by the Texas Office of Consumer Credit Commissioner ("OCCC") and are required to file annual reports of activity with the OCCC (TEX. FIN. CODE § 342.559). Interpreting the law to allow CSOs to make such loans without the same requirements is self-evidently unfair.

It is for these reasons that AFSA strongly recommends the Attorney General does not expand the interpretation of Chapter 393 of the Texas Finance Code to include consumer credit in a form other than a deferred presentment transaction or motor vehicle title loan.

Thank you for your attention to this matter. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 952-922-6500 or [dfagre@afsamail.org](mailto:dfagre@afsamail.org).

Sincerely,



Danielle Fagre Arlowe  
Senior Vice President, State Government Affairs  
American Financial Services Association  
919 Eighteenth Street, NW, Suite 300  
Washington, DC 20006-5517