TEXAS OFFICE OF CONSUMER CREDIT COMMISSIONER

HOUSE COMMITTEE ON INVESTMENTS & FINANCIAL SERVICES

Overview of the OCCC and Texas Credit Laws

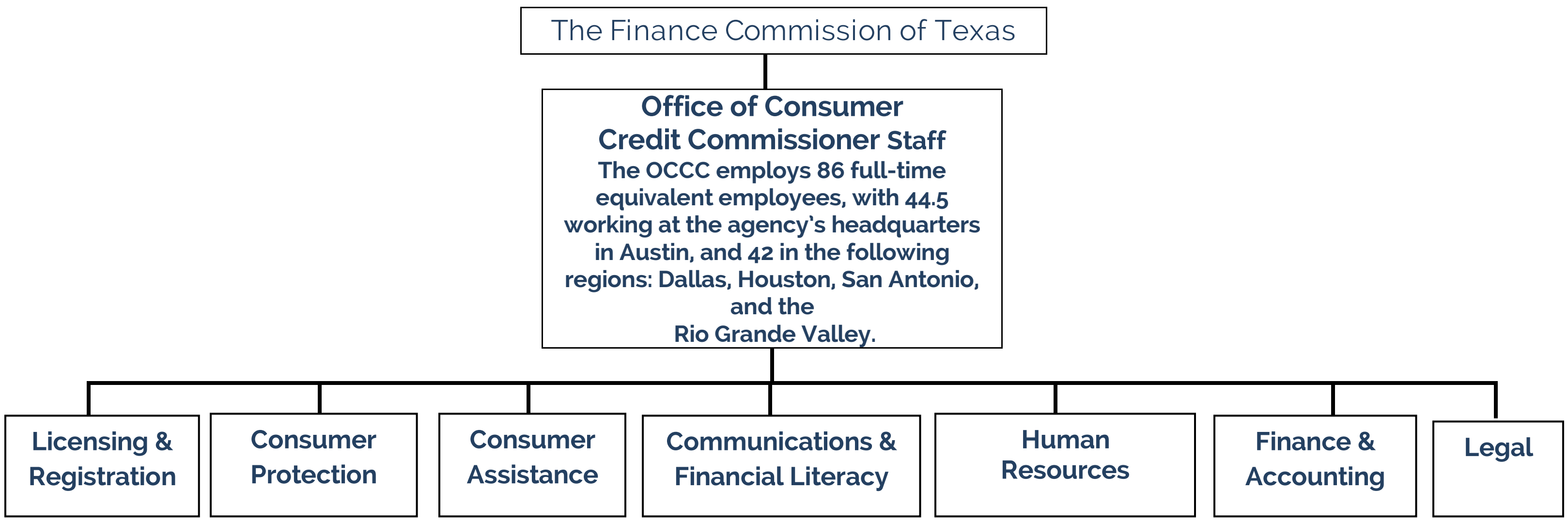
February 28, 2017

TEXAS OFFICE OF CONSUMER CREDIT COMMISSIONER

OVERVIEW OF THE OCCC

Mission

The mission of the Office of Consumer Credit Commissioner (OCCC) is to regulate nonbank financial services and to educate consumers and industry providers, fostering a fair, lawful, and healthy financial services market that grow economic prosperity for all Texans.



Philosophy

The OCCC promotes the highest principles of professional conduct and ethics; diversity; stewardship and conservation of funds; and limited yet effective regulation. The OCCC regulates non-depository financial service providers, either through registration or licensure, and its programs and services are based on a four-factor philosophy:

Regulate **fairly, efficiently, and effectively, balancing the needs of both consumers and creditors by enforcing Texas credit laws and licensing qualified financial service providers;**

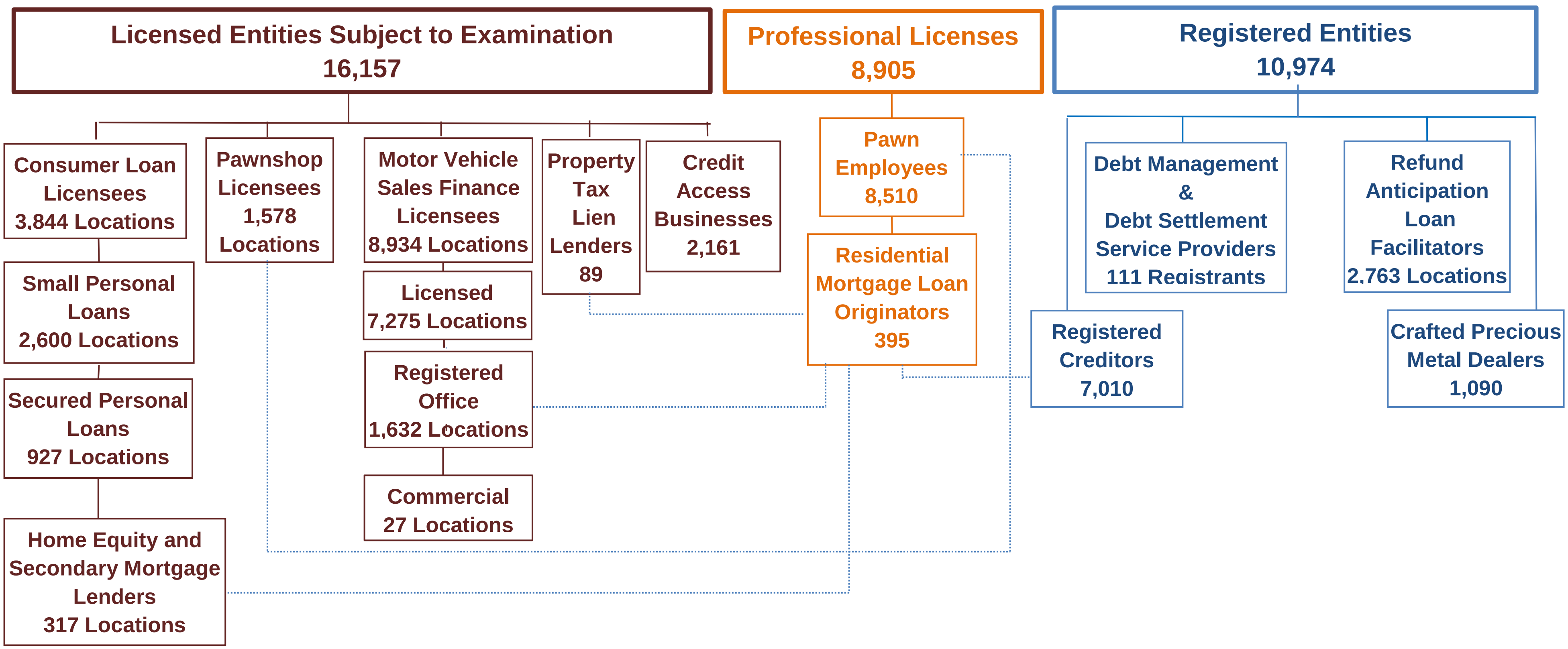
Educate **consumers of their rights, responsibilities and remedies and financial services providers of their rights and responsibilities;**

Communicate **collaboratively with and encourage communication among the financial services industry, consumer public, and the agency;**

Protect **and safeguard consumers against abusive, unfair, and deceptive lending practices.**

Regulatory Responsibility

The OCCC licenses regulated lenders, property tax lien lenders, residential mortgage loan originators, motor vehicle sales finance companies, pawnshops, and pawnshop employees. OCCC also registers debt management service providers, refund anticipation loan facilitators, and creditors who finance the sales of their goods and services. In fiscal year 2016, the agency processed 1,642 new business applications, 3,253 new pawnshop employee applications and 148 new mortgage loan originator applications. Data below is as of December 31, 2016.



Examination and Enforcement

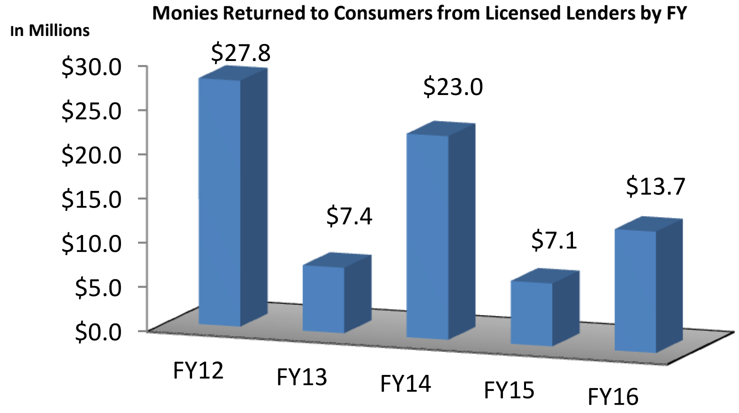
OCCC examines licensed financial service providers and investigates creditors, licensees, and certain license applicants. Examinations focus on consumer protection and compliance with the Texas Finance Code. As of August 31, 2016, the agency regulated 16,157 licensed financial services locations. Examinations generally take place every 18 to 60 months, depending upon the type of license. Motor vehicle sales finance licensees are currently expected to be examined on a 48 to 60 month cycle. In fiscal year 2016, the OCCC performed 4,288 examinations of business entities holding one of the regulated types of business licenses.

Consumer Assistance (Complaint Resolution)

Members of the consumer assistance section primarily focus on responding to the needs of consumers who contact the OCCC's consumer assistance department through

- The consumer assistance helpline (800-538-1579)
- The consumer assistance email: consumer.complaints@occc.texas.gov
- The agency's general information email: info@occc.texas.gov

The consumer assistance contact information is printed on every loan, retail installment contract, and certain other financial transaction documents entered into by a licensee or registrant, and is also displayed on state-mandated consumer disclosures. The agency receives approximately 2,100 calls per month from consumers.



Directed restitution to consumers and consumer complaint resolution are important enforcement tools for the OCCC. Over the past five fiscal years, a total of $79 million has been returned to Texans as a result of irregularities discovered during examinations and investigations.

Education

Financial Literacy in Texas

The OCCC has two primary goals for its credit education program: equipping consumers with the necessary knowledge to use credit wisely and educate the industry so that its members are better informed of their responsibilities under the law. In an effort to provide Texas consumers with in-depth educational service, the agency targets more individualized smaller audiences. This allows the agency to concentrate resources on improved and more comprehensive financial educational services. The agency also oversees the Texas Financial Education Endowment, which awards grants every 2 years to organizations providing statewide financial capability and consumer credit building activities and programs.

CONSTITUTIONAL PROVISION

The Legislature shall have authority to define interest and fix maximum rates of interest; provided, however, in the absence of legislation fixing maximum rates of interest all contracts for a greater rate of interest than ten per centum (10%) per annum shall be deemed usurious; provided, further that in contracts where no rate of interest is agreed upon, the rate shall not exceed six per centum (6%) per annum. TEX. CONST. ART. XVI. §11.

INTERPRETIVE COMMENTARY

The ethical nature of the concept of usury renders it impossible to formulate permanent and definite criteria of what constitutes a usurious transaction. As long as freedom of contract remains the cornerstone of economic organization it is up to the Legislature to decide at what point a voluntary economic transaction constitutes an abuse of economic freedom and thus an act of usury.

TRANSACTIONS DEFINED BY PURPOSE

Consumer Transactions	=	primarily for personal, family, or household use
Commercial Transactions	=	primarily for business, commercial, investment, agricultural, or other similar purpose

TEXAS FINANCE CODE - TITLE 4

General Provisions, Interest, and Commercial Transactions

SUBTITLE A - INTEREST

CHAPTER
301 - General Provisions
302 - Interest Rates
303 - Optional Interest Rate Ceilings
304 - Judgment Interest
305 - Penalties and Liabilities
306 - Commercial Transactions
307 - Collateral Protection Insurance
339 - Miscellaneous Provisions

Consumer Transactions

SUBTITLE B - LOANS AND FINANCE TRANSACTIONS

CHAPTER
342 - Consumer Loans
- Subchapter E - Non-Real Property Loans
- Subchapter F - Small Consumer Non-Real Property Loans
- Subchapter G - Secondary Mortgage Loans

343 - Home Loans
345 - Retail Installment Sales
346 - Revolving Credit Accounts
347 - Manufactured Home Transactions
348 - Motor Vehicle Installment Sales
349 - Penalties
351 - Property Tax Lien Lenders
352 - Tax Refund Anticipation Loans
353 - Commercial Motor Vehicle Installment Sales

SUBTITLE C - PAWNSHOPS

CHAPTER
371 – Pawnshops

TEXAS FINANCE CODE - TITLE 5

CHAPTER
393 – Credit Services Organization Act
394 - Debtor Assistance (Debt Management Service Providers)

CONSUMER LOAN TRANSACTIONS

PERSONAL LOANS *TEXAS FINANCE CODE* - CHAPTER 342, SUBCHAPTER E	SMALL INSTALLMENT LOANS *TEXAS FINANCE CODE* - CHAPTER 342, SUBCHAPTER F
- Effective Interest to 32% up to $2,010 - For Loans up to $16,750, the Maximum Rate is a Three-Tiered Rate of 30%, 24%, and 18% - All Other Loans have a Maximum Rate of 18% - Credit and Property Insurance Allowed - Additional Default Interest 5% - Primary Interest Bearing - No Rule of 78s Refunding	- Signature Loans or Small Collateral - Effective Interest to 240% - Small Installment Loans up to $1,340 - No Insurance or Other Charges Allowed - Additional Default Interest of 5% OR $10.00 - Precomputed
SECONDARY MORTGAGE LOANS *TEXAS FINANCE CODE* - CHAPTER 342, SUBCHAPTER G	PAYDAY LOANS *TEXAS FINANCE CODE* - CHAPTER 342, SUBCHAPTER F
- Effective Interest to 18% (precomputed 14.5%) - No Maximum Loan Amount - Credit and Property Insurance Allowed - Other Charges (i.e. appraisals) Allowed - Additional Default Interest if Precomputed - General Interest Bearing	- Payday Loans Authorized by Finance Commission Rule, June 2000 - Typical Rate Ranges from 152%-309% - Average Loan Term is 14 Days, Minimum is 7 - Almost all payday loans are conducted under Ch. 393, not under Ch. 342

TEXAS OFFICE OF CONSUMER CREDIT COMMISSIONER

Presentation to the Investments & Financial Services Committee

February 28, 2017

SIGNIFICANT POLICY ISSUES

Credit Card Surcharge Prohibition

In *Rowell v. Pettijohn*, the Fifth Circuit dismissed a challenge to the constitutionality of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. *Rowell v. Pettijohn*, 816 F.3d 73 (5th Cir. 2016). The plaintiffs have appealed the case to the U.S. Supreme Court.

The lawsuit was originally filed in 2014. A group of merchants sued Commissioner Pettijohn in her official capacity to enjoin enforcement of Section 339.001. The plaintiffs argued 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 Fifth Circuit dismissed the case, ruling in the OCCC's favor. The court held that Section 339.001 is a regulation of pricing and economic conduct rather than speech, and that it is not void for vagueness.

The U.S. Supreme Court is holding the *Rowell* case while it decides a related case challenging New York's credit card surcharge law: *Expressions Hair Design v. Schneiderman*, case no. 15-1391. The parties have filed their briefs in the *Expressions* case. The OCCC joined the State of Florida and eight other states to file an *amicus curiae* brief arguing that the court should not invalidate the surcharge prohibition. The Supreme Court heard oral argument on January 10, 2017.

Recently filed legislation in the House (HB 2176, Parker) and in the Senate (SB 560, Hancock) proposes to transfer enforcement authority for the credit card surcharge prohibition to the Office of the Attorney General. Currently, the OCCC has enforcement responsibility. The bill transfers provisions of the Finance Code to the Business & Commerce Code and would authorize the attorney general (or the prosecuting attorney in the county where the violation occurs) to enjoin a person from violating the prohibition, or to sue to recover a civil penalty. The bill entitles a first-time violator to an opportunity to cure the violation.

Similar legislation was passed in 2015, where the enforcement authority for the debit card surcharge prohibition was transferred from the Texas Department of Banking to the Office of Attorney General. This bill would ensure that the surcharge prohibitions for both debit cards and credit cards are enforced by the same agency.

Credit Access Businesses (Payday and Auto Title Loan Activity)

Licensing

The number of active CAB licenses reflects a decrease of approximately 24.7% from FY15 to FY 16.

CAB Applications	FY15	FY16	FY17
Number of CAB Licenses	2,944	2,216	2,180

Table 1: CAB applications received and processed as of 1st Qtr. 2015, 2016, 2017.

Consumer Protection & Examination

The OCCC continues to focus resources on CAB compliance. Year-to-date, 282 (43.79% of target) out of 642 examinations have been conducted in FY17. 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 39 municipalities have enacted regulations directly affecting CAB products.

CAB Examinations	FY15	FY16	FYTD – Jan 2017
Number of Examinations	816	707	18
Acceptable Level of Compliance	94.5%	43.14%	72.22%
Investigations Completed	18	15	2

In FY 2016, there were significant groups of locations with unacceptable levels of compliance. However, the OCCC has performed follow-up examinations and is noting improved levels of compliance. Common violations and areas of non-compliance 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.

Consumer Complaints					
Fiscal Year	**Payday Loans**	**Title Loans**	**Total**	**% of total processed complaints**	**Consumer Refunds Issued**
FYTD-Jan 2017	54	65	119	15.0%	$5,279.57
FY16	208	199	407	18.8%	$26,485.53
FY15	240	194	434	20.4%	$7,793.34

The chart below demonstrates the percentage of closed complaints from the total of all payday and title loans. The complaints predominately pertain to posting/processing of payments, charges and fees, collection practices, repossessions, and consumer alleging that they did not apply for loan for both categories. Although payment posting has slightly moved up from FY15 to FY 16, most other areas have experienced improvement, particularly the following categories: excessive charges & fees in title loans from 22% in FY 15 to 14.6% in FY 16. Repossessions went down from 19% in FY15 to 16.2% in FY16.

	FY16		**FY15**	
Complaint/Concern	**Payday Loans**	**Title Loans**	**Payday Loans**	**Title Loans**
	% of Closed Complaints		% of Closed Complaints	
Payment Posting/Processing	37.5%	31.3%	30.%	24.0%
Excessive Charges & Fees	13.0%	14.6%	10.0%	22.0%
Collection Practices	8.7%	--	15%	--
Repossession	--	16.2%	--	19.0%
Right of Rescission & Did Not Apply for Loan	8.7%	--	15%	--
Release of Title Upon Payoff	--	10.6%	--	17.0 %

Legal

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

Type of Action	**Number of Actions**	
	FYTD17	**FY16**
License Revocation or Suspension	1	2
Injunctions	31	25
Administrative Penalties	8	97

Table 3: Administrative actions taken during FY16 and FYTD17 (September 1, 2015 through January 31, 2017).

Credit Access Business Reporting

The presented statistics compare data between calendar year (CY) 16 & CY 15. The total number of locations from CY 16 is down by 24.9% from CY 15 and is partially attributed to consolidation of businesses, market uncertainty, and city ordinances. Although the total overall loan volume continues to decrease, the number and length of installment loans continues to trend upward.

Data Highlights (All Loan Types)	2016	2015
Payday (deferred presentment) loan volume including refinances	$2,374,123,320	$2,559,129,691
Payday loan fee volume	$1,184,216,814	$1,241,118,102
Auto title loan volume including refinances	$1,226,006,680	$1,545,073,781
Auto title loan fee volume	$410,318,639	$432,068,935
Average number of payday loans per customer	2.99	3.13
Average number of auto title loans per customer	3.14	3.35
Number of vehicles repossessed under all auto title loans	32,077	37,296
Total number of locations reporting activity	2,018	2,688

	Single Installment		Multiple Installment	
Payday Loans	**2016**	**2015**	**2016**	**2015**
Number of consumers obtaining new loans	639,888	724,273	779,678	704,985
Number of new loans	1,368,563	1,446,582	966,947	964,335
Number of refinances on loans initiated in report year	1,716,049	1,877,570	188,820	186,217
Average loan amount	$449	$476	$561	$540
Average fee per $100 borrowed (on planned term)	$23.76	$23.58	$166.21	$166.38
Average original term (in days)	18	19	159	160

	Single Installment		Multiple Installment	
Title Loans	**2016**	**2015**	**2016**	**2015**
Number of consumers obtaining new loans	135,171	178,613	94,254	83,682
Number of new loans	164,901	231,475	108,722	97,045
Number of refinances on loans initiated in report year	396,931	513,594	49,342	37,617
Average loan amount	$1,224	$1,308	$1,221	$1,083
Average fee per $100 borrowed (on planned term)	$18.35	$16.96	$88.31	$89.91
Average original term (in days)	32	30	159	169

Texas Financial Education Endowment

As part of the licensing process each CAB location pays an annual assessment fee to the Texas Financial Education Endowment Fund to provide opportunities for asset building, improved consumer credit, and financial education (§393.628, Texas Finance Code). The assessments are collected by the Agency 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. In December 2015, the Finance Commission chose eight organizations to receive grant awards in an aggregate amount of $250,000 in the second 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 OCCC is currently preparing for the upcoming grant application cycle to begin in January of 2018.

Federal Rulemaking

The OCCC is monitoring several rule actions that federal agencies have recently proposed or adopted. These rules may have significant impacts to regulated entities where the OCCC has regulatory jurisdiction.

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 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 has proposed that the rule will begin to apply 211 days after a final version of the rule is published in the *Federal Register*. In a fall 2016 rulemaking agenda, the CFPB listed February 2017 as a target date for issuing the final rule.

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. In August 2016, the CFPB convened a Small Business Review Panel to gather feedback from small businesses on the proposal. After the CFPB publishes the proposed text of the rule, there will be an additional period for comments from the public.

CFPB Larger Participant Rule for Automobile Financing

On June 30, 2015, the CFPB published a final rule defining larger participants in the automobile financing market. These larger participants are subject to the CFPB's enforcement authority. The Dodd-Frank Act provides the CFPB with enforcement authority over a nondepository institution that: (1) originates or services mortgage loans, (2) is a larger participant as defined by rule, (3) has been notified by the CFPB of conduct that poses a risk to consumers (based on a complaint about the institution or another source), (4) offers private education loans, or (5) offers payday loans. 12 U.S.C. § 5514.

Under the CFPB's rule, an automobile financing company is a larger participant if it has at least 10,000 aggregate annual originations. Annual originations include granting credit to purchase a vehicle, entering a lease, refinancing credit to purchase a vehicle, and purchases or acquisitions of credit to purchase a vehicle. The rule does not apply to motor vehicle dealers that: (1) engage in the sale and servicing of motor vehicles (or the leasing and servicing of motor vehicles), and (2) routinely assign the credit contracts they enter with consumers (or don't enter credit contracts). These motor vehicle dealers are exempt from the CFPB's authority under the Dodd-Frank Act. 12 U.S.C. § 5519.

The CFPB's larger participant rule for automobile financing went into effect on August 31, 2015.

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). If a creditor makes a loan to a covered military borrower, then the MLA Rule: (1) prohibits the lender from making the loan at a military APR over 36% (the MAPR is similar to APR but includes additional charges), (2) requires the creditor to provide a disclosure about the MLA Rule and the MAPR to the borrower, and (3) prohibits the creditor from requiring arbitration. The DOD has established a database that lenders can consult, to determine whether a consumer is a covered military borrower.

Lenders were required to comply with the amended MLA Rule starting October 3, 2016.

IMPLEMENTATION OF LEGISLATION FROM THE 84TH LEGISLATURE

SB1075: Criminal History Obtained by OCCC

This bill specified that the OCCC may obtain criminal history information from the Department of Public Safety for license holders or applicants under the following chapters of the Finance Code: Chapter 180 (residential mortgage loan originators), Chapter 393 (credit access businesses), and Chapter 394 (debt-management providers). The bill also allowed the OCCC to obtain criminal history information for an employee or volunteer of the OCCC, an applicant for employment with the OCCC, or a contractor or subcontractor of the OCCC. It provided that the OCCC may not release the information unless: (1) it is obtained from a fingerprint-based search, and (2) it is released on a court order, to the person who is the subject, or with the consent of the person who is the subject. The Finance Commission has adopted rule amendments to implement SB 1075.