



## Texas Fair Lending Alliance

Comments on the Sunset Staff Report:  
The Office of Consumer Credit Commissioner (OCCC) and Finance Commission  
May 10, 2018

The Texas Fair Lending Alliance (TFLA) is a coalition of more than 60 community-based and nonprofit organizations across the state working to transform the Texas payday and auto title loan market from one based on a cycle of debt, to one that thrives on a cycle of success.

We greatly appreciate the level to which stakeholder input was solicited by Sunset staff and the thorough analysis of key issues and opportunities for improvements. While Sunset staff did not recommend changes to the state's regulation of credit access businesses, advocates continue to see a need for meaningful reform to payday and auto title lending. Reform efforts would strengthen the OCCC's ability to carry out their role in creating a fair credit environment that grows economic prosperity for all Texans. Additionally, the Sunset review process should not be used as an opportunity to expand high-cost credit products or preempt local ordinances as cities have taken important steps to support the financial well-being of families and the local economies.

Of particular note, we support the call for a strengthened consumer complaint process within the OCCC. Below, please see our comments related to the recommendations by Sunset on that issue and additional recommendations aimed at strengthening fair lending in Texas.

**(Recommendation 2.6) Consolidate the consumer complaint intake process to reduce duplication of standard procedures common across the three agencies and overall, to increase consumer benefit and satisfaction**

We support the consolidation of the consumer complaint intake system while not diminishing the quality and expertise needed to appropriately handle the receipt and routing of complaints. Consolidation of the complaint intake process to one system was previously recommended by Sunset during the 2001 review; however, the Sunset Commission did not adopt the recommendation. As highlighted in the report, "To complain properly, consumers must navigate not only the confusing web of state financial regulatory structures, but also multiple federal agencies such as the Consumer Financial Protection Bureau and Federal Reserve Bank, as well as other states' banking and financial regulatory agencies, and in some cases, even city or county regulatory." The current system of three finance agencies maintaining separate phone numbers, email addresses, websites, and complaint forms is inefficient and does not benefit the consumer.

**(Recommendation 5.3-5.6; Recommendation 5.12; and Recommendation 5.13) Strengthen the consumer complaint and resolution process of the OCCC to reflect best practices and common regulatory standards.**

We support the recommendations aimed at strengthening the overall consumer complaint and resolution process. Improvements to the consumer complaint process, including providing complainants information about status of complaint, investigating complaints in a timely manner, and streamlining the complaint intake process to one system, as noted above will result in a more meaningful, transparent, and fair consumer complaint process. The report clearly outlines the benefits of these changes noting, “Updating these provisions would help the agency consistently and timely enforce state laws and rules, streamline regulation across the agency’s programs, and improve tracking and reporting of complaints to the Finance Commission.”

Additional Issues and Recommendations:

**In addition to consolidating the consumer complaint intake process, ensure the OCCC receives and appropriately responds to complaints made by consumers.** The OCCC is responsible for assisting Texas consumers in resolving issues related to its statutory jurisdiction; however, various state agencies, such as the Attorney General’s office, may also receive consumer complaints related to entities regulated by the OCCC. All state agencies that receive complaints related to non-depository lenders should be required to forward consumer complaints to the OCCC and the OCCC should respond to complaints and investigate suspected violations in a timely manner.

**Ensure regulation of online consumer loan providers and lead generators under Texas consumer lending laws.**

Online loan transactions continue to grow in Texas and online businesses often skirt state legal standards, engage in abusive collections practices, and facilitate identity theft. There is currently no state oversight of lead generators, online entities that create business for online lenders by gathering sensitive customer information and selling it to the highest bidder with the promise of a loan. As recommended by both the OCCC and the House Investments and Financial Service Committee, online lenders and lead generators should be regulated under Texas consumer lending laws.

The OCCC noted in their self-evaluation to the Sunset Advisory Commission, “Texas consumer lending laws do not explicitly recognize these rapidly evolving online lending practices, and do not provide the agency with specific tools to address them.” This change would bring Texas accountability and overall, strengthen consumer protections. It is also a necessary change to modernize Texas consumer credit laws. As the law stands, unlicensed lenders and lead generators based in any part of the world can market high-cost loans to Texas families and engage in fraud or abusive practices with little to no recourse. Additionally, the OCCC feels this

change would minimize regulatory uncertainty and help the agency in coordinating with other states.

**Provide explicit authority to the Office of Consumer Credit Commissioner (OCCC) to regulate all online lenders and lead generators.** In addition to clarifying that Texas consumer lending law applies to both online lenders and lead generators, the OCCC should be the regulatory entity responsible for overseeing online lending and lead generator issues, as they engage in compliance examinations and take individual complaints. In order to ensure consumers are protected from fraud and abuse, the front-line entity for regulating online consumer loan providers and lead generators should be the OCCC and as recommended by both the OCCC and the House Investments and Financial Services Committee, both online lenders and lead generators should be regulated under Texas consumer lending

**Require the appointment of at least one consumer advocate/representative on the Finance Commission Board of Texas.**

The Finance Commission of Texas (Commission) works to ensure that the banks, savings institutions, nondepository financial service providers, and other regulated entities chartered or licensed under state law operate as safe and sound institutions to increase the economic prosperity of the state. While the Commission consists of members with expertise in banking, savings, consumer credit, mortgage loans, and accounting, an expert on consumer experience in the financial marketplace is not represented on the Commission. At least one public member on the Commission should be a representative of a nonprofit organization or nonprofit direct-service provider who serves and advocates for individuals who use many of the regulated consumer credit products. Having this member will ensure that there is a voice for the customer on the Finance Commission. By increasing the expertise and diversity of the Commission, this change would also result in increased effectiveness and overall accountability of the board.

**Increase transparency of the data collected by the OCCC through additional data collection and consistent reporting via the annual report as required by statute.**

Given the OCCC's role in creating a fair credit environment that grows economic prosperity for all Texans, OCCC should have access to critical data and release more of the data they collect related to the size of industry, types of products and use by borrowers. Section 11.305 of the Texas Finance Code states that, "The finance commission shall instruct the consumer credit commissioner to establish a program to address alternatives to high-cost lending in this state." As part of the program, the OCCC is directed to, "study and report on the problem of high-cost lending, including without limitation the availability, quality, and prices of financial services..." The current annual study offers important information about the market, but, due to the lack of data, does not offer insights into the impact of high-cost loan products on the financial well-being of their customers, a key indication of quality. Providing the OCCC with additional data

collection authority would allow it to offer a more informative study that includes not just the details of a particular licensed product, but insight into the financial impacts on customers.

To support a more robust study, the OCCC should collect and report on the following:

- Average and median number of days a customer was in debt in a 12-month period for each of the regulated loan products.
- Maximum and minimum APR and fees with lender information.
- Average total paid in fees and interest vs. average paid in principal per customer (on loans paid in full during the reporting year).
- The average annual percentage rate
- Amount of penalty fees paid by customers, by type of licensee and product, including late fees, nonsufficient funds fees, and fees related to the repossession of vehicles.

Thank you for the opportunity to provide feedback. We look forward to continuing to work with the Sunset Commission on this important effort.

Sincerely,

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