Office of the State Bank Commissioner

Small Dollar and Open-End Lending Under the Uniform Consumer Credit Code (UCCC)

Special Committee on Financial Institutions and Insurance

October 11, 2017

Role of the Consumer and Mortgage Lending Division

- The Consumer and Mortgage Lending Division (CML) has two primary responsibilities:
  - License non-depository entities that conduct mortgage business, extend consumer credit or provide debt management services. The CML Division is fully funded through licensing application and renewal fees and annual report/volume fees.
    - A list of entities licensed with the Office of the State Bank Commissioner (OSBC) is available on the agency's website www.osbckansas.org.
  - Examine entities licensed by the Division for compliance with state and federal law and regulation.
- Administer grants to support consumer education and awareness.
- Respond to consumer questions and concerns.

CML Consumer Credit Law

- Uniform Consumer Credit Code (UCCC)

  - The UCCC is the primary state law that governs consumer loans and credit sales, or, as stated in the UCCC "any loan for personal, family or household use."

  - This coverage includes payday, title and installment loans (also referred to as "small dollar loans") but also auto loans and sales, open-end lines of credit such as HELOCs, consumer credit sales such as furniture, jewelry, and other types of credit sales. Lenders making high loan-to-value mortgages or second mortgages are also subject to the UCCC.

  - The UCCC defines how credit transactions may be structured, specifies what information must be provided to the consumer, and sets limitations on fees, interest and other charges.

Kansas
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CML Licensing Activity – 1st Half 2017

Entity Type	Entities on 12/31/16	Surrenders	Newly Licensed	Entities on 6/30/17	Net Changes (#)	Net Changes (%)
Mortgage Companies	434	11	27	450	16	4%
Mortgage Company Branches	766	85	127	808	42	5%
Supervised Lenders[1]	278	11	16	283	5	2%
Supervised Lender Branches	359	18	11	352	-7	-2%
Mortgage Loan Originators	6,115	1,143	1,121	6,093	-22	0%
Credit Services Organizations	31	2	0	29	-2	-6%
Notification Filers[2]	2,310	215	63	2,158	-152	-7%
Total Entities:	**10,293**			**10,173**	**-120**	**-1%**

[1]Lenders that make or take assignment of loans with an APR that exceeds 12%. Includes finance companies, small dollar lenders, and debt buyers.

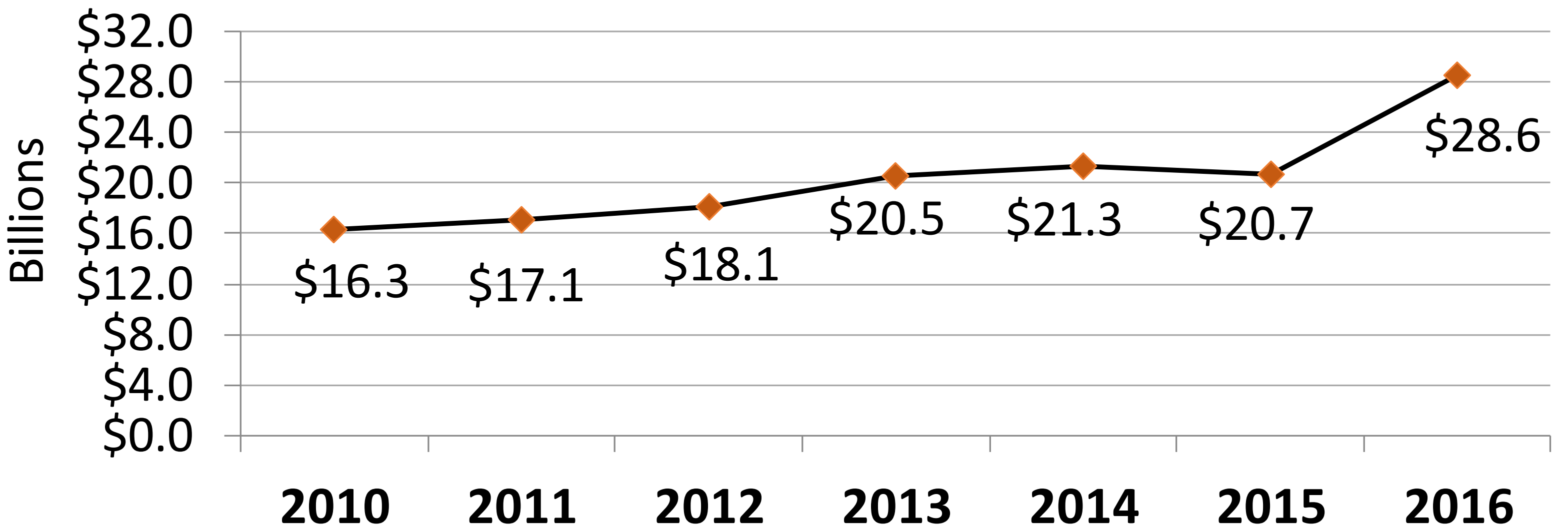
[2]Creditors that enter into consumer credit transactions (credit loan, sale or lease), take assignment of and undertake collection of payments, or take assignment of and enforce rights against debtors arising from the consumer credit transactions. Loans must be less than 12% APR. Notification filers include buy here/pay here auto dealers, furniture stores, jewelry stores, and funeral homes.

Kansas

Office of the State Bank Commissioner

Total Kansas Loan Volume[1]

(as of last annual report)

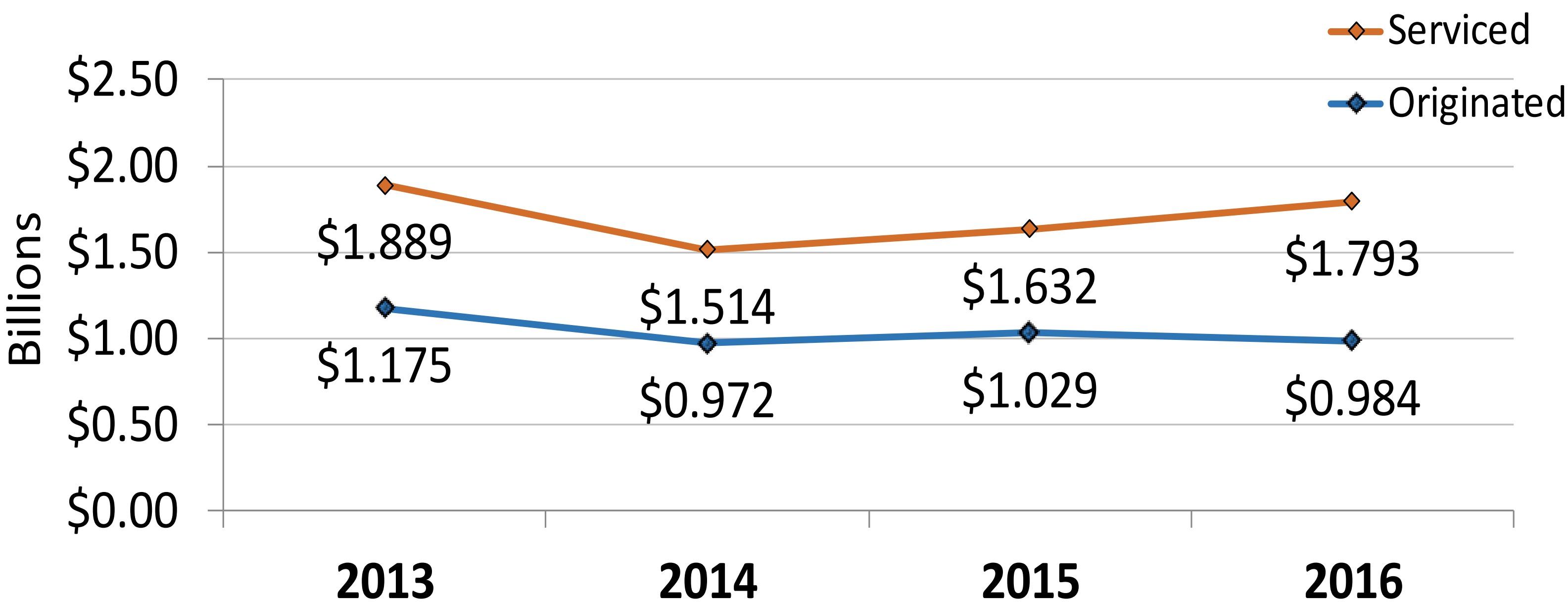


[1]Loan volume includes: mortgage loan originations, acquisitions, and servicing; consumer loan originations and servicing; credit sales originations and servicing; and debt management plans. For 2016, the spike was partially a result of higher mortgage origination volume as well as reporting changes capturing subservicing volume.

Office of the State Bank Commissioner

CML Consumer Loan Activity[1]

(as of last annual report)



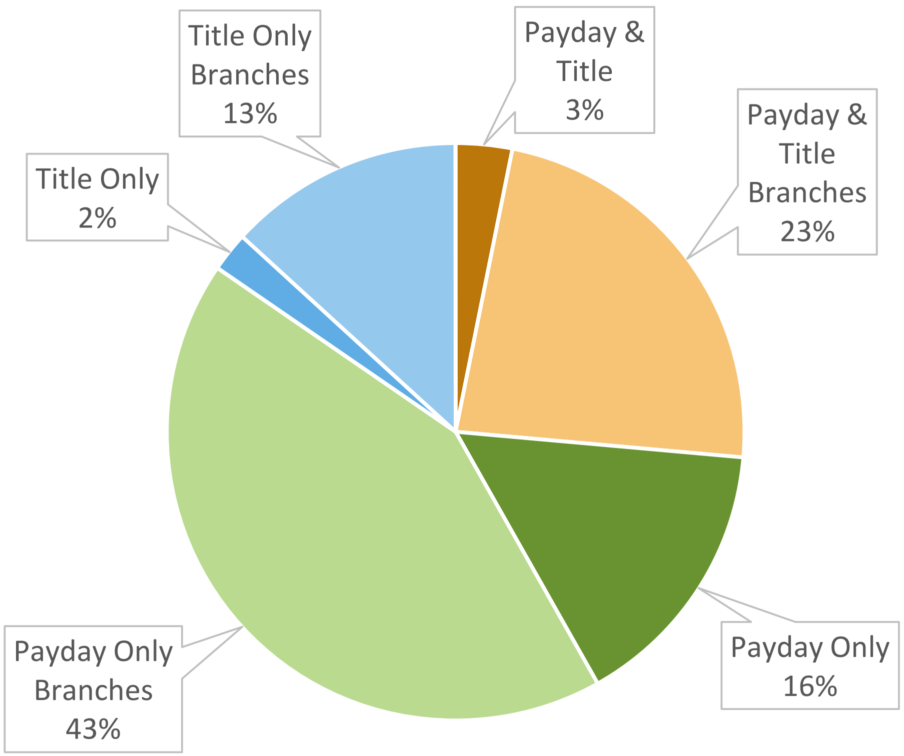
[1]Loan volumes include: consumer closed-end and open-end loans; payday loans; title loans; and other high-rate loans.

Kansas
Office of the State Bank Commissioner

Small Dollar Lending in Kansas

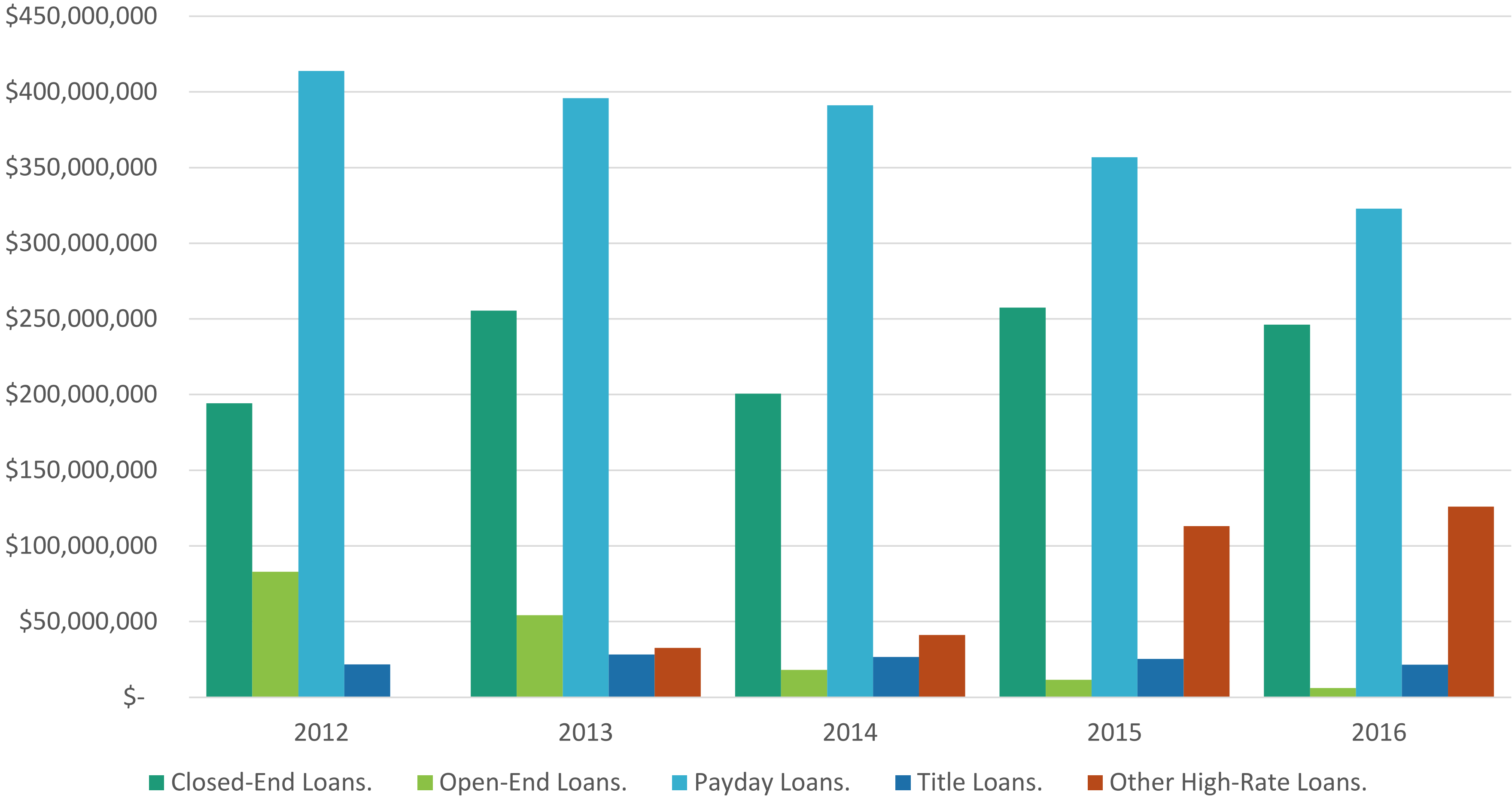
Companies providing payday, title or other small dollar loans are required to license with the OSBC and comply with the provisions of the UCCC.

Payday Only	49
Payday Only Branches	136
Payday & Title	10
Payday & Title Branches	74
Title Only	7
Title Only Branches	42
Total Companies	66
Total Branches	252
Total Locations	**318**



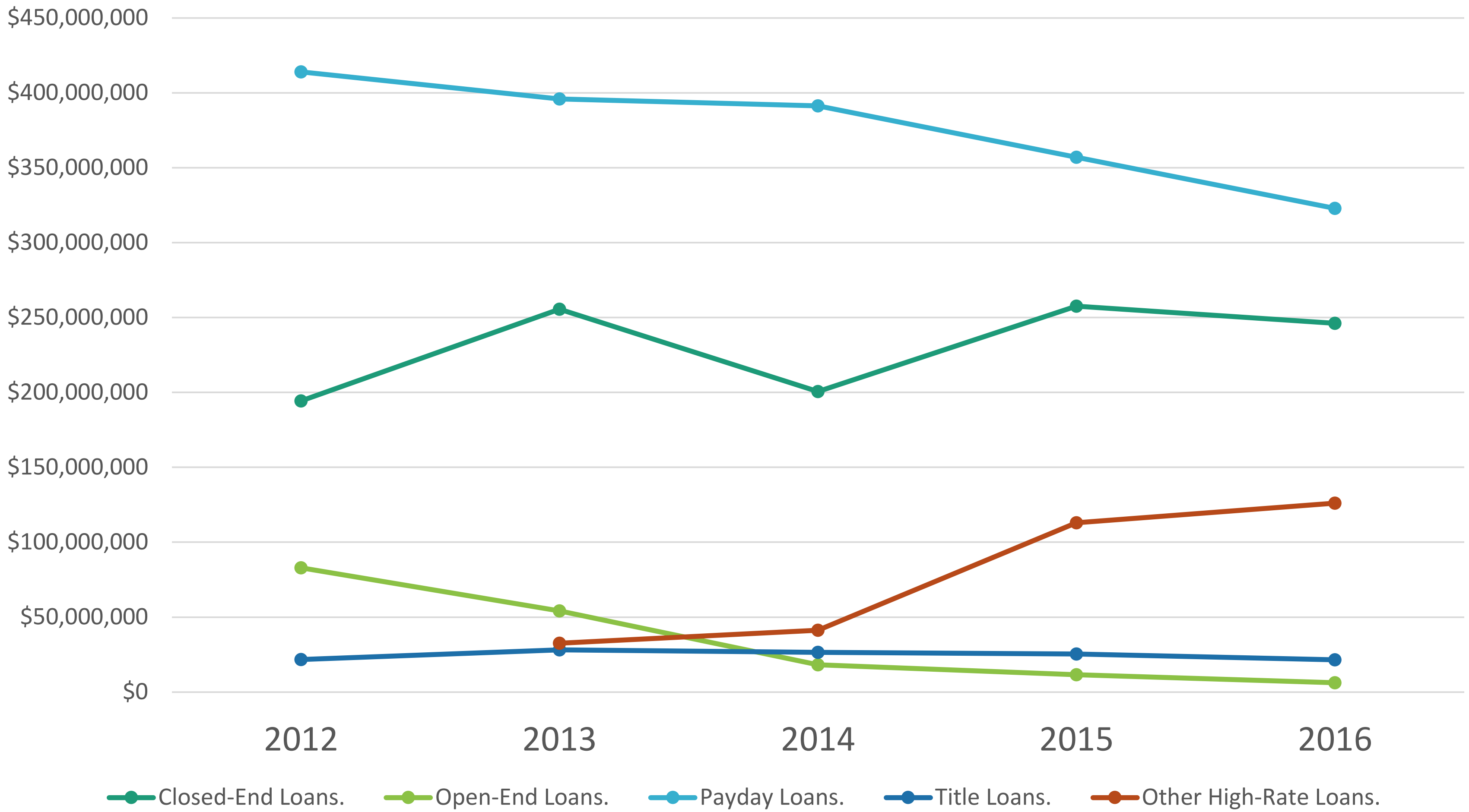
Office of the State Bank Commissioner

Consumer Loan Volumes by Type



Office of the State Bank Commissioner

Consumer Loan Volumes by Type



Trends in Small Dollar Lending

- The OSBC notes that some lenders are moving away from the traditional payday loan model and into an installment loan product, which is also permitted under the UCCC. The CFPB rule issued on October 5, 2017 will impact the type of product lenders offer.

- A growing challenge for both state and federal regulators is unlicensed lenders that operate primarily, or only, online.

- Online unlicensed lenders often operate outside state or federal jurisdiction.

Payday Loans

- Payday loans are governed by the UCCC
- Payday lenders that operate in Kansas are required by state law (UCCC) to license with the OSBC
- Payday loans are generally offered by a company focused on payday lending, but loans may be offered by other financial institutions

Payday Loans

Terms of a Payday Loan (K.S.A. 16a-2-404 and K.S.A. 16a-2-501)

- A payday loan may not exceed $500.
- The loan term must be between 7 and 30 days.
- A lender cannot charge a finance charge greater than 15% of the payday loan.
  - Example - $200 loan x 15% = $230
    - Consumer will repay $230 at the end of the loan term (7-30 days)
- Repayment in a single payment is anticipated

Fees Permitted for Payday Loans (K.S.A. 16a-2-404 (5) and K.S.A. 16a-2-501)

- The UCCC permits lenders to collect the following fees for a payday loan:
  - Loan Amount – average loan amount in Kansas is $385
  - Finance Charge (cannot exceed 15% of amount borrowed -- $15 for every $100 borrowed)
  - A lender may assess and collect no more than 3% per month of the loan proceeds after the maturity date of the payday loan
  - A $10 charge is permitted for an insufficient check; however, statute permits a lender to contract for up to $30 for an insufficient check

Required Disclosures (K.S.A. 16a-2-404(4))

- The loan contract must contain two notices.
  - NOTICE TO CONSUMER: 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay the unpaid balance at any time without penalty.
  - NOTICE TO BORROWER: KANSAS LAW PROHIBITS THIS LENDER AND THEIR RELATED INTEREST FROM HAVING MORE THAN TWO LOANS OUTSTANDING TO YOU AT ANY ONE TIME. A LENDER CANNOT DIVIDE THE AMOUNT YOU WANT TO BORROW INTO MULTIPLE LOANS IN ORDER TO INCREASE THE FEES YOU PAY.
- The Notice must be disclosed in both English and Spanish in at least 10-point font.
- The borrower must sign or initial by the language in which they are most fluent.

Right to Rescind (K.S.A. 16a-2-404(9)

- A borrower may rescind a payday loan transaction without having to pay any amount as long as the borrower rescinds the loan no later than the end of the business day immediately following the day on which the loan was made.

- A borrower must inform the lender that they want to rescind the loan.

- A borrower must return any cash amount of the principal of the loan to the lender.

- The lender must return any fees (i.e. finance charge) that have been collected to the borrower in association with the loan.

Repayment Plan

- There are no specific Kansas laws prohibiting the use of a repayment plan on a payday advance. However, a repayment plan must conform to the laws of the UCCC and may only be an amendment to the original transaction.

- No additional fees may be charged in connection with a repayment plan.

Prohibitions (K.S.A. 16a-2-404)

- A lender and related interest cannot have more than two loans to the same borrower at any one time
- A borrower cannot obtain a new loan from the same lender or related interest to pay off an existing loan
- A lender cannot make more than three loans to the same borrower within a 30-day period
- No insurance charges or any other charges are permitted, except an insufficient funds fee
- A lender is prohibited from seeking civil penalties allowed by K.S.A. 60-2610 for a returned check written in exchange for a payday loan

Prohibitions (K.S.A. 16a-2-404)

- A lender may not sell any other product in connection with making or collecting a payday loan

- A lender may not include any of the following provisions in a payday loan document:

    - A hold harmless clause
    - A confession of judgment clause
    - A provision in which the consumer agrees not to assert a claim or defense arising out of the loan contract

Criminal Prosecution Not Allowed (K.S.A. 16a-2-404 (10))

- The lender is not allowed to use or threaten to use the criminal process in any state to collect on the loan.

Lender Requirements

- Each lender must keep a journal of loan transactions for each borrower containing the borrower’s name, address, phone number, the date the loan was made, and the loan due date

- Records must be retained for 36 months after the last entry on the account

- Submit an annual report to the OSBC regarding number and volume of activity for the previous calendar year

Payday loans to military borrowers (K.S.A. 16a-2-405)

- A lender may not garnish any wages or salary paid to a military borrower for service in armed forces.
- A lender may not contact any person in the military chain of command of a military borrower in an attempt to collect such a loan.
- A lender must defer all collections against a military borrower who has been deployed and for the entire duration of deployment.
- A lender may not make a payday loan to any military borrower whenever the base commander has declared such place of business off limits to military personnel.
- The federal Military Lending Act (MLA) also applies.

Other Small Dollar Loans / Installment Loans

An installment loan is a loan with scheduled payments over time. There has been a rise in the availability and usage of small dollar installments loans.

- Small dollar installment loans typically have a term of several months but usually not more than a few years
    - Often used to consolidate other debt at a lower rate
    - Consumer may borrow an amount above $500
    - Generally have more favorable interest rates than other short term loan options

- Some loans are offered online only, others have both storefront and online presence

- Offered by a variety of consumer credit providers

Title Loans

- Title Loans are offered under the UCCC's open-end statute where the interest rate is agreed to by the parties to the transaction (KSA 16a-1-401).
- Open-end credit allows a consumer to borrow money up to an amount pre-approved by the lender, and the consumer may repeatedly borrow up to the pre-approved amount.
- Consumer may either pay the balance in full or pay in installments.
- Title Loans are secured by a consumer's vehicle title. UCCC provides the consumer a right to cure protection.

Agency Authority

- The target examination schedule for regulated entities is approximately every 36-40 months. Exams are conducted both on-site and off-site. More frequent exams are conducted if necessary. Exams review transactions for compliance with state and federal law as well as review of management, and company policies and procedures.

- The agency has statutory authority to take a range of enforcement actions as needed for companies not in compliance.

- Enforcement actions may include consumer restitution, fines, and license revocation or bar from state.

Consumer Education Initiatives

- The OSBC provides grants to support consumer education programs statewide. Grants support programs for children and adults.

- Fines and penalties collected as a result of enforcement actions are deposited in the Consumer Education Settlement Fund and used to fund grants for consumer education.

- The OSBC has provided approximately $4.8 million in grants for consumer education since 1999, awarding an average of $250,000 annually.

- Grantees served more than 41,000 consumers/students in FY2016.

- **KansasMoney.gov** – A state agency partnership that developed and launched a one-stop website for consumer financial information and assistance. Participating agencies include: Kansas Securities Commissioner, Office of the State Bank Commissioner, Attorney General, State Treasurer, Department of Revenue, Kansas Department of Credit Unions, and Kansas Insurance Department.

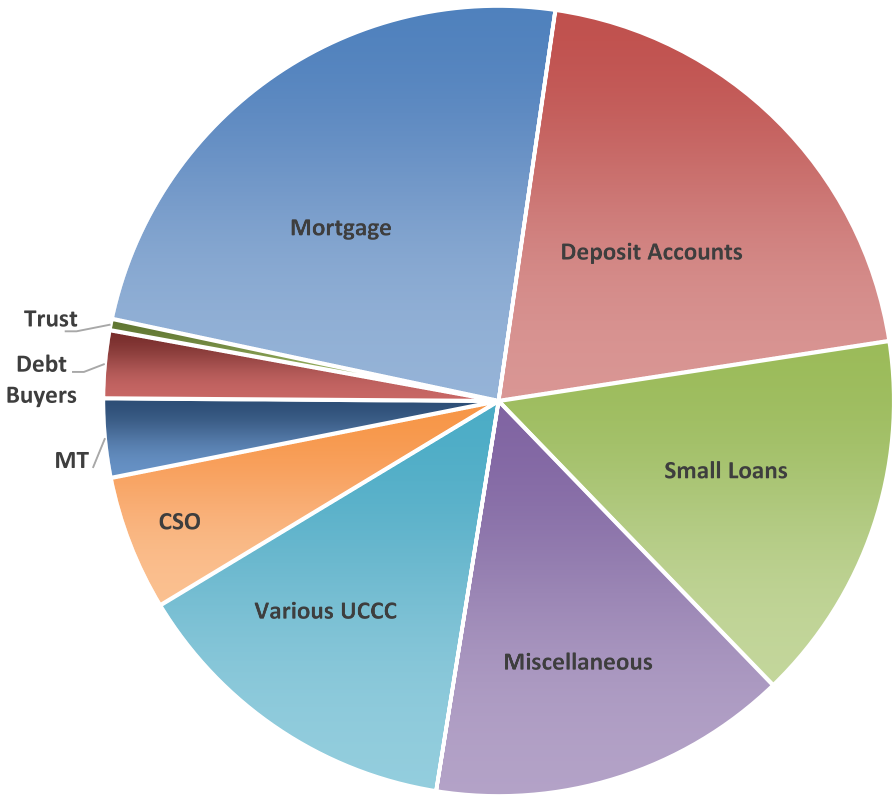
Office of the State Bank Commissioner

Consumer Inquiries and Complaints in 2016

The OSBC receives approximately 1,500 inquiries per year

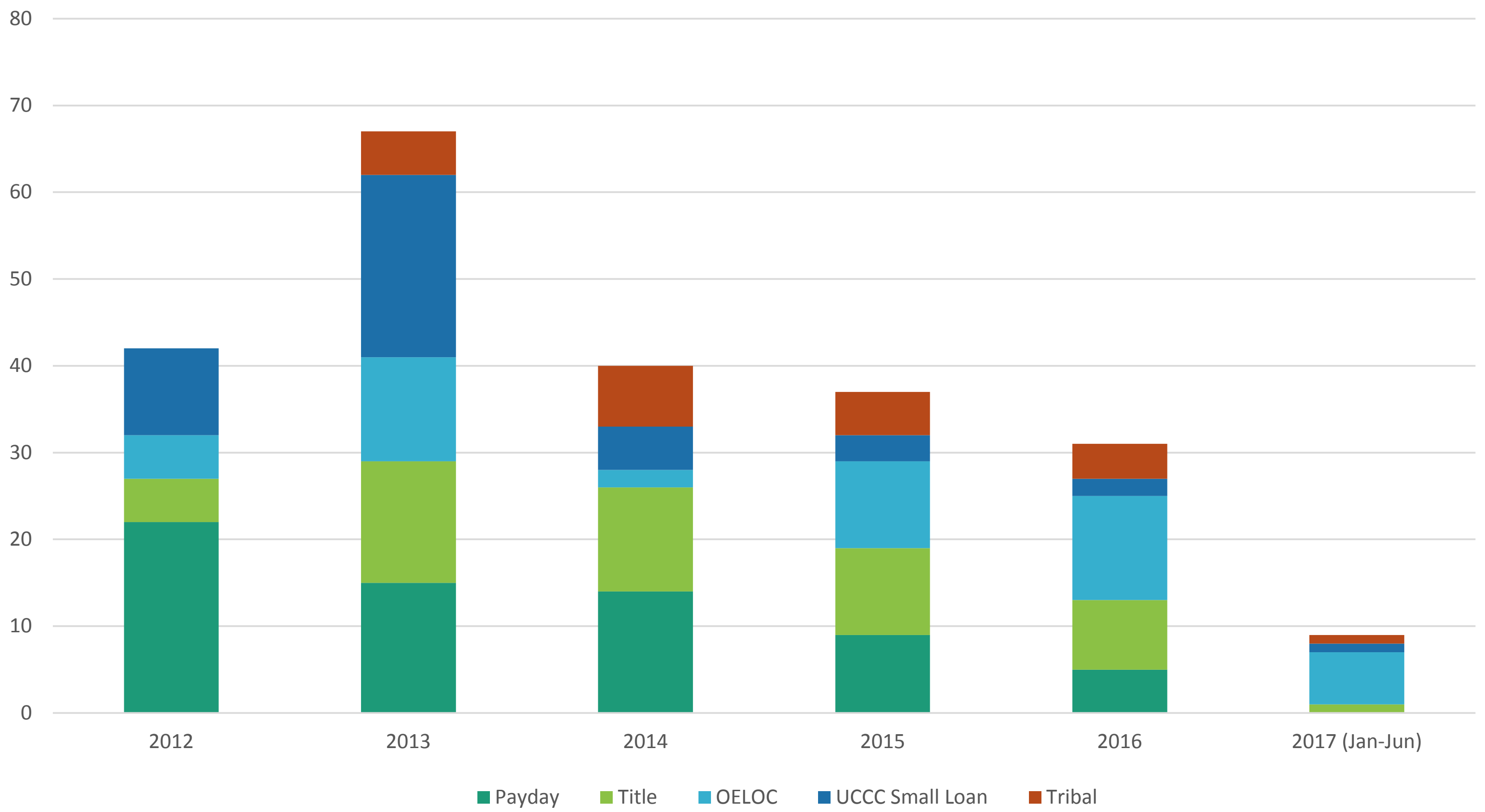
Total Consumer Complaints in 2016: 217

2016 Written Complaints by Topic



- Mortgage - 52
- Deposit Accounts - 44
- Small Loans (Payday/Title/OE LOC) - 33
- Miscellaneous (Scam/ID Theft/Other) - 32
- Various UCCC / Auto / Sales Finance - 30
- CSO - 12
- Money Transmitters - 7
- Debt Buyer - 6
- Trust Companies - 1

OSBC Small Dollar Loan Complaints



OSBC Small Dollar Loan Complaints

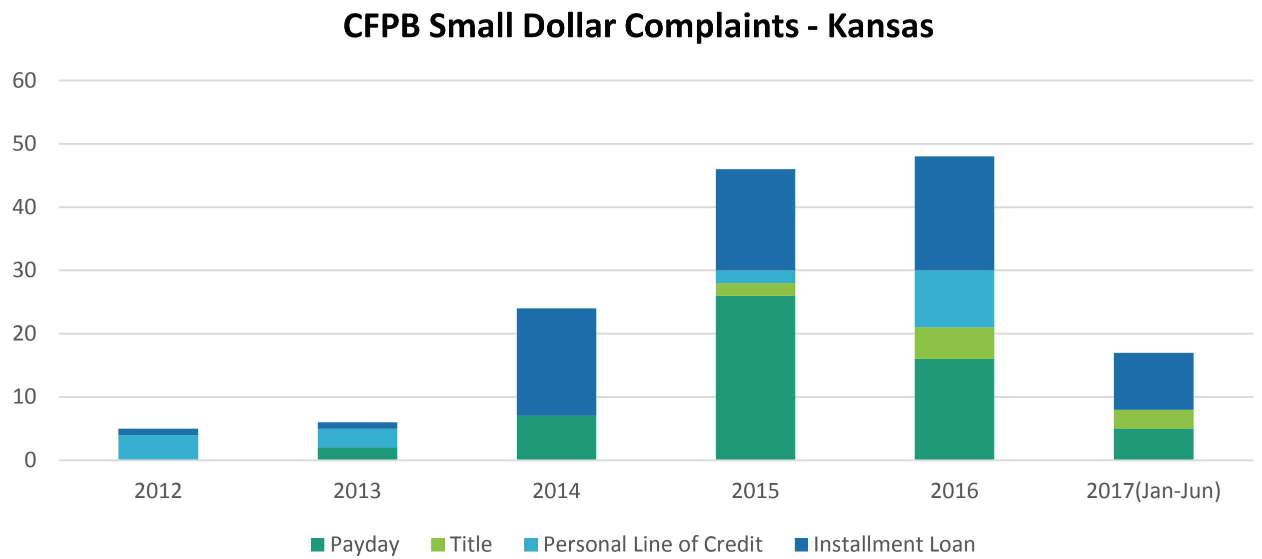
The OSBC receives approximately 1,500 inquiries per year

Total of All Consumer Complaints in 2016: 217

OSBC Small Dollar Loan Complaint Data Summary								
Year	**Payday**	**Title**	**OELOC**	**UCCC Small Loan**	**Tribal**	**Total**	**Total Complaints**	**Percent of Yearly Total**
2012	22	5	5	10		42	286	14.69%
2013	15	14	12	21	5	67	268	25.00%
2014	14	12	2	5	7	40	277	14.44%
2015	9	10	10	3	5	37	239	15.48%
2016	5	8	12	2	4	31	217	14.29%
2017(Jan-Jun)	0	1	6	1	1	9	124	7.26%
Total	**65**	**50**	**47**	**42**	**22**	**226**	**1411**	**16.02%**

	2012	**2013**	**2014**	**2015**	**2016**	**2017 (Jan-Jun)**	**Total**
Payday	22	15	14	9	5	0	65
Title	5	14	12	10	8	1	50
OELOC	5	12	2	10	12	6	47
UCCC Small Loan	10	21	5	3	2	1	42
Tribal		5	7	5	4	1	22
Total	**42**	**67**	**40**	**37**	**31**	**9**	**226**

CFPB Small Dollar Loan Complaints



CFPB Small Dollar Loan Kansas Complaint Data Summary							
Year	Payday	Title	Personal Line of Credit	Installment Loan	Total	Total Complaints	Percent of Yearly Total
2012			4	1	5	333	1.50%
2013	2		3	1	6	474	1.27%
2014	7			17	24	750	3.20%
2015	26	2	2	16	46	840	5.48%
2016	16	5	9	18	48	952	5.04%
2017(Jan-Jun)	5	3		9	17	608	2.80%
Total	**56**	**10**	**18**	**62**	**146**	**3957**	**3.69%**

Federal Regulation – CFPB

- Many consumer financial protection provisions are contained in Title X of the Dodd-Frank Act (DFA), which establishes the Consumer Financial Protection Bureau (CFPB). The CFPB is an executive branch agency, established in 2011, that assumed most of the existing federal consumer protection responsibilities exercised by other federal regulators. The CFPB has broad authority to identify consumer protection issues and implement regulations to address those issues.

Federal Regulation – CFPB Final Rule

CFPB Final Rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans

- In June 2016, the CFPB proposed a rule regarding certain types of short-term and long-term loans ("covered loans"). The CFPB announced a final rule on October 5, 2017. The implementation period is 21 months following publication of the rule in the Federal Register.
- The rule covers short-term loans less than 45 days that are open-end or closed-end.
- The rule covers longer-term loans more than 45 days that are open-end or closed-end and have a balloon payment feature.
- Certain types of loans are exempted from the rule, including loans for autos and consumer goods, real estate loans, credit cards, student loans, pawn loans, overdraft services and overdraft lines of credit.
- Lenders that make 2,500 or fewer loans per year and derive 10% or less in revenue from the loans, are exempt from the rule.

Federal Regulation – CFPB Final Rule

Key Provisions:

- Lender must assess a borrower's ability to repay a closed-end or open-end loan
  - The rule provides an alternative to the ability-to-repay that permits the consumer to take out up to three loans in succession if the amount of loan principal is reduced by at least 1/3 each time.
- Limits the number of loans a consumer may take out within a specific timeframe.
  - Loans are limited to no more than 3 in 30 day period.
- Limits the lender's access to a consumer's deposit or other payment account.
- For short-term loans requires 30-day mandatory cooling off period after 3 loans before a consumer can take out another covered loan.

CFPB Rule and the UCCC

- The UCCC statutes governing the loans covered in the rule do not align with all of the requirements in the rule.

OSBC WORKING DRAFT SUMMARY

CFPB Proposed Rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans

The following three pages comprise a draft summary of the CFPB's Proposed Rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans. The summary is not intended to provide, nor should it be construed to be, any legal guidance or interpretation of the proposed CFPB rule. Questions regarding the proposed rule should be directed to the CFPB.

Background

- The rule establishes loans with certain characteristics as "covered loans" and subject to the rule.
- Products that may be considered "covered loans" and subject to the rule include: payday loans, deposit advance products, and certain longer-term loans (only those with balloon payment).
- Loan products excluded: purchase-money loans for autos and consumer goods, real estate secured loans, credit cards, student loans, non-recourse pawn loans, overdraft services and overdraft lines of credit, wage advance programs, certain no-cost advances, loans that conform to the NCUA's PAL program, and loans made by lenders that make 2,500 covered loans per calendar year and did not derive more than 10 percent of their receipts from covered loans during the previous tax year.

Types of Covered Loans

Short-term Loans with a term of 45 days or less

- Closed-end loans and Open-end loans: the consumer is required to repay substantially the entire amount of the loan within 45 days.

  *Principal step down option (See page 2)

Longer-term balloon-payment Loans more than 45 days

- Closed-end loan: Consumer required to pay or repay substantially the entire balance of the loan in a single payment more than 45 days after loan closes or one payment that is more than twice as large as any other payment (balloon payment).
- Open-end loan: Consumer required to pay substantially the amount advanced in a single payment more than 45 days after the advance is made or is required to make at least one payment on the advance that is more than twice as large as any other payment(s).
- Open-end loan: Loan allows multiple advances where paying the required minimum payments may not fully amortize the outstanding balance by a specific date/time, and the amount of the final payment to repay could be more than twice the amount of other minimum payments under the plan (balloon payment).
- Other Loan Type: A longer-term loan is subject only to payment withdrawal practices, disclosures and record keeping if the loan has an APR over 36% and the lender has access to a consumer's account.

Provisions applicable to all covered loans

- Ability to Repay and Underwriting: Before making a covered loan or advance, a lender must reasonably determine that the consumer will be able to make the payments on the loan while also meeting major financial obligations and basic living expenses without the need to reborrow over the next 30 days. Lenders are also required to make this determination for an open-end loan if a consumer seeks an advance more than 90 days after the last determination that the consumer has the ability to repay the loan.
- Payments: Lenders are generally subject to two requirements when collecting payments on covered loans directly from consumers' accounts: pre-withdrawal notice required, and further withdrawals prohibited after two unsuccessful attempts unless the lender obtains new and specific consumer authorization.
- Lenders are required to submit information regarding covered loans to a registration system and use the system to verify the consumer's eligibility for a covered loan.
- Lenders are required to develop compliance policies and procedures, retain records, and satisfy certain credit-reporting related requirements.

Both Short-term and Longer-term Loans Require Assessment of Ability-to-Repay (ATR)
ATR Test:

- Lenders are required to obtain and consider documentation of a consumer's financial information including:
  - Consumer net income -- consumer is required to state net income and amount of payments required to meet major financial obligations. Specified major financial obligations: housing, debt payments, child support, and alimony.
  - Verify the consumer's net monthly income through reliable records of income or consumer's written statement.
  - Verify the amount of payments required for the consumer's major debt obligations using a credit report, lender and affiliates records, and registered information system approved by the CFPB, or if not available, lenders may rely on consumer's written statement.
  - Determine that making the loan will not result in the consumer having more than three covered short-term or balloon payment loans taken out within 30 days of each other.
  - Lenders must verify borrowing history on covered loans with the same lender and affiliates; and
  - Determine the consumer's ATR based on lender's projections of either consumer's residual income or debt-to-income ratio during the calendar month with the highest payment(s) under the loan.
    - Residual income analysis: Short-term loan. Lender must determine if the consumer has enough projected residual income (net income minus major financial obligations) to meet major financial obligations, make payments on the loan and meet basic living expenses for the lesser of the loan term or 45 days after loan made plus 30 days after making highest payment under loan. For short-term and balloon payment loans, the lender must assess ability-to-repay without reborrowing within 30 days of largest payment. Longer-term loan: must meet same obligations as above during loan term and 30 days after making highest payment under loan.
  - A 30-day mandatory cooling off period is required after three loans before consumer can take out additional covered loan.

Principal Step-Down Option for Certain Covered Short-term Loans:
This option has the following features:

- Loans made under this part are not required to have an ATR determination made.
- The loan is not open-end credit.
- The loan does not result in the consumer having more than three consecutive covered short-term loans.
  - First loan has a principal amount of $500 or less.
  - Any successive loan made within 30 days of a prior loan must reduce the principal amount by at least one-third from the prior loan.
  - After a sequence of three covered short-term loans under this option, a 30-day mandatory cooling off period before consumer can take out additional short-term loans under this option.
- Lender does not take security interest in vehicle.
- Consumer has not had any outstanding covered loan in the past 30 days.
- This option cannot be used if the consumer has been in debt on covered short-term loans for an aggregate period of more than 90 days or has had six such loans in any consecutive 12-month period. In this case, the lender is required to use ATR analysis to determine if consumer could afford another loan.
- Lender and affiliates cannot make any other loan to that consumer while principal step-down is outstanding and for 30 days after.

- Lenders are required to provide certain disclosures in writing or electronically, separate from all other materials provided to the consumer regarding the loan. The disclosures below must be provided at two points in time:
  - First Loan Notice - When the lender makes a first loan. Disclosure provides notice to the consumer that the consumer should not take out the loan if the consumer is unsure of being able to repay the total amount of principal and finance charges by the due date, and a statement that the Federal law requires a similar loan taken out within the next 30 days to be for a smaller amount. Disclosure also informs the consumer of principal step-down requirements for additional loans.
  - Third Loan Notice - When a lender makes a third loan in a sequence. Disclosure provides the consumer notice that the lender's records show the consumer has two similar loans without taking at least a 30-day break between loans, and a statement that Federal law requires the loan amount to be smaller than previous loans in the loan sequence. Disclosure also contains statement that the consumer cannot take out a similar loan for at least 30 days after repaying the (third) loan.

Payment Withdrawals

Two requirements regarding lenders' withdrawal of payments from the consumer's account after prior attempts have failed due to insufficient funds.

- Lenders are required to provide written notice to the consumer before the first attempt to withdraw payment for a covered loan and before any attempt using a different payment channel or when withdrawal deviates from scheduled dates or amounts. Notice must provide information about the upcoming payment attempt. Lender may provide notice electronically with consumer consent.

- After two consecutive withdrawal attempts fail due to insufficient funds, the lender cannot attempt another withdrawal from same account unless the consumer consents to further withdrawals.

Registered Information Systems

Lenders making covered loans or principal step-down loans are required to:

- Provide certain loan data to information systems registered with and supervised by the CFPB.

- Pull a consumer report from at least one system when making a covered loan. Lenders are required to report loan information to all registered information systems at origination, update the information if it changes over time, and report information when a loan ceases to be outstanding.

- CFPB sets criteria for entities to become a registered information system. Criteria includes: capability to receive information and generate reports, federal consumer financial law compliance program, comprehensive information security program, ability to facilitate compliance with the rule.