

TESTIMONY

Before the

HOUSE INVESTMENTS AND FINANCIAL SERVICES COMMITTEE

September 14, 2016

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AGENCY UPDATES, SIGNIFICANT POLICY ISSUES & LITIGATION

2016 INDUSTRY DATA UPDATE

As previously reported, in December 2015, the Office of Consumer Credit Commissioner (OCCC) issued *the 2015 Report on Availability, Quality and Pricing of Certain Financial Services and Consumer Loan Products*. The comprehensive report provides an overview of segments of the consumer financial services market in Texas that the OCCC regulates. The report fulfills a number of constitutional, statutory and administrative mandates for the publication of information. A copy of the report is found on the OCCC website under the *PUBLICATIONS* tab below the *SPECIAL REPORTS* section. The Agency will began preparations for the 2016 update.

OCCC REGULATED INDUSTRIES

Business Licenses Issued		
License Type	Total 8/31/16	Total 8/31/15
Consumer Loan License	3,804	3,370
Pawnshops	1,574	1,583
Motor Vehicle Sales Finance	8,444	8,096
Commercial Motor Vehicle Sales Finance	29	19
Property Tax Lenders	90	91
Credit Access Businesses	2,216	2,944
Professional (Individual) Licenses Issued		
Mortgage Loan Originator	370	379
Pawnshop Employee	7,649	7,281
Business Registrations Issued		
Debt Management /Settlement Providers	108	108
Registered Creditors	7,851	8,170
Refund Anticipation Loan Facilitators	1,536	912
Crafted Precious Metal Dealers	1,106	1,237
Total – all categories	34,777	34,190

CREDIT ACCESS BUSINESSES OFFERING PAYDAY (DEFERRED PRESENTMENT) AND AUTO TITLE LOANS

Chapter 393 of the Finance Code governs “credit access businesses (CABs),” which are credit services organizations that provide payday loans or title loans.

The number of active CAB licenses reflects a 26% decline through the end of FY16 from the level of 2,944 at the end of FY15. Much of this decline appears to be attributable to consolidation within the industry, concerns over proposed

rules in payday, vehicle title, and certain high-cost installment loans by the federal Consumer Finance Protection Bureau, and the effects of municipal ordinance restrictions.

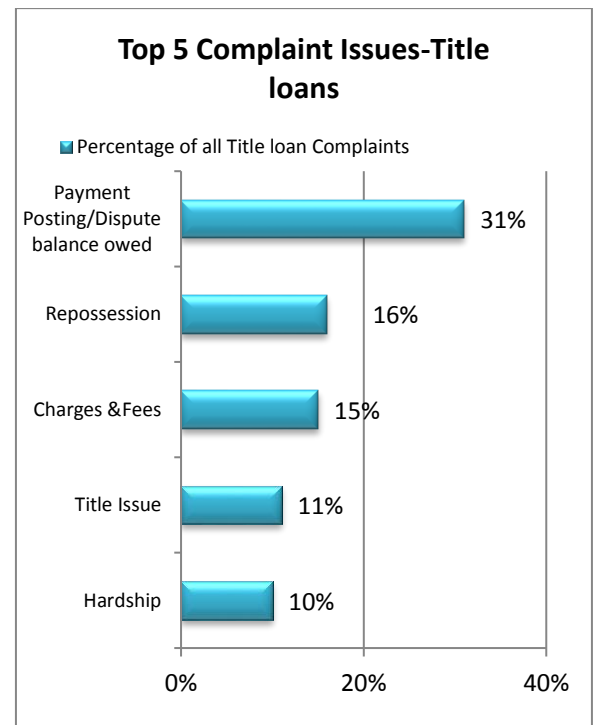
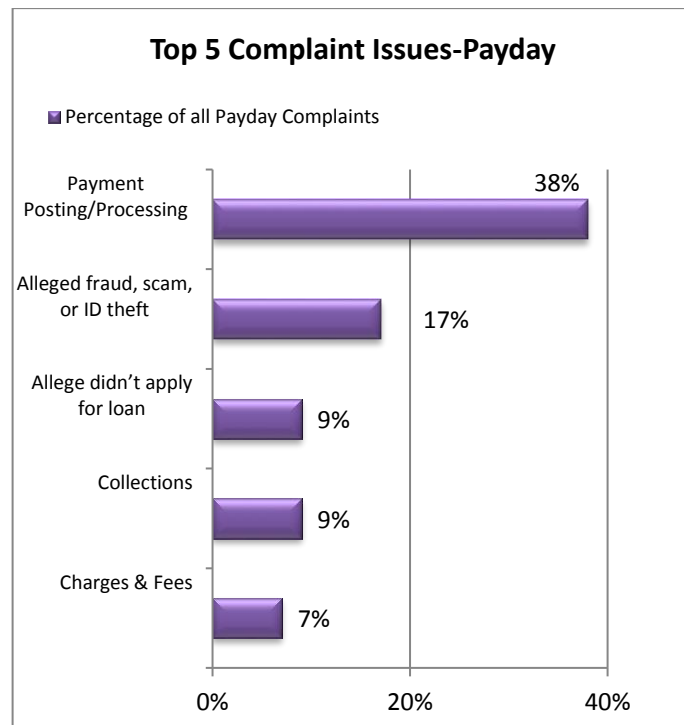
CAB Licenses	FY14	FY15	FY16
Number of CAB Licenses Issued and Active	3,356	2,944	2,168

CAB Examinations	FY14	FY15	FY16
Number of Examinations	1,031	816	707
Acceptable Level of Compliance	86.6%	94.5%	43.14%
Investigations Completed	6	18	15

Consumer Complaints					
Fiscal Year	Payday Loans	Title Loans	Total	% of all processed complaints	Consumer Restitution
FY16	208	198	406	18.8%	*\$5,863,539
FY15	240	194	434	20.4%	\$9,780
FY14	283	171	454	23.7%	\$20,512

Complaints predominately pertain to charges and fees, collection practices, posting/processing of payments, and repossessions. *In FY 2016, an investigation was conducted into a complaint regarding repossessions. Due to compliance issues with the notice of disposition and questionable disposition methods, the deficiency balances were waived on 3,271 accounts.

The five recurring complaints for CAB Payday and CAB Auto Title are charted separately below for FY 2016.



CREDIT ACCESS BUSINESS DATA REPORTING

The presented statistics represent data reported to the Office of Consumer Credit Commissioner (OCCC) from credit access businesses (CABs) in the annual report for calendar year 2015 with comparison data from the 2014 annual report. The data is continuing the trend towards multiple installment products increasing while single installment products are decreasing.

Data Highlights (All Loan Types)	2015	2014
Number of payday (deferred presentment) loans obtained	2,410,917	2,451,568
Number of auto title loans obtained	328,520	367,518
Number of payday (deferred presentment) refinances	2,063,787	2,523,731
Number of auto title refinances	551,211	658,309
Number of vehicles surrendered or repossessed under all auto title loans	37,296	44,042
Total number of locations reporting	3,153	3,499

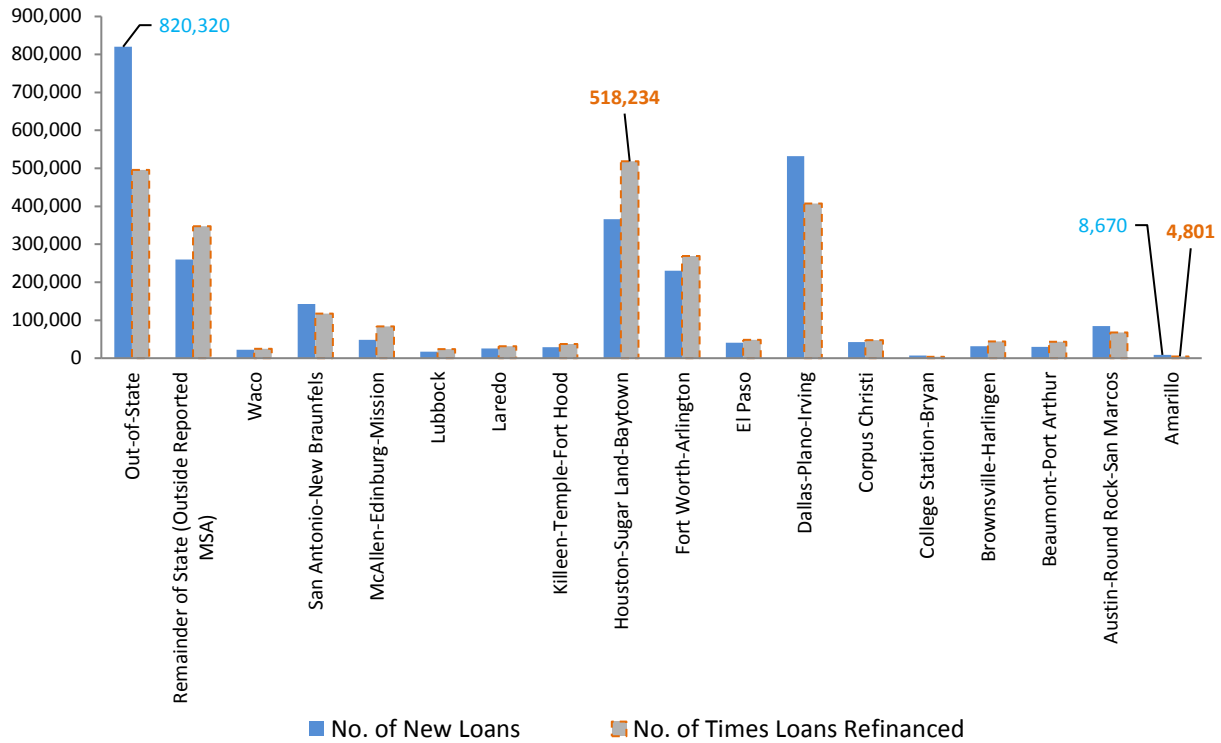
Payday Loans	Single Installment		Multiple Installment	
	2015	2014	2015	2014
Number of consumers for whom the CAB obtained an extension of credit	724,273	844,690	704,985	601,955
Number of extensions of credit obtained by CAB	1,446,582	1,592,479	964,335	859,089
Number of refinances	1,877,570	2,368,312	186,217	155,419
Average Loan Amount ¹	\$476	\$475	\$540	\$543
Average Fee per \$100 borrowed ¹	\$23.58	\$23.27	\$166.37	\$150.69
Average original term (in days) ¹	19	18	160	152
Average number of loans and refinances per consumer	4.59	4.69	1.63	1.69

Title Loans	Single Installment		Multiple Installment	
	2015	2014	2015	2014
Number of consumers for whom the CAB obtained an extension of credit	178,613	251,466	83,682	59,771
Number of extensions of credit obtained by CAB	231,475	299,868	97,045	67,650
Number of refinances	513,594	626,832	37,617	31,477
Average Loan Amount ¹	\$1,308	\$1,170	\$1,083	\$1,097
Average Fee per \$100 borrowed ¹	\$16.96	\$19.12	\$89.91	\$96.48
Average original term (in days) ¹	30	30	169	191
Average number of loans and refinances per consumer	4.17	3.69	1.61	1.66

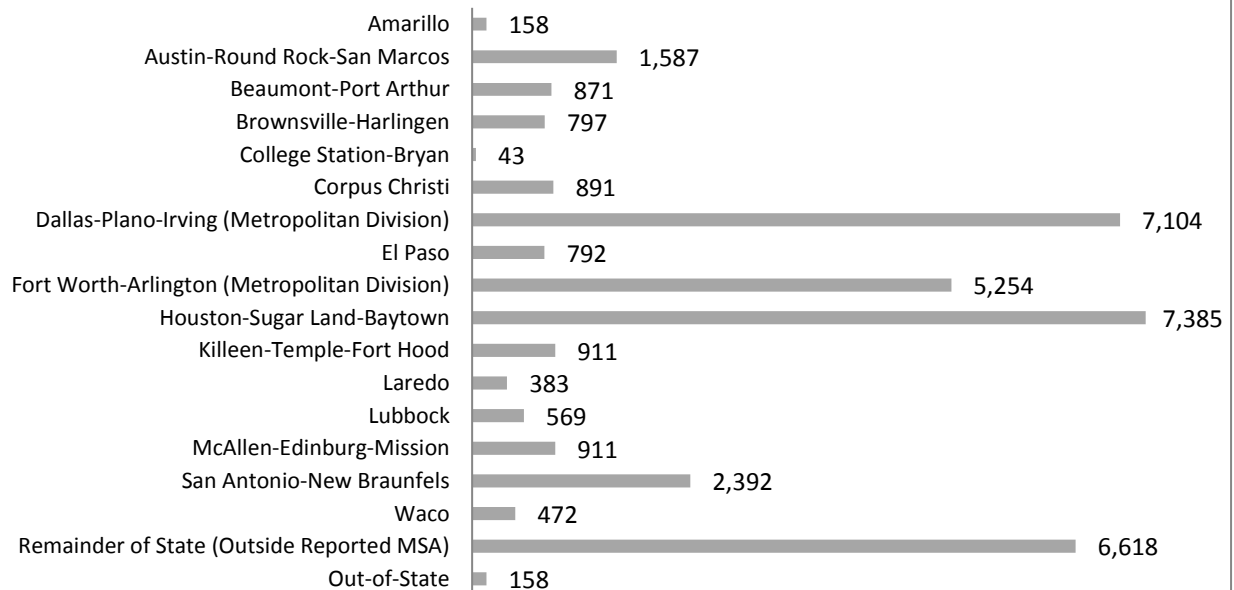
¹ Average statistics for individual products are averaged from the four separate quarterly reports, for each calendar year.

Geographic information for loan volume and motor vehicle repossessions are presented in the following two charts. The first chart represents the number of new loans made and the number of times those loans were refinanced in CY 2015 by Metropolitan Statistical Area (MSA). For the first time, Out-of-State licensees originated the most transactions indicating an increase in internet lending. The second chart focuses on the number of motor vehicle repossessions that resulted from title loans in 2015.

2015 Number of Loans and Refinances - MSA (Payday and Title Loans)



2015 Repossession Figures (Title Loans)



RULEMAKING FROM OTHER AGENCIES

The OCC is monitoring several rule actions that other agencies have recently proposed or adopted.

CFPB Payday Loan Rule:

On June 2, 2016, the Consumer Financial Protection Bureau (CFPB) proposed a rule with requirements for payday loans, title loans, and other high-cost consumer loans. The rule would apply to short-term consumer loans (*i.e.*, loans where the consumer is required to repay the loan in 45 days or less). The rule would also apply to longer-term consumer loans that: (1) have a term more than 45 days; (2) have an all-in APR over 36% (this includes certain fees that are not in a normal APR); and (3) require a leveraged payment mechanism (*i.e.*, the right to obtain payment from the consumer's account or payroll) or a security interest in a motor vehicle.

For both types of covered loans, the creditor would have to comply with either: (1) ability-to-repay requirements, under which the creditor must make a reasonable determination that the consumer can repay the loan, based on a review of income, major financial obligations, and borrowing history, or (2) alternative requirements, which limit the loan amount and the number of covered loans a consumer can have outstanding in a period of time. The rule would also put limitations on unsuccessful payment transfers from consumers' accounts, and would generally require creditors to report covered loans to a real-time commercial database for tracking information about covered loans.

The CFPB's deadline for official comments on the rule is October 7, 2016. The CFPB has proposed that the rule will be effective 15 months after a final version of the rule is published in the *Federal Register*.

CFPB Arbitration Rule:

On May 5, 2016, the CFPB proposed a rule with requirements for arbitration agreements for consumer financial products. The rule would prohibit creditors from including a class-action waiver in a pre-dispute arbitration agreement. Arbitration agreements would have to explain that the consumer may file a class action in court and may be a member of a class action.

The CFPB's deadline for official comments on the rule was August 22, 2016. The CFPB has proposed that the rule will begin to apply 211 days after a final version of the rule is published in the *Federal Register*.

CFPB Debt Collection Rule:

On July 28, 2016, the CFPB published an outline of a potential rule that would apply to third-party debt collectors. The rule would include requirements for leaving voicemails, requirements for collection by e-mail or text message, limitations on the frequency of contacts with the consumer, and a prohibition on collecting from a consumer's estate within 30 days after the consumer's death.

The CFPB is preparing to convene a Small Business Review Panel to gather feedback from small businesses on the proposal. After the CFPB seeks input from small businesses and other stakeholders, it will publish the rule and allow an additional period for official comments.

DOD Military Lending Act Rule:

On July 22, 2015, the U.S. Department of Defense adopted amendments to its Military Lending Act Rule at 32 C.F.R. part 232. The amendments expand the scope of the MLA rule, so that it will apply to most consumer loans made to covered military borrowers (including active-duty service members and their dependents). The MLA rule contains

several requirements for loans made to covered military borrowers, including the following: (1) the rule prohibits the creditor from making the loan at a military APR over 36% (the MAPR is similar to APR but includes additional charges); (2) the rule requires the creditor to provide a disclosure about the MLA rule and the MAPR to the borrower; and (3) the rule prohibits the creditor from requiring arbitration. The DOD has established a database that creditors can consult to determine whether a consumer is a covered military borrower. Creditors must comply with the amended MLA rule starting October 3, 2016.

OTHER SIGNIFICANT AGENCY UPDATES

Motor Vehicle Sales Finance

MVSF Licenses	FY14	FY15	FY16
Number of MVSF Licenses Issued and Active	7,825	8,096	8,435

MVSF Examinations	FY14	FY15	FY16
Number of Examinations	1,247	1,565	707
Acceptable Level of Compliance	72.4%	79.8%	75.47%
Investigations Completed	43	42	60

Consumer Complaints		
Fiscal Year	Total	% of all processed complaints
FY16	1,141	52.8%
FY15	982	46.1%
FY14	810	42.3%

Credit Card Surcharge

This case is a challenge to the constitutionality of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. The plaintiffs have appealed the case to the U.S. Supreme Court. The plaintiffs argue that the credit card surcharge prohibition is an unconstitutional violation of free speech and that it is void for vagueness, under the First and Fourteenth Amendments to the U.S. Constitution. The Fifth Circuit Court of Appeals ruled in the OCCC's favor, holding that the law is a price regulation rather than a speech regulation, and that it is not void for vagueness. *Rowell v. Pettijohn*, 816 F.3d 73 (5th Cir. Mar. 2, 2016). This decision affirmed the district court's ruling, which granted the OCCC's motion to dismiss the lawsuit. *Rowell v. Pettijohn*, No. 1:14-cv-00190-LY, 2015 U.S. Dist. LEXIS 40739 (W.D. Tex. Feb. 4, 2015).

The plaintiffs filed a petition to appeal the case to the U.S. Supreme Court on May 31, 2016. The plaintiffs argue that the Court should hold this case until it rules on the *Expressions Hair Design* case (discussed below), or alternatively, grant review in both this case and *Expressions Hair Design*. On July 5, the OCCC filed a brief in opposition, arguing that the Fifth Circuit's decision was correct and does not warrant review by the Supreme Court. On July 25, the plaintiffs filed a reply brief reaffirming their position. The Court is scheduled to consider the case in conference on September 26, to decide whether it will hear the case in the 2016-2017 term.

The full style of the case is *Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas*. The U.S. Supreme Court's case number is 15-1455, the Fifth Circuit's case number

is 15-50168, and the district court's case number is 1:14-cv-00190-LY. The OCCC is being represented by three divisions of the Office of the Attorney General: the Office of Solicitor General; the General Litigation Division; and the Financial Litigation, Tax, and Charitable Trusts Division.