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Needed: Consumer Access to Capital

by Olivia Krog
Research Associate

by Bill Peacock
Vice President, Research

Key Points

- Consumers in Texas face decreasing access to capital as regulations drive capital out of the market.
- The Texas Tax Code currently bars property owners from initiating a tax lien loan until after their taxes have already become delinquent.
- In 2019, the 86th Texas Legislature will have the opportunity to increase capital access for consumers as the Finance Commission of Texas undergoes the sunset review process.

Introduction

For a typical American faced with bills to pay and a shortage of cash, the solution is increased access to liquid capital. For government officials, the response to the market's effort to supply this capital has largely been increased regulation. This disconnect has resulted in significant harm to consumers.

For instance, as Texas property taxes have increased over the last decade, special interests have successfully pushed for legislation that restricts taxpayers' access to much-needed assistance for paying taxes through tax lien lending (Peacock and Martinez-Gouhier, 162). For those seeking short-term consumer loans when the need for capital arises suddenly and unexpectedly, regulators have tightened restrictions on payday, auto title, and related lending, making it more difficult to obtain credit (Peacock and Martinez-Gouhier, 160). Demand for loans has gone up as their supply goes down, harming lenders and borrowers alike.

The Importance of Capital

When consumers have unhindered access to capital, they are able to purchase goods and services, investing in a market and enabling it to flourish. When barriers are put up, preventing them from acquiring the capital needed to trade, it hurts not only the consumer but the entire economic system which comes to a standstill without customers to buy the goods and services produced.

As an example, suppose a fisherman wants to buy a bass boat. If he has the capital to make the purchase, he gives it to the supplier in exchange for the boat. The supplier then uses some of the cash to pay a mechanic to replace the tires on his car. The mechanic then has the money to make his mortgage payment. Without access to capital, the fisherman could not have paid the supplier, who could not have paid the mechanic, who could not have paid his mortgage. Capital is the key that facilitates trade and powers the economy. To obstruct access to capital is to handicap the function of the economy, which in turn reduces prosperity.

Every year, Texas property owners face a mounting and inescapable tax obligation. Consequently, many property owners turn to tax lien lending when a temporary drop in their finances and liquidity make them unable to satisfy the government's payment requirements. Through the competitive market, tax lien lending offers Texans "an opportunity to spread out their tax burden over several years through negotiated payment terms, all while avoiding the sizeable costs and foreclosure risks associated with tax delinquency" (Hunker).

Similarly, there are many Americans, and many Texans, who seek loans for everyday needs that traditional institutions like banks will not provide. When the loan is for $500 or less, the cost of all the regulations and red tape for a bank to make the loan is greater than the earnings from the loan itself. Payday lenders have typically stepped into this breach, providing access to capital to those who have few, if any, other resources. However, new regulations in Texas are choking out this option for hard-pressed citizens—just as has been done previously with access to traditional lending. For instance, in Midland, one of 22 Texas cities that have passed

continued

Table 1: Consumer loans made 2012-2014

Consumer Loans Made	2014	2013	2012
Number Personal/Secured Loans (342-E)	331,915	244,644	160,952
Number Small Installment/Signature Loans (342-F)	4,150,111	4,750,605	4,673,613
Number of Pawn Loans (371)	9,137,483	8,626,594	9,739,617
Number Payday/Title Loans (393)	6,001,126	6,714,507	7,620,290
TOTAL	**19,622,649**	**20,338,363**	**22,196,474**

Table 1: Number of transactions by selected OCCC licensee

Source: Texas Office of Consumer Credit Commissioner

ordinances limiting loans offered by payday and auto title lenders (Texas Appleseed), according to a city councilman, five of the 18 credit access companies went out of business after the ordinances went into effect (Hershaw).

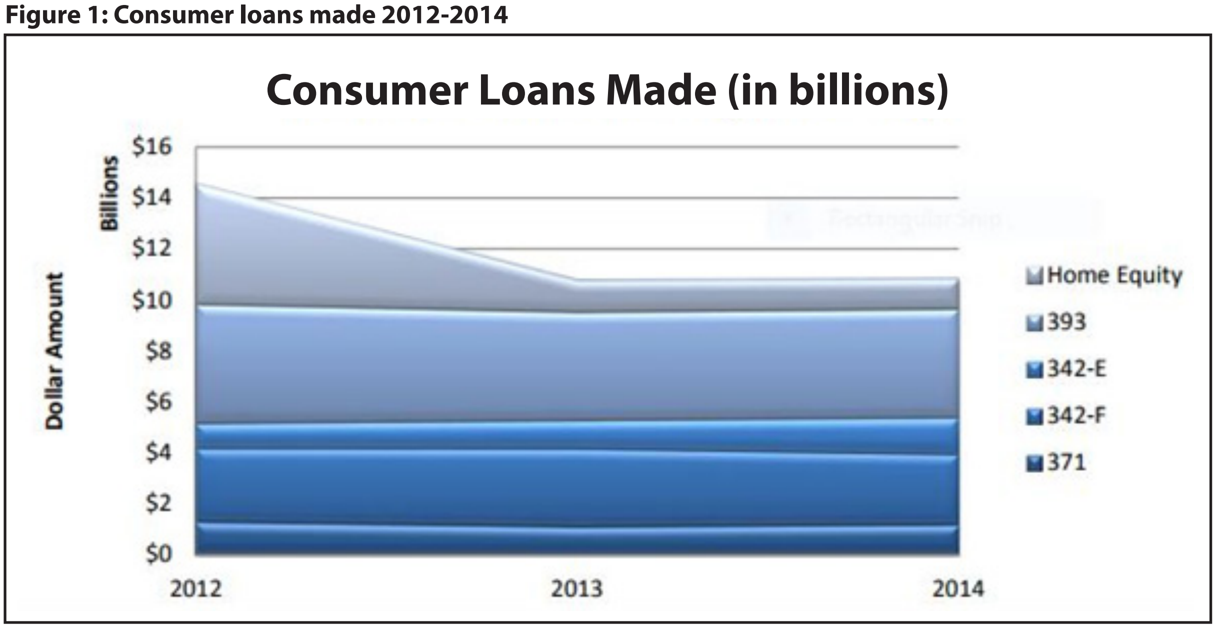
Regulations include a limit on the size of each payday loan ($1,800) and that there are no criminal rights for the lender if the borrower defaults, meaning that those who intentionally default on a loan can be tried in a civil court, but not in a criminal court (Pantalassa Loan). In 2011, the city of Dallas issued an ordinance requiring payday lenders to register with the city, as well as restricting the amount of loans that can be extended and the terms of repayment (Heinrich). The city of Austin, as well, issued an ordinance that "capped the maximum loan amount and restricted the number of times a payday loan can be refinanced" (Heinrich). Such ordinances pose a significant barrier to Texans in search of a short-term solution.

Borrowers continue to come under fire in the form of pushes to increase regulation coming from the direction of the Legislature. During the 2015 Texas Legislature's regular session, House Bill 3047 sought to create a statewide law that would "limit loans to 20 percent of the borrower's annual income, allow for only four installments without refinancing, and require a 25 percent principal payment to be made with each installment." It also would have created "a database, overseen by the Consumer Credit Commissioner, that would collect lender and borrower data" (Hershaw). Such a law would severely limit the ability of the most dependent Texans to divide their payments into smaller, more frequent increments. Thus, it would eliminate the essential purpose and benefit offered by payday loans in the first place.

Sunset Review: An Opportunity for Consumers

The Texas Legislature will soon have a chance to address the problems in law and local ordinances that restrict consumer access to capital. Every legislative session, the Texas Sunset Advisory Commission reviews 20 to 30 of the 130 state agencies subject to the Texas Sunset Act; each agency typically undergoes review once every 12 years (Sunset

Figure 1: Consumer loans made 2012-2014



Source: Texas Office of Consumer Credit Commissioner

Advisory Commission). The Finance Commission of Texas, consisting of the Texas Department of Banking, the Savings and Loan Department, and the Office of Consumer Credit Commissioner, is scheduled to be reviewed by the 86th Texas Legislature in 2019. The commission will be examined with an eye toward how it carries out its responsibilities of protecting consumer interests, maintaining a safe and sound banking system, and increasing the economic prosperity of the state (Finance Commission of Texas Subchapter A., Sec. 11.002).

Recommendations

Eliminate the requirement that property owners must wait until after their taxes have already become delinquent to initiate a tax lien loan.

Amend Sec. 32.06 (a-2) of the Texas Tax Code to eliminate the requirement that property owners with mortgages must wait to initiate a tax lien loan until after their taxes have already become delinquent (Peacock and Martinez-Gouhier, 163). Denying Texas property owners access to tax lien transfers will not eliminate demand but rather push them into an expensive delinquency process (Hunker). It is far more costly for mortgage holders to obtain a loan once they have already missed their tax payments. This requirement, advocated by special interests that profit when property owners are delinquent on their taxes, forces homeowners seeking to use tax lien transfers into default on their mortgages and delinquency on their taxes—all for the benefit of mortgage bankers and tax collection businesses (Peacock).

Eliminate local regulation of payday and auto title lenders.

The Texas Legislature should curb the overreach of a patchwork of local governments so that payday lenders and borrowers can freely exchange money and services. "Consumer protection" regulations by cities make it more expensive for businesses to provide financial services to consumers—witness EZCorp's recent decision to abandon the payday lending market in response to "an increasingly challenging legislative and regulatory environment" in the payday lending market (Theis). Since the state is ultimately responsible for local government actions, it has an inherent interest in making sure that local governments operate within the bounds of right and reason (Peacock and Martinez-Gouhier, 111). Eliminating local regulation of this market would improve consumer access to capital by allowing the necessary supply to meet present demand.

Conclusion

In the face of rising regulation, an opportunity has been given to the members of the Texas Legislature through the sunset review process. It is through the lens of liberty that Texas' elected officials ought to be crafting public policies so as to protect and promote those inalienable rights of life, liberty, and the pursuit of happiness (Think Local Liberty). By preventing the overregulation of consumer finance options such as tax lien lending and payday lending, the Texas Legislature can best serve the interests of the people by whom and for whose freedom they were elected.

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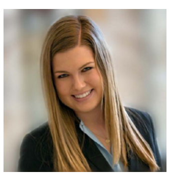
About the Author



Olivia Krog is a research associate for the Center for Economic Prosperity at the Texas Public Policy Foundation.

Bill Peacock is the vice president of research at the Texas Public Policy Foundation and has been with the Foundation since February 2005. Bill has extensive experience in Texas government and policy on a variety of issues including, economic and regulatory policy, natural resources, public finance, and public education. His work has focused on identifying and reducing the harmful effects of regulations on the economy, businesses, and consumers.

Prior to joining the Foundation, Bill served as the deputy commissioner for Coastal Resources for Commissioner Jerry Patterson at the Texas General Land Office. Before he worked at the GLO, he was a legislative and media consultant, working with groups like Citizens for a Sound Economy and Putting Children First. Bill also served as the deputy assistant commissioner for intergovernmental affairs for Commissioner Rick Perry at the Texas Department of Agriculture, as a legislative aide to Rep. John Culberson in the Texas House of Representatives, and as an analyst for the Texas Senate Committee on Education.

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