QUARTERLY UPDATE TO THE

SENATE BUSINESS AND COMMERCE COMMITTEE

January 16, 2014

BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER

IMPLEMENTATION OF LEGISLATION FROM THE 83RD LEGISLATURE

SB 247: Property Tax Loans

Summary:
This bill imposes new requirements on property tax lenders. The bill's requirements fall mainly into the following categories:

- ***Judicial foreclosure:*** The bill repeals language allowing property tax lenders to engage in non-judicial foreclosure. This effectively requires them to use judicial foreclosure for any property tax loans closed on or after the bill's effective date.

- ***Advertisements:*** The bill prohibits deceptive or misleading advertising, and it requires property tax lenders to disclose certain additional information if they disclose a rate or charge in an advertisement.

- ***Payoff statements:*** The bill imposes new requirements for payoff requests sent by other lienholders and payoff statements provided by the property tax lender. It requires the Finance Commission to adopt forms for the payoff statement and the request for a payoff statement.

- ***New prohibitions:*** The bill prohibits property tax loans in certain situations (e.g., where the borrower is 65 years old or older and can claim a tax exemption, or where the taxes are neither due nor delinquent).

Effective date:
May 29, 2013. The bill went into effect immediately upon the governor's signature. The new law applies only to property tax loans closed on or after May 29, and advertisements distributed on or after May 29. Property tax loans closed before May 29 are still subject to previous law.

Implementation Activities:

<u>Rulemaking</u>

At its August 2013 meeting, the Texas Finance Commission adopted a rule implementing SB 247's advertising provisions. The rule prohibits property tax lenders from including certain phrases in advertisements, and it describes how property tax lenders must disclose rates in their advertisements. The rule also amends the model form for the property owner's sworn authorization, deleting a reference to borrowers who are 65 years old or older.

In September 2013, the OCCC held a stakeholder meeting on proposed rules to implement SB 247's payoff statement requirements. Representatives from the Texas Property Tax Lienholders Association, the Texas Bankers Association, the Texas Mortgage Bankers Association, the Independent Bankers Association of Texas, and Protect My Texas Property attended the meeting. The OCCC developed model forms for the payoff statement and the request for a payoff statement, incorporating suggestions made at the meeting.

At its October 2013 meeting, the Finance Commission adopted a rule implementing SB 247's payoff statement requirements. The rule includes model forms for the payoff statement and the request for a payoff statement. The rule also includes requirements for delivery of the request and the payoff statement, as well as amended recordkeeping requirements.

Advisory Bulletin

In May 2013, the OCCC distributed an advisory bulletin summarizing SB 247's requirements. The bulletin explains the bill's prohibition on nonjudicial foreclosure, the bill's provisions regarding advertising, the bill's provisions on payoff statements, and the bill's new prohibitions on property tax loans in certain situations.

SB 1251: Regulated Loan Fees

Summary:
Under previous law, Chapter 342 of the Finance Code provided a $25 maximum administrative fee under Subchapter E, and a $10 maximum acquisition charge under Subchapter F. This bill allows the Finance Commission to adopt rules setting a higher Subchapter E administrative fee and a higher Subchapter F acquisition charge. The bill provides that the administrative fee and the acquisition charge are not interest.

The bill also allows authorized lenders to use the true daily earnings method or scheduled installment earnings method for a Subchapter F loan. The bill includes interest-calculation requirements and payment-allocation requirements for a Subchapter F loan in which a lender uses these earnings methods.

Effective date:
September 1, 2013

Implementation Activities:
In May 2013, the OCCC held a stakeholder meeting regarding the maximum administrative fee and maximum acquisition charge. Representatives from the Texas Consumer Finance Association, Springleaf Financial Services, Famsa Financial, Texas Appleseed, and the Center for Public Policy Priorities attended the meeting.

At its August 2013 meeting, the Finance Commission adopted a rule setting the maximum administrative fee at $100 and the maximum acquisition charge at the lesser of $100 or 10% of the cash advance. The rule also prohibits a Subchapter F lender from charging an acquisition charge more than once per month. Later in August, the OCCC distributed an advisory bulletin summarizing the rule's requirements.

At its October 2013 meeting, the Finance Commission adopted a rule describing the calculation requirements for Subchapter F loans using the true daily earnings method or scheduled installment earnings method.

HB 2548: Credit Card Surcharge Exclusive Jurisdiction

Summary:
Under previous law, the Finance Commission has exclusive jurisdiction to enforce Section 339.001 of the Finance Code, which prohibits credit card surcharges. This bill provides that the OCCC has exclusive jurisdiction to enforce the section. The bill also amends Chapter 14 of the Finance Code to provide that the OCCC has investigation authority, enforcement authority, and authority to order restitution to a person injured by a violation of Section 339.001.

Effective date:
September 1, 2013

Implementation Activities:
The OCCC has been working through transition issues related to the changed enforcement policy associated with HB 2548. The Finance Commission adopted a rule to assist with enforcement procedure for complaints both before and after the effective date. Nineteen complaints have recently been received that are being processed under the older provisions. Eight of those have been closed and eleven remain pending as they are being worked through to resolution.

SIGNIFICANT POLICY ISSUES

Credit Access Businesses offering Payday (deferred presentment) and Auto Title Loans

Background:
The 82nd Legislature amended Chapter 393 of the Finance Code establishing new requirements for "credit access businesses," which are credit services organizations (CSOs) that provide payday loans or title loans.

Credit access businesses (CABs) are required to provide a consumer disclosure prescribed by the Finance Commission. The disclosure must include interest, fees, and APR for the loan and a comparison of those charges to "alternative forms of consumer debt," and it must describe fees that the consumer will incur for renewing the loan. CABs are also required to obtain a license with the OCCC. The OCCC has examination and investigation authority over credit access businesses. Chapter 393 also requires the Finance Commission to create an endowment for financial education in Texas.

The requirements became effective January 1, 2012. Significant legislative activity and effort ensued in the 83rd Legislature for a short term lending reform bill. Unfortunately, the 83rd session came to a close without a final legislative reform bill.

Regulatory Activities

Licensing
The number of active CAB licenses reflects a growth of approximately 15% in FY13.

CAB Applications	FY12	FY13	FY14-1st Quarter
Applications Filed	3,804	197	52
Applications Fully Approved	3,675	585	61
Applications Withdrawn	191	20	4
Provisional Licenses Pending	3	0	0
Applications Denied	25	7	1
Number of CAB Licenses Issued and Active	3,022	3,502	3,491

Table 1: CAB applications received and processed as of August 2012, August 2013 and November 2014.

Consumer Protection & Examination
The OCCC significantly stepped up its examination activity in FY 13, more than tripling the production of the prior year. The average hours per CAB examination (7.51 hours per exam) for FY 2013 continues to be higher than estimated. The most significant non-compliance areas are smaller licensees not understanding the basic requirements of Credit Service Organization disclosures and contracts, and variations in the loan and credit service organization transaction design in response to city ordinances. Wide variability exists within the industry and lack of uniformity is becoming a greater compliance concern. During FY13, the OCCC also participated in and coordinated examinations with the Federal Consumer Financial Protection Bureau (CFPB).

CAB Examinations	FY12	FY13	FY14-1st Quarter
Number of Examinations	290	916	168
Acceptable Level of Compliance	90.9%	91.1%	91.07%
Investigations Completed	0	13	1

Although the examination process has indicated that the majority of examined entities were within acceptable compliance levels, caution should be exercised in characterizing the entire industry at this rate of compliance. Thus far, the OCCC has only examined roughly less than 35% of the industry and the expectation is that the acceptable level of compliance will decline as additional segments of the industry come under examination. Common violations and areas of non-compliance, in addition to that mentioned above, were identified as failure to provide or providing incorrect consumer disclosures; failure to post fee schedules; failure to obtain non-obligor signature; and charging of excessive or unauthorized late charges. Restitution to consumers as a result of examinations of CABs was $18,054 for FY13.

Consumer Complaints

The consumer assistance section processed

- 282 CAB complaints between September 1, 2011, and August 31, 2012 which represented 14.49% of all processed complaints by the agency during that 12-month period.
- 422 CAB complaints between September 1, 2012, and August 31, 2013 which represented 21.16% of all processed complaints by the agency during that 12-month period.
- 98 CAB complaints have been filed in the first quarter of fiscal year 2014.

Fiscal Year	Payday Loans	Title Loans	Total
FY12	179	103	282
FY13	243	179	422
FY14 – 1st Quarter	59	39	98

Consumer assistance pertaining to CAB transactions resulted in consumers receiving refunds totaling $6,331.59 in FY13. In the first quarter of FY14, consumers received refunds totaling $2,605.44. The complaints predominately pertain to charges and fees, collection practices, posting/processing of payments, and repossessions, as shown in the table below for both categories.

FY13: September 1, 2012– August 31, 2013			
Payday Loans		**Title Loans**	
Complaint/Concern	% of Closed Complaints	Complaint/Concern	% of Closed Complaints
Excessive/unauthorized Charges & Fees	40.7%	Repossession	22.3%
Collection Practices	15.6%	Excessive/unauthorized Charges & Fees	20.1%
Payment Posting/Processing	14.4%	Payment Posting/Processing	19.0%
FY14: September 1, 2013– November 30, 2013			
Payday Loans		**Title Loans**	
Complaint/Concern	% of Closed Complaints	Complaint/Concern	% of Closed Complaints
Excessive/unauthorized Charges & Fees	28%	Repossession	21%
Collection Practices	21%	Excessive/unauthorized Charges & Fees	18%
Payment Posting/Processing	21%	Payment Posting/Processing	32%

Legal

The legal department has reported minimal enforcement actions taken or required during FY 2013 and FYTD 2014. The enforcement actions taken predominately pertain to compliance with quarterly reporting requirements.

Type of Action	Number of Actions	Cause of Action
Administrative Hearing	No. Hearings Conducted/Scheduled: 2 No. Hearings Dismissed: 2	•Applicant's appeal of license denial. •Applicant completed application requirements. •Applicant entered into agreed order.
License Revocation	0	
Issuance of Preliminary Reports	49	•Licensees did not timely file their quarterly reports. •Administrative penalties of $100 per late report were assessed.
Agreed Orders	2	•Licensee agreed to license revocation and administrative penalty for failure to maintain CSO registration. •Licensee agreed to pay administrative penalty and submit late 2nd quarter reports as a condition of approval for permanent licensure.

Table 2: Administrative action taken during FY 2013 (September 1, 2012 through August 31, 2013).

Administrative Hearing	No. Hearings Conducted/Scheduled: 2 No. Hearings Dismissed: 0	•Failure to file Quarterly and Annual Reports. •Usury violations due to common ownership between CAB and lender. •Hearings resulted in one agreed order and one license revocation.
Agreed Orders	1	•Failure to file Quarterly and Annual Reports. Licensee agreed to license revocation, restitution of CAB fees, and payment of an administrative penalty.
License Revocation	1	•Usury violations due to common ownership between CAB and lender. Commissioner adopted ALJ recommendation to revoke CAB license.
Issuance of Preliminary Reports	21	•Licensees did not timely file their quarterly reports. •Administrative penalties of $100 per late report were assessed.

Table 3: Administrative action taken during FYTD 2014 (September 1, 2013 through January 16, 2014).

Non-Compliance with Quarterly Data Reporting	
CY 2013 – 1st Quarter Due April 30, 2013	Delinquent Filings: 21 Store Locations 16 licensees, comprising 21 store locations, did not timely file 1st quarter reports. • *Status: 15 licensees have filed completed 1st quarter reports. A license revocation action is pending against one licensee for failure to file completed quarterly report(s).*
CY 2013 – 2nd Quarter Due July 31, 2013	Delinquent Filings: 99 Store Locations 13 licensees, comprising 99 store locations, did not timely file 2nd quarter reports. • *Status: 12 licensees have filed completed 2nd quarter reports. A license revocation action is pending against one licensee for failure to file a completed quarterly report.* • *Note: 1 preliminary report issued for a delinquent 2nd quarter filing was withdrawn when the licensee submitted proof that its licensed location was not required to file a 2nd quarter report based on its date of licensure.*
CY 2013 – 3rd Quarter Due October 31, 2013	Delinquent Filings: 8 Store Locations 8 licensees, comprising 8 store locations, did not timely file 3rd quarter reports. • *Status: 1 licensee has filed its completed 3rd quarter report. 6 licensees were ordered to file their quarterly reports and pay an administrative penalty.* • *Note: 1 preliminary report issued for a delinquent 3rd quarter filing was withdrawn when the licensee surrendered its license.*

Table 4: Status of non-compliance with quarterly data reporting during FYTD 2014 (September 1, 2013 through January 16, 2014).

CREDIT ACCESS BUSINESS REPORTING

The statistics presented on the following pages represent preliminary data reported to the Office of Consumer Credit Commissioner (OCCC) from credit access businesses (CABs) through the 3nd quarter of calendar year 2013. Amendments and corrections of data are included as of January 13, 2014. Full summary reports prior to the 3rd quarter of 2013 are available on the OCCC website: http://www.occc.state.tx.us/pages/publications/FinSvcsActvityRpts.html#CABRpts. The deadline to submit 4th quarter and annual data for calendar year 2013 is January 31, 2014.

Previous reports included a categorization of data issue; installment transactions being reported as single payment. That issue was addressed by amended licensee filings. After filtering products into the correct product type, data errors were noticeable for the installment products. Additional revisions to 2013 information is expected due to pending corrections from specific stores that will occur shortly. Updated 3rd quarter 2013 data will be published on the website following receipt of the corrected filings.

Statewide Averages

Quarterly reporting is designed for the product type, whether the product is a deferred presentment transaction (payday loan) or a title loan, and the repayment schedule; either a single installment or multiple installment repayment. Each transaction must be reported as one of the four product types.

Selected loan characteristics from the three preceding quarters is presented in the table below as well as the percent the data has changed from Q1 2013 to Q3 2013. Noticeable fluctuations occur for the Installment Payment Deferred product that is greatly affected by inconsistent reporting. Corrections are now in process.

Prior 3 Quarters	Single Payment Deferred	Installment Payment Deferred[1]	Single Payment Title	Installment Payment Title[2]
Average Fee Amount (per $100 loaned)				
Q1 2013	$23.80	$83.25	$22.42	$54.25
Q2 2013	$23.92	$82.79	$22.17	$63.62
Q3 2013	$23.25	$65.22	$21.93	$55.67
Change (Q1 – Q3)	(2.31%)	(21.66%)	(2.19%)	2.62%
Average Loan Amount				
Q1 2013	$448	$589	$1,054	$1,222
Q2 2013	$439	$571	$1,147	$1,267
Q3 2013	$469	$499	$1,310	$1,176
Change	4.69%	(15.28%)	24.29%	(3.76%)
Average Original Term (days)				
Q1 2013	21	128	29	177
Q2 2013	23	125	30	180
Q3 2013	19	148	30	170
Change	(9.52%)	15.63%	3.45%	(3.95%)

Volume Totals (Comparison of First Three Quarters CY 2012 & 2013)

The following table captures the year over year volume comparison of combined Q1 – Q3 reports, regardless of product type. A slight increase is reported in the number of consumers and the number of loans they obtained in the period. However, there is a large decrease in refinancing activity. This decrease is attributable to the industry's move to different types of installment products.

Q1 – Q3	CY 2012	CY 2013	Change
Number of Consumers (Per Reporting Location)	1,730,590	1,812,176	4.71%
Number of New Extensions	2,190,451	2,278,241	4.01%
Number of Renewals on those Extensions (Renewed in quarter they were obtained)	2,066,926	1,550,213	(25.00%)
Number of Consumers Renewing	979,974	654,055	(33.26%)
Total Number of Transactions[3]	5,964,905	5,346,200	(10.37%)
Total Number of Vehicle Repossessions	26,973	27,464	1.82%

[1] Approximately 13% of submissions in this category have known errors that licensees are in the process of correcting.
[2] Approximately 11% of submissions in this category have known errors that licensees are in the process of correcting.

[3] Includes renewals on loans made in prior reporting periods.

Metropolitan Statistical Area (MSA) – Q3 Year over Year Installment Loans

The large decrease in refinancing activity in the previous chart is in large part due to the increase of installment loans. Longer terms and lower regular payments results in less frequent refinances. The installment loan products are typically scheduled to be repaid within three to six months and consist of traditional amortizing loans and balloon payment loans. The balloon payment transaction consists of fee only payments until the principal and interest are scheduled due.

The installment product growth is especially found in municipalities that have enacted ordinances covering credit access businesses. The following chart represents installment loan figures in ordinance affected areas for the 3rd quarter of 2013 in comparison to 3rd quarter of 2012.

MSA Q3 Comparison	Number of Customers (Installment Only)	Number of New Installment Loans	Percentage of all Loans that are Installment
Austin			
Q3 2012	4,310	4,874	15.45%
Q3 2013	16,116	17,957	48.90%
Dallas			
Q3 2012	35,027	39,455	24.98%
Q3 2013	43,862	50,688	28.39%
El Paso			
Q3 2012	2,859	3,513	14.09%
Q3 2013	3,123	3,927	14.33%
San Antonio			
Q3 2012	7,014	7,727	13.48%
Q3 2013	30,856	34,245	54.79%
Statewide			
Q3 2012	117,290	132,516	17.00%
Q3 2013	212,873	244,306	28.45%

Advisory Bulletins

The OCCC issued four advisory bulletins to CABs during FY 2013:

- In a December 2012 bulletin, the OCCC expressed concern regarding certain CABs' practice of referring consumers to locations outside city limits, in order to avoid the application of city ordinances.
- In another December 2012 bulletin, the OCCC expressed concern regarding certain CABs' practice of assisting consumers in obtaining loans other than payday or title loans, in order to avoid regulatory requirements that generally apply to CABs.
- In a February 2013 bulletin, the OCCC described inconsistencies in CAB quarterly and annual reports, and explained how CABs can review their reports to ensure accuracy.
- In an October 2013 bulletin, the OCCC explained that CABs may not file criminal charges against consumers without specific evidence of criminal conduct. For example, a dishonored postdated check is not sufficient evidence to show that a consumer committed criminal conduct.

Texas Financial Education Endowment

As part of the licensing process each CAB location pays an annual assessment fee to OCCC to provide opportunities for asset building, improved consumer credit, and financial education (§393.628, Texas Finance Code). The assessments are collected by the OCCC during the licensing process and are invested with the Texas Treasury Safekeeping Trust Company.

The Finance Commission of Texas oversees the Endowment and its grant program, designed to support and promote financial capability, education, and responsibility of Texans. The endowment supports innovative consumer credit building activities and programs for youth and adults throughout the state. At the December 13 Finance Commission meeting, eight organizations were chosen to receive grant awards in an aggregate amount of $250,000 in the first grant award cycle. The program activities of the awarded grants fall into three categories: K-12 Financial Education and Capability, Financial Coaching and Adult Financial Education and Capability. The next grant cycle is planned for 2015.

Property Tax Lenders

Beginning in 2008, the OCCC has been licensing, examining, and collecting annual report information from property tax lenders operating in Texas. At the conclusion of the first fiscal year of licensing (August 31, 2008), 55 locations made up the regulated industry. Today, there are 100 individually licensed locations representing historical highs.

Since reporting began, the number of tax lien loans per year have ranged from a low of 12,078 (2008) to the highest of 14,526 (2012). The volume of loans has ranged from approximately $119 million (2008) to a high of $178 million (2011). Over the three most recent reporting cycles (2010 – 2012), lending volume has not varied more than $3.2 million. For 2012, the average loan made was approximately $12,000.

Reported for calendar year 2012, outstanding loans numbered 34,087 and were valued at $370 million. The average loan balance of approximately $11,000 is slightly lower than previous years. Property foreclosures resulting from tax lien loans numbered 152 for 2012. Historically, foreclosures have ranged from a low of 99 (2008) to a high of 204 (2011).

Examination Information

In fiscal year 2013, the Examination & Enforcement Department conducted twenty-eight (28) examinations of property tax lenders. As part of the examination process, the agency provides a written report to each licensee of any violations identified during the examination. The examination report also places the licensee on notice so that future violations will be considered knowingly and willful which gives the agency grounds for administrative action. A partial list of some of the violations noted in the 28 examination reports are described below.

Sixteen out of the twenty-eight property tax examinations required the property tax lenders to provide restitution to the affected borrowers. In some cases, the property tax lenders were instructed to conduct a company-wide review in order to locate and correct any additional transactions requiring restitution. For the fiscal year 2013, property tax lenders refunded $12,784.25 to 130 property tax borrowers. The restitution involved or related to: (1) excessive interest; (2) excessive release-of-lien fees, (3) excessive closing costs; (4) excessive default or late charges; (5) non-sufficient fund fees (NSF fee); and (6) unauthorized servicing fees such as wire transfer fees, demand letter fees, and payoff statement fees.

Failure to provide or timely provide the “notice to prior existing lienholder” to the mortgage holder or servicer, as required by Section 32.06(b-1) of the Texas Tax Code, was cited in seven of the twenty-eight examination reports. The examination reports identified approximately 73 property tax loans wherein the property tax lender did not send the “notice to prior existing lienholder” by certified mail within 10 days of receiving the certified statement from the taxing units. To resolve this issue, the property tax lenders were instructed to provide a belated “notice to prior existing lienholder” to the lienholders or servicers. All of the property tax lenders have complied with this instruction. Two of the cases were referred to the Legal Department for possible administrative action. One of the identified companies has paid an administrative penalty of $1,000 for failing to timely send the notice on 17 property tax loans.

Property tax lenders were cited for employing unlicensed residential mortgage loan originators in eight of the twenty-eight property tax examinations. Of the twenty-eight examinations, ten of the property tax lenders were cited for providing documents to borrowers that contained inaccurate or incorrect annual percentage rates that were outside of permitted tolerances found under *Regulation Z – Truth-in-Lending*, 12 C.F.R. §1026.22.

Complaint Information

In fiscal year 2013, the Consumer Assistance Department received eighteen (18) consumer complaints regarding property tax loans.

Eight of the eighteen complaints involved a dispute regarding the payoff or account balance of the property tax loan. Two of the more serious cases involved pre-existing lienholders attempting to payoff or receive assignment of a delinquent property tax loan. The property tax loans in question involved multiple parcels of land wherein the pre-existing lienholder did not have a security interest in all of the properties secured as part of the property tax loans. The pre-existing lienholders objected to the amount requested by the property tax lender to payoff/assign the property tax loans. As part of the resolution of these complaints, the property tax lenders agreed to reduce the amount necessary to payoff/assign the property tax loans in question by approximately $5,800 and $17,000.

False, misleading, or deceptive advertisements or solicitations were alleged in six of the eighteen consumer complaints. The advertisements or solicitations involved one or more the following issues: (1) the advertisements or solicitations were in the form of a non-negotiable check that was made payable to the borrower, (2) the advertisements or solicitations did not fully disclose the terms of the proposed loan to the potential borrower, and (3) the advertisements or solicitations were sent in envelopes that had a design similar to the Internal Revenue Service. The property tax lenders were instructed to discontinue using these false, misleading or deceptive advertisements or solicitations. The false, misleading, or deceptive advertisements or solicitations were instrumental in the drafting of regulation 7 Texas Administrative Code §89.208.

Conclusion

The OCCC has been working to improve compliance by meeting routinely with industry groups and other interested stakeholders to discuss current issues and recent developments. Additionally, compliance bulletins are posted to the agency's website to provide guidance regarding new laws and prohibited practices. The OCCC anticipates that these actions will contribute to better overall compliance.