



Office of the State Bank Commissioner

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# Overview of Financial Products and Consumer Protections

Presented by the Consumer and Mortgage Lending Division,  
Office of the State Bank Commissioner

House Financial Institutions Committee

January 23, 2014



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## Role of the CML Division

- The Consumer and Mortgage Lending Division examines and licenses payday lenders, title loan lenders, mortgage companies, and other consumer credit providers. As of December 31, 2013, the Consumer and Mortgage Lending Division had 7,554 entities under its supervision.
- Administers grants to support consumer education and awareness
- Responds to consumer questions and concerns



# Who we regulate

- Payday Lenders
- Title Lenders
- Mortgage Brokers
- Mortgage Lenders
- Mortgage Servicers
- Finance Companies
  - A lender who makes consumer loans
- Notification Registrants
  - Auto Dealers, Doctor's Offices, Furniture Stores, other businesses who make credit sales or assignment
- Debt Purchasers
- Credit Services Organizations



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# State and Federal Laws

The Consumer and Mortgage Lending Division supervises and enforces the following state and laws:

- Uniform Consumer Credit Code (UCCC)
  - K.S.A. 16a-1-101 to 16a-9-102
- Kansas Mortgage Business Act (KMBA)
  - K.S.A. 9-2201 to 9-2220
- Credit Services Organization Act
  - K.S.A. 2004 Supp. 50-1116 to 50-1135
- Federal Regulation Z (TILA)
- Federal Regulation X (RESPA)
- Federal Regulation B (ECOA)
- Federal Regulation CFR Part 232 (DoD)
- Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act)
- Dodd-Frank Wall Street Reform and Consumer Protection ACT (CFPB Regulations)



## State Laws

- The Uniform Consumer Credit Code (UCCC) is the primary state law that governs consumer loans and credit sales.
- The UCCC defines how credit transactions may be structured, what information must be provided to the consumer, and limitations on fees, interest, and other charges.
- For example, consumer credit sales or loans made under the UCCC may generally be at an interest rate that the lender and borrower agree upon, subject to the restrictions and consumer protections that are included in the UCCC.



## CML Examinations

- One of our primary responsibilities is to exam companies that are licensed/registered with our office for compliance with state and federal laws and regulations. Can take range of enforcement actions for companies not in compliance.
- The target examination schedule for regulated entities is approximately every 36 months. More frequent exams may be conducted if necessary.



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# Types of Entities Licensed/Registered and Regulated by CML

Year-end 2013

|  |       |
|--|-------|
| Supervised Lenders (includes branches)         | 954   |
| Mortgage Company Licensees (includes branches) | 489   |
| Loan Originator Registrations                  | 3,537 |
| Notification Registrants                       | 2,519 |
| Credit Services Organizations                  | 35    |

**Total: 7,554**

|                               |                  |
|-------------------------------|------------------|
| Total Assets of Licensed Cos. | \$ 1.03 Trillion |
| Kansas Loan Volume            | \$ 18.1 Billion  |



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# Types of Entities Licensed/Registered and Regulated by CML

Year-end 2013

|  |     |
|--|-----|
| Supervised Lenders (includes branches) | 954 |
| Finance Companies                      | 154 |
| Mortgage Companies                     | 296 |
| Payday Companies                       | 365 |
| Title Lending Companies                | 170 |
| Mortgage Servicer Companies            | 357 |
| Debt Purchasing Companies              | 265 |





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# Finance Companies

- Companies that offer secured and unsecured personal loans
- Products:
  - Closed end loans
  - Signature
  - Debt consolidation
  - Automobile
  - Furniture
  - Jewelry
  - Vacation



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# Notification Registrants

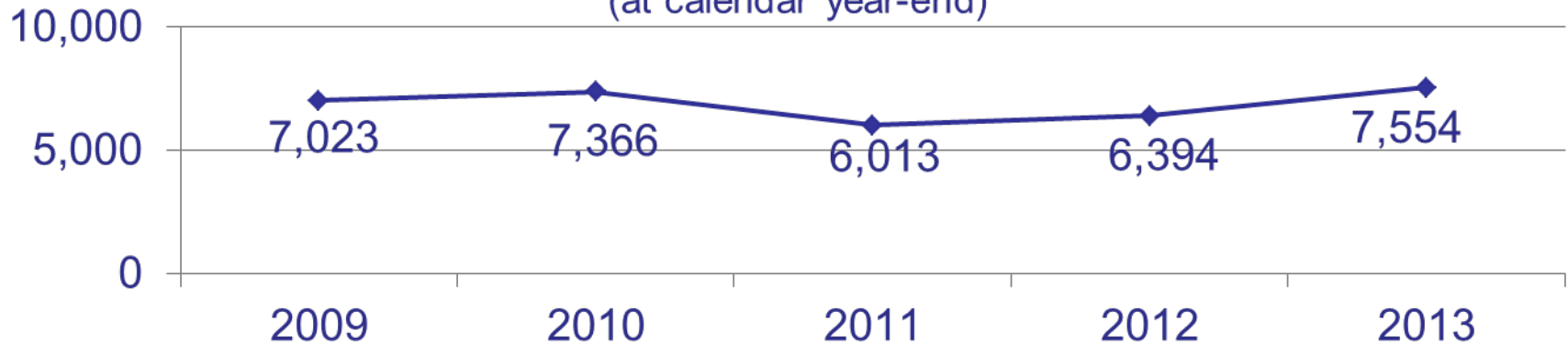
- Creditors must file notification with our office if they:
  - enter into consumer credit transactions
  - take assignment of and undertake collection of payments
  - take assignment of and enforce rights against debtors arising from the consumer credit transactions (K.S.A. 16a-6-201)
- Note: Consumer loans may not be more than 12% APR; otherwise they would require a Supervised Lender license
- Businesses: Buy here/pay here automobile dealers, furniture stores, jewelry stores, funeral homes



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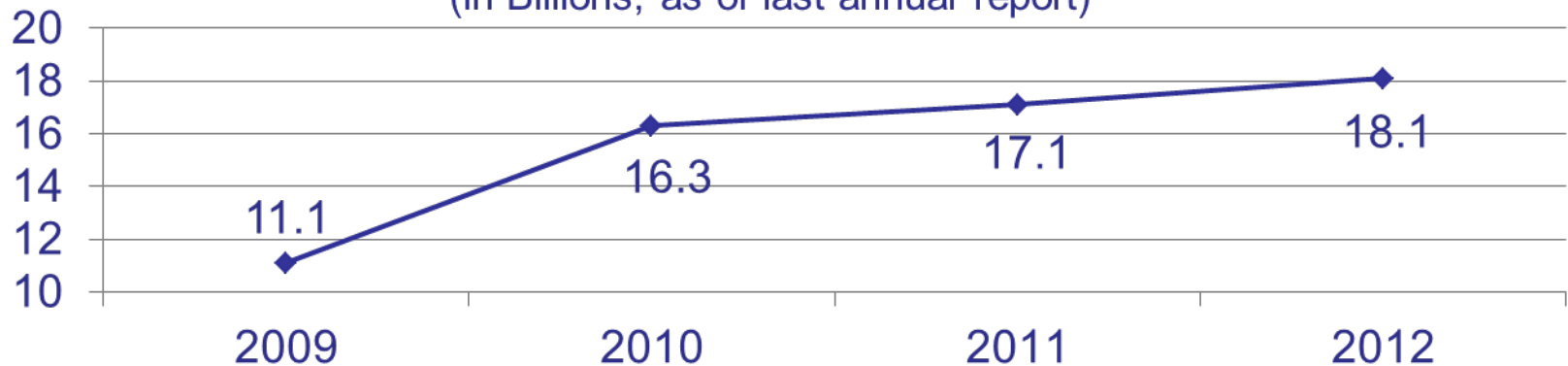
## Total Licensed/Registered

(at calendar year-end)



## Total Kansas Loan Volume

(in Billions, as of last annual report)





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# Payday Loans

- Short-term loans
  - Term of loan must be between 7 and 30 days to be considered a payday loan
- The payday loan is expected to be made as a single payment to the borrower
- The maximum payday loan amount is \$500
- Payday loan finance charge cannot exceed 15% of the loan amount
- Payday lenders must be licensed with the Office of the State Bank Commissioner (OSBC)



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## Payday Loan Costs Permitted

- Loan Amount
- Finance Charge
- Lenders may collect 3% per month of the loan proceeds after maturity date of the payday loan
- May charge \$10 for insufficient check. An amount of up to \$30 may be charged if it is specified in the contract

## Payday Loan Repayment

- Borrower must pay the loan amount and finance charge
- No loan may be paid by the proceeds of another loan from the same lender or related interest



## Payday Loan Restrictions

- No insurance charges or any other charges are permitted, except an insufficient funds fee. This includes any charges for cashing the check for the payday loan.
- Lenders may only charge one insufficient funds fee/return check charge per payday loan.
- Lender may not sell any other product in connection with making or collecting a payday loan



## Payday Loan Restrictions

- Lender is not allowed to use or threaten to use the criminal process to collect on a loan
- Lender may not include any of the following provisions in a payday loan contract:
  - Hold harmless clause
  - Confession of judgment clause
  - Provision where a customer agrees not to assert a claim or defense arising out of the loan contract





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# Payday Loan Restrictions

- A consumer may not have more than two payday loans from the same lender or related interest at any one time.
- No more than three payday loans to any borrower from the same lender or related interest within 30 calendar days
- A borrower cannot obtain a new loan to pay off an existing loan
- No unconscionable acts.
- Military borrowers and their dependents are restricted to Military Annual Percentage Rate (MAPR) of 36%



# Payday Loan Licensing Statistics

- Payday companies licensed as of December 31, 2013
  - 78 companies
  - 365 licensed locations
  
- Annual report information
  - 1,082,716 payday loans originated totaling \$413,891,458 in the 2012 calendar year
    - Average loan amount = \$382



# Payday Loan Consumer Protections

- Federal law requires that the finance charge and annual percentage rate (APR) must be more conspicuous on the contract than other provisions.
- Rescission period
  - Consumer may rescind their loan by the end of the business day following the date the transaction was made
- Extended payment plan (EPP)
  - Must be an amendment to the original transaction
  - Four equal payments or less
  - No additional fees may be charged
  - 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



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# Payday Loan Consumer Protections

- Each loan agreement made must have the following notice in at least 10 point bold face type:

**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.

- Lenders who violate these provisions may be subject to civil or criminal penalties



# Payday Loan Consumer Protections

- Fair Debt Collection Practices Act (FDCPA) (**applies only to third-party debt collectors**)
  - Both CFPB and FTC have oversight of the FDCPA
  - Collections are not subject to FDCPA if the debt that is being collected belongs to the entity collecting the debt. If the debt is sold to another party, then it is subject to the FDCPA.
  - FDCPA Provisions
    - Restricted communications by the debt collector
      - Cannot call before 8am or after 9pm
      - Cannot contact consumer if known to be represented by an attorney
      - Cannot contact consumer if consumer advises debt collector in writing to cease communications OR that consumer refuses to pay
      - Cannot make any false, deceptive or misleading statements
    - Within 5 days of initial communication (oral or written), debt collector must provide in writing:
      - Amount of the debt
      - Name of the creditor owed
      - Right to dispute validity within 30 days
      - Name and address of the original creditor
      - If disputed by consumer within 30 days, collector will provide verification of the debt



## Permissible Activities -- Payday Lenders

- Payday lenders may contact a borrower in an attempt to collect the payday loan, or to notify the borrower that the loan is coming due, provided the lender does not commit an unconscionable act under the UCCC or the Kansas Consumer Protection Act (KCPA)



# Payday Loan Common Violations

- Unsigned Contracts
  - Licensee accepts contract without the consumer's signature
- Loan made for less than 7 days or more than 30 days
  - The loan is not considered a payday loan under state law , therefore the maximum periodic finance charge is limited to 36%
- Understated APR or no APR disclosed
  - Disclosed APR is less than the actual APR
- Three loans in 30 days
  - The 30 days is a “rolling” 30 days
  - Within 30 days at any time, the consumer can only have 3 payday loans



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## Title Loans

- An open-end loan made to a consumer in which a lien against their vehicle is used as collateral by the lender
- The lender can re-possess and sell the borrower's vehicle if the loan goes into default and consumer is provided a notice of their right to cure the loan
  - After the consumer is in default for ten days, a creditor may give the consumer a notice of their right to cure the loan
  - The consumer has 20 days after receiving the notice to cure all defaults or their vehicle may be repossessed





# Title Loan APR and Finance Charges

- Kansas law does not limit the APR on a title loan
- The APR is determined by the parties' written agreed terms
- Other charges, such as a cash advance fee, may be allowed. There is no restriction on the fee amount.
- Late fees are allowed in the amount of 5% of the unpaid installment or \$25, whichever is less

# Title Loan Licensing Statistics

- Title companies licensed as of December 31, 2013
  - 15 companies
  - 170 licensed locations
- Annual report information
  - 28,337 title loans originated totaling \$21,702,313 in the 2012 calendar year
    - Average loan amount = \$766

# Title Loan Common Violations

- Overcharged late fees
  - Licensee does not limit the late fee to the lesser of 5% of the unpaid installment or \$25
- Monthly statements not provided or not compliant
- Improper vehicle repossessions
  - Right to cure not provided
  - Licensee does not allow for 20 days for consumer to cure loan before taking repossession

# Unsecured Open-End Loans

- Substantially similar to a title loan, but no collateral is required
- No APR limitation
  - Agreed upon the creditor and the consumer
- Limited to prepaid finance charges of 2% of the amount financed or \$100, whichever is less
- Payday and title companies offer this product
  - Maximum loan amount less than title loan but greater than payday loan
  - Interest rates are similar to payday and title loans
  - Duration of the unsecured loans not limited at this time



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# Automobile Transactions

- “Tote the note” or “Buy-here pay-here”
- Consumer makes payments to the same location from where the vehicle sale is made
  - Transactions less than \$25,000 are subject to the laws of the UCCC
    - Interest rate does not have a limit; its agreed upon by the parties
    - Prepaid finance charge must not exceed 2% of the amount financed or \$100
  - Transactions greater than \$25,000 may be subject to UCCC
    - The transactions can be made subject to the UCCC if agreed to by the creditor and the consumer
    - If not subject to UCCC, interest rate is limited to 15%
    - No specific limit on prepaid finance charges
  - Must follow laws of Kansas Uniform Commercial Code (UCC)
  - Federal Regulation Z provisions would apply
    - Truth in Lending Act (TILA) box
      - Amount financed, APR, total of payments, and finance charge



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# Automobile Transactions Consumer Protections

- Consumer can prepay without penalty
- Prepaid finance charge limited to 2% of amount financed or \$100, whichever is less
- ACH fees limited to \$5 per installment
- Late fees limited to 5% of the unpaid installment or \$25, whichever is less
- Contract does not contain waiver of rights



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# Insurance Product Types

No consumer can be required to purchase any insurance product in order to obtain a loan

- Single Premium Credit Life
- Single Premium Credit Disability (Accident and Health)
- Involuntary Unemployment

## Credit Cards

- Open, revolving line of credit
- OSBC regulates consumer finance companies that issue credit cards
  - Federal regulators oversee other card issuers





# Credit Card Laws

- Federal Credit Card Accountability Responsibility Act of 2009 (CARD Act)
  - Consumer Financial Protection Bureau (CFPB) responsible for administering the CARD Act
  - CARD Act is also known as the “Credit Cardholders Bill of Rights”
- Federal Reserve Board Regulation Z (Truth-in Lending)
- Kansas Uniform Consumer Credit Code (UCCC)
  - K.S.A. 16a-2-401
- Fair Credit Billing ACT (FCBA)
  - Federal Trade Commission is the overall enforcing agency



# Credit Card Consumer Protections

- CARD Act
  - Prohibits retroactive rate increases on existing balances due to late payment
  - Contract terms must be stable for at least one year
  - Creditor must give consumers at least 21 days to pay from the mailing of the monthly bill
  - Excess payments to be applied to the highest interest balance first
  - Consumers must opt-in to over limit fees
  - Requires enhanced disclosures for inactivity fees on gift cards
  - Disclosures must be conspicuous and must be posted on the internet
  - Allows for significantly increased penalties for violations
  - Card issuers and universities are required to disclose agreements with regard to the marketing of credit cards on campuses

# Credit Card Consumer Protections

- CARD Act rules implemented by the Federal Reserve
  - 45 day notice before increasing interest rate, changing certain fees, or making other significant changes in the terms of the credit extension
  - Credit card bills must include how long it will take the consumer to payoff the balance if only the minimum payment is made and how much total interest will be paid
  - Consumers under 21 years of age need to demonstrate the ability to make payments or cosigner needed
  - The payment due date must always be on the same day of each month
  - Payments in excess of the minimum balance must be applied to the portion outstanding with the highest interest rate
  - Late fees cannot exceed the minimum payment or \$25, whichever is less
  - Inactivity fees are prohibited



## Signature Loans

- Unsecured loans where the borrower agrees to repay the amount of money borrowed
  - May have higher interest rates than most forms of credit because unsecured
  - Also known as a “good faith loan” or “character loan”
- Product is offered by banks, credit unions, and other finance companies
- Only remedy creditor has for default is to file a lawsuit to collect



## Overdraft Services

- Offered by depository institutions in the event a customer's checking account is overdrawn
- Standard Overdraft Practices
  - Bank or credit union will cover the amount overdrawn, which becomes a loan to the customer and the bank or credit union will charge a flat fee for the overdraft service
- Overdraft Protection Plans
  - Bank or credit union may offer a line of credit or offer to draw from the customer's savings in order to cover an amount overdrawn on the customer's checking account



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# Consumer Tips

- Thoroughly explore all options before signing any document to borrow money
- Check OSBC website for list of licensed/approved companies before doing business
- If having difficulty repaying, contact the lender as soon as possible
- Call the OSBC if help is needed
- If a problem occurs, file a complaint with OSBC or appropriate regulator
- Consumer credit counseling services
- Resources available online
  - OSBC website
  - Federal regulator websites



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## Contact Information

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