



**Texas Appleseed Written Testimony  
Texas Sunset Advisory Commission**

May 24, 2018

Submitted by Ann Baddour, Director, Fair Financial Services Project

Chair Birdwell, Vice Chair Paddie, and Committee Members:

Thank you for the opportunity to submit testimony on the Texas Office of Consumer Credit Commissioner Sunset report.

Texas Appleseed is a public interest justice center working to build policies that enhance the ability of Texans to achieve their full potential. In partnership with pro bono partners and collaborators, we develop and advocate for innovative and practical solutions to complex issues. As part of our work, Texas Appleseed also conducts data-driven research to better understand inequities and identify solutions for concrete, lasting change. We are part of a non-profit network of 17 justice centers in the United States and Mexico.

As part of the Sunset review of the Texas Office of Consumer Credit Commissioner (OCCC), I would like to focus on an oversight in the Sunset report—we believe that it is important to modernize Texas consumer credit laws to cover online lending and lead generators. It has been 18 years since the last Sunset review of the OCCC and over that period, there has been substantial growth in the use of the Internet for consumer lending. There is currently a grey area in Texas law regarding online lending and lead generators, and Texans would benefit from clarity, to ensure that all businesses that lend to Texans follow the same rules of the road and offer the same consumer protections.

**Online Lending**

Non-bank web-based lending is growing at a fast rate in the U.S. It has We do not have data specific to Texas, Nationwide, the number of new loans has doubled every year since 2010.<sup>1</sup> Though it currently makes up a small proportion of the consumer credit market, growth continues. According to a 2018 study by the American Bankers Association, non-bank online

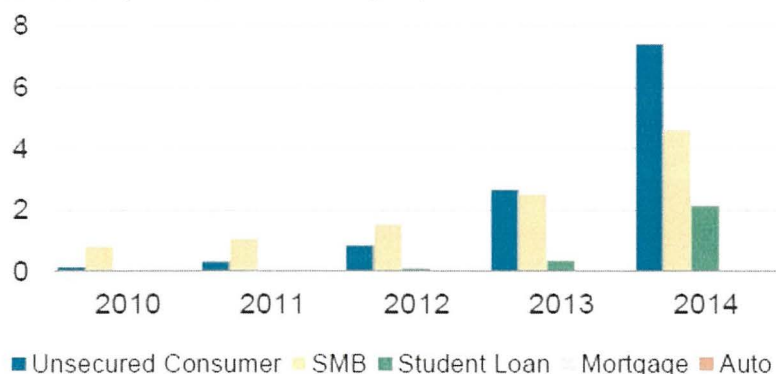
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<sup>1</sup> Morgan Stanley, "Global Marketplace Lending Disruptive Innovation in Financials." (May 19, 2015) at 6, available at: <https://bebeez.it/wp-content/blogs.dir/5825/files/2015/06/GlobalMarketplaceLending.pdf>.

consumer lending comprised 3% of all consumer loans in 2015.<sup>2</sup> By 2020, an estimate by Autonomous Research found that digital lending will comprise 10% of the U.S. lending market.<sup>3</sup>

### Non-Bank Web-Based Loan Originations Growth Led by Unsecured Consumer Loans

US Marketplace Loan Issuance (\$bn)



Source: Morgan Stanley (2015), <http://bit.ly/2wflAaG>

Many businesses that offer online loans are either licensed under state law or make loans through legal arrangements with state or federally chartered financial institutions to originate loans nationwide.

Another part of the online lending ecosystem is lead generators. These are websites that appear to offer loans, but in fact, in the very fine print, disclose that they are not lenders, but will share borrower information with interested lenders who may offer a loan. This business model has led to a number of challenges for Texans, as social security numbers and bank account information has been sold to the highest bidder with little to no accountability regarding the end use of the data.<sup>4</sup>

The problem in the market is not with legitimate players, but with the growing fraud and financial abuse associated with shady online lending and loan transactions. An *American Banker* article described online lending as a “legal minefield,” with many legitimate players, but also an array of players operating through members of Native American Tribes, operating offshore in locations around the world, and business licensed in one state and trying to use that license to make loans in other states without complying with local laws.<sup>5</sup>

### Fraud in Online Lending and Lead Generators

<sup>2</sup> American Bankers Association, “The State of Digital Lending.” (2018) at 5, available at: <https://www.aba.com/Products/Endorsed/Documents/ABADigitalLending-Report.pdf>.

<sup>3</sup> *Id.* At 5.

<sup>4</sup> There are many lead generators online. Moneymutual.com is a well-known website, promoted by Montel Williams. Another example is CashAdvance.com. These sites collect personal information and sell it to the highest bidders. See: Credit.com, “Online Lead Generation Sites May Open the Door to Fraud,” (January 2016), available at: <https://www.creditcards.com/credit-card-news/online-loan-lead-generation-sites-fraud-1282.php>.

<sup>5</sup> Kevin Wack & Joe Adler, “Cheat Sheet: Online Lenders’ Legal Minefield.” *American Banker* (Oct. 1, 2013). Available at: <https://www.americanbanker.com/news/cheat-sheet-online-lenders-legal-minefield>.



Fraud and scams are disturbingly common in the online lending and lead generator space. A 2014 study by Pew Charitable Trusts documented multiple problems faced by online borrowers, including threats of arrest to collect loan payments, fraud related to dissemination of personal information, and unauthorized withdrawal transactions from borrower accounts.<sup>6</sup>

Some recent frauds and scams impacting Texans include:

- In January of this year, the owner of a series of online lending businesses operating under a variety of names, such as Ameriloan and OneClickCash, was convicted of racketeering, wire fraud, money laundering and Truth in Lending (TILA) violations in New York State and received a sentence of 17 years in prison. Court documents indicate that more than 446,000 Texans borrowed from this business, yet the case was prosecuted in New York.<sup>7</sup>
- In 2014, scammers posed as authorities from the Texas Attorney General's office and called online small payday loan borrowers threatening to issue arrest warrants if they did not pay their debts.<sup>8</sup> The Houston Better Business Bureau noted that "[m]ore than likely what happened was there (sic) information was sold somehow to somebody."<sup>9</sup>
- At least 10,000 Texans paid more than \$50 million in debts they did not owe because of fraud perpetrated by a lead generator. The Federal Trade Commission took action in this case.<sup>10</sup> Prior to the FTC action, the fraud came to light because of a vigilant Houston bankruptcy judge, who noticed multiple debts submitted for collection through the bankruptcy process for different people, but for the exact same amount.<sup>11</sup>

The Federal Trade Commission and the Consumer Financial Protection Bureau have prosecuted additional cases of fraud and scams in the online lending and online lead generation space, but Texas should not rely on Federal authorities to protect the rights of our citizens.<sup>12</sup> Clarifying Texas consumer credit laws to cover online lending and lead generation is an important update to ensure that our laws keep up with the market and that our regulators have the necessary tools to fulfill their statutory mandates.

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<sup>6</sup> Pew Charitable Trusts, "Key Findings from Fraud and Abuse Online: Harmful Practices in Internet Payday Lending," (October 2014), available at: [http://www.pewtrusts.org/~media/assets/2014/10/payday-lending-report/payday-lending-infographic\\_v5.pdf](http://www.pewtrusts.org/~media/assets/2014/10/payday-lending-report/payday-lending-infographic_v5.pdf).

<sup>7</sup> United States Attorney's Office, Southern District of New York, "Scott Tucker Sentenced to More than 16 years for Running \$3.5 Billion Unlawful Payday Lending Enterprise." (January 5, 2018) available at: <https://www.justice.gov/usao-sdny/pr/scott-tucker-sentenced-more-16-years-prison-running-35-billion-unlawful-internet-payday>.

<sup>8</sup> ABC Channel 13 Houston, *Scammers pretending to be with Texas AG's Office to get victims to pay up*, available at <http://abclocal.go.com/ktrk/story?section=news/consumer&id=9527789> (May 5, 2014).

<sup>9</sup> *Id.*

<sup>10</sup> Texas Standard, "How One Man Allegedly Got 10,000 Texans to Pay Off Fake Payday Loans." (January 2017) available at: <http://kut.org/post/how-one-man-allegedly-got-10000-texans-pay-fake-payday-loans>.

<sup>11</sup> Steve Vockrodt, "Joel Tucker, brother of payday loan mogul Scott Tucker, avoids custody in Houston," *The Kansas City Star* (July 29, 2016), available at: <http://www.kansascity.com/news/business/article92718242.html>.

<sup>12</sup> See, for example, Ed Mirszinski, "CFPB, FTC Take Separate Actions Against Two Illegal Online Payday Loan "Cash-Grab" Schemes," *US PIRG* (September 18, 2014) available at: <https://uspirg.org/blogs/eds-blog/usp/cfpb-ftc-take-separate-actions-against-two-illegal-online-payday-cash-grabschemes>.