

**QUARTERLY UPDATE TO THE  
SENATE BUSINESS AND COMMERCE COMMITTEE**

**April 15, 2014**

**BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER**

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**SIGNIFICANT POLICY ISSUES**

**Home Equity Lending Interpretations**

Over the next several months, the OCCC will assist the Finance Commission in preparing amendments to the home equity lending interpretations of the Texas Constitution, in response to the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013).

The requirements for home equity loans are provided in Article XVI, Section 50 of the Texas Constitution. The Finance Code allows the Finance Commission and Credit Union Commission to jointly issue interpretations of the Constitution's home equity lending provisions. These interpretations are adopted under the rulemaking provisions of the Texas Administrative Procedure Act.

In *Norwood*, the Supreme Court struck down the following interpretations adopted by the Commissions:

- First, the court struck down the Commissions' interpretations defining "interest" for purposes of the Constitution's 3% cap on fees other than interest.
- Second, the court struck down an interpretation allowing homeowners to sign a power of attorney and have the attorney-in-fact close the loan at the office of an attorney, lender, or title company.
- Third, the court struck down an interpretation allowing the homeowner to send a required consent form to the lender by mail.

The court issued its original opinion on June 21, 2013, and it issued a supplemental opinion on January 31, 2014. The Commissions are contemplating amendments to the interpretations in order to comply with the court's opinions. The proposed amendments are expected to be published for comment in June.

**Credit Card Surcharge Prohibition**

On March 5, 2014, a group of Beaumont merchants filed a complaint in federal court against Greg Abbott in his official capacity as Attorney General of the State of Texas and Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas, to enjoin enforcement of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. The merchants argue that the prohibition is an unconstitutional violation of free speech and that it is void for vagueness, in violation of the First and Fourteenth Amendments to the U.S. Constitution. The case has been assigned to Judge Lee Yeakel in the Western District of Texas, Austin Division. On March 25, the OCCC was served with the complaint. The state's answer is due on April 15. The case number is 1:14-cv-00190-LY.

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

### Background:

The 82<sup>nd</sup> 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 83<sup>rd</sup> Legislature for a short term lending reform bill. Unfortunately, the 83<sup>rd</sup> 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 and a 4% decline through the 2<sup>nd</sup> quarter of FY14 from the high mark of FY13.

CAB Applications	FY12	FY13	FYTD-2Q14
Applications Filed	3,804	197	122
Applications Fully Approved	3,675	585	129
Applications Withdrawn	191	20	7
Applications Denied	25	7	2
Number of CAB Licenses Issued and Active	3,022	3,502	3,353

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

#### Consumer Protection & Examination

The OCCC continues to focus resources on CAB compliance, performing 343 examinations during the first half of FY14. The average hours per CAB examination (8.06 hours) for the first two quarters of FY14 continues to be higher than initially anticipated. Challenges remain for smaller licensees and their understanding of the basic requirements of CAB disclosures and separation of the parties involved.

Compliance questions are consistently raised due to licensees’ attempts to adapt their product offerings to fit around the framework of municipal ordinances. Based on our research, at least 13 municipalities have enacted regulations directly impacting CAB products.

CAB Examinations	FY12	FY13	FYTD-2Q14
Number of Examinations	290	916	343
Acceptable Level of Compliance	90.9%	91.1%	92.42%
Investigations Completed	0	13	4

The acceptable level of compliance has remained similar for the past three fiscal years. Presently, the OCCC has examined approximately 46% of the industry. Common violations and areas of non-compliance, in addition to that mentioned above, were identified as failure to provide consumer disclosures or providing incorrect consumer disclosures; failure to post fee schedules; and charging undisclosed fees such as certificate of title fees. Restitution to consumers as a result of examination of CABs is \$38,448.98 for FYTD14.

<b>Consumer Complaints</b>					
<b>Fiscal Year</b>	<b>Payday Loans</b>	<b>Title Loans</b>	<b>Total</b>	<b>% of all processed complaints</b>	<b>Consumer Refunds Issued</b>
FYTD-2Q14	131	72	203	24.25%	\$7,527.63
FY13	243	179	422	21.16%	\$6,331.59
FY12	179	103	282	14.49%	—

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.

<b>Complaint/Concern</b>	<b>FYTD-2Q14</b>		<b>FY13</b>	
	<b>Payday Loans</b>	<b>Title Loans</b>	<b>Payday Loans</b>	<b>Title Loans</b>
	<b>% of Closed Complaints</b>			
Excessive/unauthorized Charges & Fees	23%	15%	40.7%	22.3%
Payment Posting/Processing	26%	32%	14.4%	19%
Collection Practices	15%		15.6%	
Repossession		22%		22.3%
Right of Rescission & Did Not Apply for Loan	20%			
Release of Title Upon Payoff		11%		

**Legal**

The legal department has reported enforcement actions that predominately pertain to compliance with quarterly reporting requirements.

<b>Type of Action</b>	<b>Number of Actions</b>		<b>Cause of Action</b>
	<b>FYTD14</b>	<b>FY13</b>	
Administrative Hearing	Conducted/ Scheduled: 4  Dismissed: 0	Conducted/ Scheduled: 2  Dismissed: 2	<ul style="list-style-type: none"> <li>• Two applicants appealed their license denial.</li> <li>• Two licensees failed to file Quarterly and Annual Reports.</li> <li>• Two licensees committed usury violations due to common ownership between CAB and lender.</li> </ul>
License Revocation	2	0	<ul style="list-style-type: none"> <li>• Failure to file Quarterly and Annual Reports.</li> <li>• Usury violations due to common ownership between CAB and lender.</li> </ul>
Issuance of Preliminary Reports	26	49	<ul style="list-style-type: none"> <li>• Licensees did not timely file their quarterly reports.</li> </ul>
Agreed Orders	2	2	<ul style="list-style-type: none"> <li>• Licensee agreed to license revocation and administrative penalty for failure to maintain CSO registration.</li> <li>• Licensee agreed to pay administrative penalty and submit late 2nd quarter reports as a condition of approval for permanent licensure.</li> <li>• Licensee agreed to license revocation, restitution of CAB fees, and payment of an administrative penalty.</li> <li>• Licensee agreed to license revocation, restrictions on ability to operate as a CAB or lender in the future, and payment of an administrative penalty.</li> </ul>

Table 3: Administrative action taken during FY13 and FYTD14 (September 1, 2013 through April 16, 2014).



### **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 2013 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.

## **IMPLEMENTATION OF LEGISLATION FROM THE 83RD LEGISLATURE**

### **SB247: 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).

#### ***Implementation Activities:***

#### **Rulemaking & Enforcement**

At its August 2013 meeting, the Texas Finance Commission adopted a rule implementing SB 247's advertising provisions. In September 2013, the OCCC held a stakeholder meeting on proposed rules to implement SB 247's payoff statement requirements. 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

## **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.

### ***Implementation Activities:***

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.

Data is being gathered at exams in order to evaluate the effectiveness of rules and identify any patterns or practices of abuse. The OCCC is also collecting additional information in the annual reports that regulated lenders are required to provide. In March 2014, the agency issued a bulletin describing new information that the agency is requiring in the annual report, including information about administrative fees and acquisition charges, as well as breakdowns of interest and fee income.

## **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.

### ***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 are being processed under the older provisions. Nine of those have been closed and ten remain pending as they are being worked through to resolution. In FY14 to date, 40 complaints have been filed.