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The Honorable Jim Murphy
Chair, Committee on Pensions, Investments,
and Financial Services
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0277

Re: Authority of a credit services organization to assist a consumer with obtaining an extension of consumer credit in a form other than a deferred presentment transaction or a motor vehicle title loan (RQ-0300-KP)

Dear Representative Murphy:

You ask whether chapter 393 of the Finance Code permits a credit services organization to assist a consumer with obtaining an extension of consumer credit in a form other than a deferred presentment transaction or a motor vehicle title loan.¹

Chapter 393 governs credit services organizations, and a review of the full context of that chapter is necessary to answer your question. TEX. FIN. CODE §§ 393.001–.628; *see Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex. 2004) (“We must read the statute as a whole and not just isolated portions.”). In construing the meaning of a statute, our primary goal “is to give effect to the Legislature’s intent.” *Gunn v. McCoy*, 554 S.W.3d 645, 672 (Tex. 2018). In doing so, courts “rely on the plain meaning of the text as expressing legislative intent unless a different meaning is supplied by legislative definition or is apparent from the context, or the plain meaning leads to absurd results.” *Id.* Thus, we look to the Legislature’s chosen language.

Chapter 393 defines “credit services organization” as

a person who 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

¹See Letter from Honorable Jim Murphy, Chair, House Comm. on Pensions, Invs. & Fin. Servs., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (July 30, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

- (C) providing advice or assistance to a consumer with regard to Paragraph (A) or (B).

TEX. FIN. CODE § 393.001(3).² Chapter 393 places multiple requirements on credit services organizations, including registering with the Secretary of State, providing disclosure statements to consumers, incorporating specific contract language in their contracts with consumers, and obtaining a surety bond, among other requirements. *Id.* §§ 393.101(a) (“Registration Statement”), 393.105 (“Disclosure Statement”), 393.201 (“Form and Terms of Contract”), 393.401 (“Surety Bond”).

In 2011, the Legislature amended chapter 393 by adding subchapters C-1 and G, which place additional requirements on “*certain* credit services organizations,” namely credit access businesses. *Id.* §§ 393.221–.224 (Subchapter C-1, titled “Notice and Disclosure Requirements for Certain Credit Services Organizations”), 393.601–.628 (Subchapter G, titled “Licensing and Regulation of Certain Credit Services Organizations”) (emphasis added).³ The Legislature defined “credit access business” as “a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle title loan.” *Id.* §§ 393.221(1), .601(2). It also defined “deferred presentment transaction,” also called “a payday loan,” as:

a transaction in which:

- (A) a cash advance in whole or part is made in exchange for a personal check or authorization to debit a deposit account;
- (B) the amount of the check or authorized debit equals the amount of the advance plus a fee; and
- (C) the person making the advance agrees that the check will not be cashed or deposited or the authorized debit will not be made until a designated future date.

Id. § 341.001(6); *see also id.* § 393.221(2) (defining “deferred presentment transaction” by reference to section 341.001 and referring to the term as “a payday loan”). And it defined “motor vehicle title loan” as “a loan in which an unencumbered motor vehicle is given as security for the loan.” *Id.* § 393.221(3). Thus, through the 2011 amendments, the Legislature identified a specific type of credit services organization—a credit access business—that obtains for a consumer or

²The Legislature originally enacted the predecessor to chapter 393 in 1987. Act of May 30, 1987, 70th Leg., R.S., ch. 764, § 1, 1987 Tex. Gen. Laws 2716, 2716–20. It made non-substantive recodifications in 1997 and has not amended the definition of “credit services organization” since that time. Act of May 24, 1997, 75th Leg., R.S., ch. 1008, § 1, sec. 393.001, 1997 Tex. Gen. Laws 3091, 3568.

³Act of May 26, 2011, 82d Leg., R.S., ch. 1301, § 1, 2011 Tex. Gen. Laws 3717, 3717–18 (adding subchapter C-1); Act of May 26, 2011, 82d Leg., R.S., ch. 1302, § 2, 2011 Tex. Gen. Laws 3719, 3719–24 (adding subchapter G).

assists a consumer in obtaining a payday loan or a motor vehicle title loan. And the Legislature augmented the regulations applicable to a credit services organization when operating as a credit access business.

But those amendments did not otherwise amend the definition of credit services organization or evidence an intent to revoke the authority of a credit services organization when not operating as a credit access business. To the contrary, throughout chapter 393, the plain language recognizes the continuing existence of credit services organizations beyond credit access businesses. The definition of “credit access business” identifies the term as a type of credit services organization. *See id.* § 393.221(1). Furthermore, when the Legislature added the subchapters in 2011 related to credit access businesses, it described the subchapters as applying to “certain” credit services organizations, implying that the new provisions applied to “some but not all” credit services organizations. *Id.* §§ 393.221–.224, 393.601–.628; *see also* NEW OXFORD AMERICAN DICTIONARY 284 (3d ed. 2010) (defining “certain” in this context to mean “some but not all”).

The Legislature maintained the definition of credit services organization to include one who obtains for a consumer or assists in obtaining an extension of consumer credit without limiting that credit to certain forms as it did with credit access businesses. *Compare* TEX. FIN. CODE § 393.001(3) (defining “credit services organization”), *with id.* §§ 393.221(1), .601(2) (defining “credit access business”).⁴ “Extension of consumer credit” is defined broadly to include “the right to defer payment of debt offered or granted primarily for personal, family, or household purposes or to incur the debt and defer its payment.” *Id.* § 393.001(4). Payday loans and motor vehicle title loans are two methods for deferring payment of debt that would qualify as extensions of consumer credit. But the plain language of chapter 393 does not restrict credit services organizations, other than when operating as credit access businesses, from obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit in another form.

The Office of the Consumer Credit Commissioner (“the Commissioner”) takes the position that because the Legislature expressly referenced only payday loans and motor vehicle title loans, chapter 393 does not authorize extensions of credit through other forms of debt. OCCC Brief at 1.⁵ The Legislature granted the Commissioner authority to enforce “Chapter 393 *with respect to a credit access business.*” TEX. FIN. CODE § 14.101 (emphasis added). “An administrative agency’s construction of a statute it implements ordinarily warrants deference when: (1) the agency’s interpretation has been formally adopted; (2) the statutory language at issue is

⁴Briefing submitted in response to your request contends that testimony about the amendments suggests that the Legislature intended in 2011 to distinguish between credit services organizations that provide credit repair services and credit services organizations that provide extensions of credit, renaming the latter credit access businesses. *See* Brief from Michael Rigby, Gen. Counsel, Office of Consumer Credit Comm’r, to Virginia K. Hoelscher, Chair, Op. Comm. at 5 (Sept. 6, 2019) (“OCCC Brief”). However, the Legislature did not remove the latter service from the definition of credit services organization. Furthermore, “a single statement by a single legislator does not evidence legislative intent” nor determine legislative intent. *Robinson v. Crown Cork & Seal Co., Inc.*, 335 S.W.3d 126, 191–92 (Tex. 2010).

⁵*See also* Brief from Jennifer Allmon, Exec. Dir., Tex. Catholic Conf. of Bishops, & Gus Reyes, Exec. Dir., Tex. Christian Life Comm’n, to Op. Comm. at 2 (Sept. 5, 2019) (arguing that “credit services organization” and “credit access business” should be read interchangeably); Brief from Christina Kaeini, Sr. Intergov’tl Relations Coordinator, City of Austin, to Op. Comm. at 1 (Sept. 5, 2019) (all briefs on file with the Op. Comm.).

ambiguous; and (3) the agency's construction is reasonable." *Tex. Dep't of Ins. v. Am. Nat'l Ins. Co.*, 410 S.W.3d 843, 853–54 (Tex. 2012).

In a 2012 bulletin, the Commissioner concluded that while the "Texas Finance Code does not specifically prohibit" a credit services organization from assisting a consumer in obtaining credit without taking a post-dated check or a motor vehicle title, "the legislature intended that the bills cover transactions . . . even where the CSO does not require the consumer to provide a post-dated check, debit authorization, or motor vehicle title."⁶ As this office previously recognized, a Texas state court "would give significantly less deference to an agency bulletin than to a formal rule on the same issue." *Tex. Att'y Gen. Op. No. KP-0115* (2016) at 4; *see also R.R. Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 625 (Tex. 2011); *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 747 (Tex. 2006). Given the Texas Supreme Court's comments in *Fiess* and *Texas Citizens*, a Texas court may not give any deference to an informal agency bulletin. *Id.* Particularly when, as here, the statutory language is unambiguous, a court likely will not look beyond the plain language of the statute to construe its meaning. *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). The Legislature may regulate obtaining extensions of credit using specific forms of debt other than payday and motor vehicle title loans, as the Commissioner cautioned in the 2012 bulletin. *See Lowe v. Tex. Liquor Control Bd.*, 255 S.W.2d 252, 256 (Tex. App.—Amarillo 1952, no writ) ("In the interest of public health, morals, or general welfare, the State has the authority under its police power to regulate a business, profession or occupation."); *see also* OCCC Bulletin ("If the legislature finds that this business practice conflicts with its intent, it could consider passing additional legislation that would put further regulatory restrictions on CSOs that obtain extensions of credit for consumers."). But the Legislature has not done so, and chapter 393 does not limit credit services organizations to obtaining extensions of credit for consumers in the form of payday or motor vehicle title loans.

You also ask whether chapter 393 allows a credit services organization to assist a consumer with obtaining an extension of credit through a "signature loan," whereby no security is obtained from the consumer in exchange for the extension of consumer credit or cash advance and no personal check or authorization to debit a deposit account is obtained from the consumer. Request Letter at 1.⁷ A determination about whether any specific service complies with the requirements of chapter 393 will involve a factual inquiry into the specific offering, and such questions are beyond the scope of an attorney general opinion. *See Tex. Att'y Gen. Op. No. KP-0128* (2017) at 1 (advising that this office cannot approve of the proposed transactions as a matter of law through the opinion process due to the necessary factual determinations). However, we can provide general guidance regarding the requirements in chapter 393.

⁶Available at <https://occc.texas.gov/sites/default/files/uploads/disclosures/b12-5-cab-accepting-check-title.pdf> ("OCCC Bulletin").

⁷We understand your question to refer to a credit services organization assisting a consumer with obtaining an extension of credit from a third-party lender. *See* Request Letter at 1. Under the statutory definition, a credit services organization provides certain "services with respect to the extension of consumer credit *by others*." TEX. FIN. CODE § 393.001(3) (emphasis added). Only licensed, regulated lenders can make consumer loans under chapter 342 of the Finance Code. *See id.* § 342.051(a) (requiring a license to make, transact, or negotiate loans under chapter 342).

As discussed above, chapter 393 defines “extension of consumer credit” as “the right to defer payment of debt offered or granted primarily for personal, family, or household purposes or to incur the debt and defer its payment.” TEX. FIN. CODE § 393.001(4). While the Legislature identified two forms of debt that qualify as extensions of consumer credit in connection with the regulation of a credit services organization—payday loans and motor vehicle title loans—it did not create an exhaustive list of the types of debt a credit services organization may assist a consumer in obtaining under chapter 393. Furthermore, nothing in chapter 393 requires that the extension of credit be secured in order for a credit services organization to assist a consumer in obtaining it. However, the statute does prohibit a credit services organization from assisting in obtaining an extension of credit that is substantially the same as that available to the public:

A credit services organization or a representative of the organization may not charge or receive from a consumer valuable consideration solely for referring the consumer to a retail seller who will or may extend to the consumer credit that is substantially the same as that available to the public.

Id. § 393.303. And the Legislature prohibited the use of “a device, subterfuge, or pretense to evade the application” of the regulations for credit access businesses. *Id.* § 393.602(c). Whether any specific extension of credit is substantially the same as that available to the public, or uses a device, subterfuge, or pretense to evade regulation as a credit access business, are fact questions that this office cannot decide through an attorney general opinion.

S U M M A R Y

Chapter 393 of the Finance Code does not restrict credit services organizations, other than when operating as credit access businesses, from obtaining for a consumer or assisting in obtaining an extension of consumer credit in a form other than a deferred presentment transaction or motor vehicle title loan.

A determination about whether any specific extension of credit complies with the requirements of chapter 393 will involve a factual inquiry into the precise offering, and such questions are beyond the scope of an attorney general opinion.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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