



# POLICY ALERT

An Urgent Update on Issues that Affect You

Center for Public Policy Priorities

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## **CPPP Calls on Texas Consumer Credit Commissioner and Attorney General to Take Action Against Payday Lenders Violating State Usury Laws**

On August 17, the Center for Public Policy Priorities and the Gone To Texas Coalition (including TexPIRG, Texas Impact, and Texas ACORN)<sup>1</sup> called on Texas' Consumer Credit Commissioner Leslie Pettijohn to request Texas Attorney General Greg Abbott to take enforcement action against companies that violate the state's usury laws. (For a copy of the letter, see <http://www.cppp.org/subcategory.php?cid=2&scid=2>.) You can help by contacting Commissioner Pettijohn and General Abbott and urging them to take all necessary steps to prevent payday lenders from operating outside of the law. Members of the Texas Legislature also need to hear from their constituents about the negative impact payday loans have on low-income consumers.

### **Background**

In July, most of the major payday loan companies operating in Texas adopted a new business model, which they hope immunizes them from Texas usury law. Under the new business model, these companies have registered as "credit services organizations" (CSO) under the Texas Credit Services Organizations Act (CSOA). Generally, the CSOA was enacted to govern entities that seek to improve a consumer's credit by providing counseling or making an extension of credit. CSOs are considered loan "brokers" and, as such, their fees are unregulated. The Payday loan companies that have registered as CSOs are hoping that as loan "brokers" their fees will not be treated as interest under Texas usury law. Those using this new approach now partner with unlicensed and unregulated Texas-based consumer lending companies to make the loans. Although the consumer lending company is considered the official "lender," it is the payday loan company reaping the vast majority of the profit from the fees charged on the loan. In a nutshell, the CSO business model allows payday lenders to evade both the interest rate limits on payday loans established by the Texas Finance Commission as well as compliance with the tighter restrictions on payday loans adopted last year by the FDIC, which regulates the industry at the federal level.

If challenged in state court, consumer law experts contend the payday lenders' CSO argument will not hold water. The payday loan companies that have registered as CSOs are relying upon the ruling of the U.S. Fifth Circuit Court of Appeals (*Lovick v. Ritemoney*, 2004), which held that the CSOA impliedly repealed portions of Texas usury law. However, the CSOA did not expressly repeal the state's usury laws, and nothing in the legislative history suggests that the Legislature intended to do so. The first time a state court confronts whether the CSOA impliedly repeals the state's usury laws, legal experts anticipate the state court will reject *Lovick* and hold that it does not. Accordingly, CPPP has urged Commissioner Pettijohn to refer any CSO charging usury through payday loan "fees" to the Attorney General for enforcement of the state's usury laws. For more details, see our policy brief at <http://www.cppp.org/subcategory.php?cid=2&scid=2>.

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<sup>1</sup> The Gone To Texas coalition is an alliance of anti-poverty, faith-based, and consumer groups that advocates for consumer lending protections. The coalition's name recalls the early American settlers struggling with debt who etched "Gone to Texas" on their doors when they moved to the Republic for the chance to escape lenders and rehabilitate.

CPPP also questioned the legality of payday loan companies' use of the CSO business model in its testimony before the Texas Finance Commission (TFC) last month. Commissioner Pettijohn reported that her legal staff have been reviewing the 5<sup>th</sup> Circuit decision that payday lenders have interpreted as legal cover for switching to the CSO model in Texas. Our testimony, coupled with Commissioner Pettijohn's briefing on the CSO model, generated serious concern amongst many of the TFC Commissioners. One Commissioner made a motion to recommend that the Legislature tighten the CSO statute and legislate any other fixes to render illegal this type of "unlicensed" and "unregulated" lending. However, because the matter was not on the TFC's official agenda for the meeting, procedural rules prevented the commissioners from taking a vote.

## **ACTIONS YOU CAN TAKE**

- Write Commissioner Pettijohn and General Abbott and urge them to take action. Contact information follows.

The Honorable Leslie Pettijohn  
Consumer Credit Commissioner  
Office of the Consumer Credit Commissioner  
2601 North Lamar Boulevard  
Austin, Texas 78705

Greg Abbott, Attorney General of Texas  
Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

- Ask Commissioner Pettijohn and the Texas Finance Commission to put this issue on the agenda for TFC's next meeting on October 21. For information about the members of the TFC and how to contact them, see <http://www.fc.state.tx.us/contact.htm>

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