



2017

**STATE OF CREDIT**

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**REPORT**

SC DEPARTMENT OF CONSUMER AFFAIRS

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## INTRODUCTION

The South Carolina Department of Consumer Affairs (“Agency”/“DCA”/ “Department”) is the state’s consumer protection agency. Established in 1974, DCA has over *forty years* of experience in protecting South Carolina consumers while recognizing those businesses that act honestly and fairly. The General Assembly has charged DCA with administering, interpreting and enforcing over fifty laws, including the South Carolina Consumer Protection Code (“Code”), *S.C. Code Ann.* sections 37-1-101 *et seq.* Our mission is to protect consumers from inequities in the marketplace through advocacy, mediation, enforcement and education.

Pursuant to South Carolina Code Ann. section 37-6-104(5), the Administrator of the Department is required to report on the state of credit in South Carolina and agency enforcement operations. Several of the items delineated in this section are reported to the Governor and General Assembly through various reporting requirements, including the Annual Accountability Report. Such information is not contained herein.<sup>1</sup>

The 2017 State of Credit Report focuses on the use of credit in this State, enforcement actions and administrative interpretations of the Department. The information contained in this report comes from an analysis of filings received by the Department, reports compiled by the South Carolina Board of Financial Institution’s Consumer Finance Division (“SCBOFI-CFD”), a general familiarity with credit markets and with regulators who are familiar with markets in other jurisdictions.

## AGENCY OVERVIEW

The Department accomplishes its mission by: 1.) acting as an effective regulator, 2.) providing complaint mediation services that are unmatched at both state and federal levels, 3.) saving millions for both consumers and small businesses through insurance rate filing intervention, 4.) serving as an educational portal for consumers and businesses alike, and 5) informing the public on effective ways of preventing and mitigating identity theft situations. Governed by the Commission on Consumer Affairs, DCA is organized into six divisions: Administration, Consumer Services, Consumer Advocacy, Public Information and Education, Legal, and the Identity Theft Unit.

All of DCA’s functions are supported by the agency’s **Administration Division**. This Division contains the Administrator’s Office, Human Resources, and Accounting and Procurement.

The **Consumer Services Division** processes and mediates written consumer complaints, seeking to find equitable solutions for the consumer and the business, including refunds, adjustments, and credits to consumer accounts. Staff takes consumer complaints against

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<sup>1</sup> The Department’s Accountability Reports can be viewed at <http://www.consumer.sc.gov/AboutUs/Pages/AccountabilityReports.aspx>.

businesses regulated by DCA, refers complaints that fall within another agency's jurisdiction, and mediates those complaints against businesses, or involving issues, that are unregulated. The Division provides South Carolina taxpayers with a readily available, experienced, and cost-effective mediation service.

The **Public Information and Education Division** serves as the main education portal for consumers, business and the media. The Division informs consumers and businesses on their rights and responsibilities in the marketplace through traditional and alternative media distribution, including social media, presentations, media coverage and publications. Education is a central part of DCA's mission. Cultivating a marketplace comprised of well-informed consumers and businesses prevents deceptive and unfair business practices and allows legitimate business activity to flourish, resulting in the promotion of competition and a healthier economy.

The Department's newest division, the **Identity Theft Unit (the "Unit")** provides education and outreach to South Carolina consumers across the state to increase public awareness and knowledge about what identity theft is, the steps consumers can take to protect themselves, and what consumers should do in the event of identity theft. For consumers who are identity theft victims, the Unit provides ongoing guidance throughout the process of mitigating and resolving their particular identity theft situation(s). The Unit also handles administration and enforcement of state identity theft-related consumer protection laws, including receipt of security breach notices to ensure reporting and notification requirements are met.

The **Advocacy Division** provides legal representation for the consumer interest in matters involving property and casualty insurance and worker's compensation insurance. As the state agency designated to represent the insurance interests of consumers, the Division aims to ensure that increases in homeowner's insurance and worker's compensation insurance rates are justified, working to avoid excessive, inadequate or unwarranted rate increases. The Division also reviews rules and regulations proposed by state and federal agencies pertaining to ratemaking and provides comments as deemed appropriate.

The General Assembly has charged DCA with advising the Legislature and Governor on consumer issues; administering, interpreting and enforcing the Code; and licensing, registering, or otherwise regulating fifteen industries, including mortgage brokers, pawnbrokers, physical fitness centers, motor clubs, credit counseling organizations, prepaid legal services, athlete agents, the sale of preneed funeral contracts, registered consumer credit grantor, maximum rate filing and motor vehicle disclosure programs. These activities are performed through the agency's **Legal Division**.

## **INTEREST RATES AND CREDITORS: GENERAL FILINGS**

The Code provides requirements and restrictions for persons engaging in consumer credit transactions with South Carolina consumers. The general provisions of the Code are not industry specific and its requirements apply to any person or transaction meeting its definitions, which cover a broad swath of industries and consumer contracts. A "consumer credit transaction" is a

consumer credit sale,<sup>2</sup> a consumer loan,<sup>3</sup> a consumer lease,<sup>4</sup> or a consumer rental-purchase agreement.<sup>5 6</sup> “Credit” is “the right granted by a creditor to a debtor to defer payment of or to incur debt and its payment.”<sup>7</sup> A “creditor” is the person who grants credit in a consumer credit transaction or an assignee thereof.<sup>8</sup>

The Code requires a person file certain information with the Department if threshold requirements are triggered.<sup>9</sup> Such filings constitute the Maximum Rate Schedule and Credit Grantor Notifications.

### ***Maximum Rate Schedule***

The Code delineates the fees and charges a creditor may impose in a consumer credit transaction, including a finance charge. A “finance charge” includes any credit service charge for consumer credit sales<sup>10</sup> and any loan finance charge for consumer loans,<sup>11</sup> and it must be disclosed as a part of the Annual Percentage Rate (APR).<sup>12</sup> These charges<sup>13</sup> are essentially the amount added to the transaction for the use of someone else’s money.<sup>14</sup>

Prior to 1982, the Code provided a tiered rate structure for most forms of consumer credit in South Carolina. Creditors were allowed to impose a finance charge of 36% on very small transactions, 21% for slightly larger ones, and 15% for larger transactions, but in no case was the combined rate to exceed 18%. By 1982, the national prime rate was over 20%. High inflation coupled with nationwide high interest rates prompted the General Assembly to pass legislation deleting the usury caps and implementing a Maximum Rate Schedule. Under current law, creditors can charge any amount up to 18% APR without notifying the Department,<sup>15</sup> but if the creditor wants to charge a higher rate, the creditor must file the rate with the Department and post it in its

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<sup>2</sup> S.C. Code Ann. § 37-2-104 (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>.

<sup>3</sup> S.C. Code Ann. § 37-3-104 (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>4</sup> S.C. Code Ann. § 37-2-106 (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>.

<sup>5</sup> S.C. Code Ann. § 37-2-701 (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>.

<sup>6</sup> S.C. Code Ann. § 37-1-301(11) (2015), available at <http://www.scstatehouse.gov/code/t37c001.php>.

<sup>7</sup> S.C. Code Ann. § 37-1-301(12) (2015), available at <http://www.scstatehouse.gov/code/t37c001.php>.

<sup>8</sup> S.C. Code Ann. § 37-1-301(13) (2015), available at <http://www.scstatehouse.gov/code/t37c001.php>.

<sup>9</sup> S.C. Code Ann. § 37-2-305 (Supp. 2016) and § 37-6-201 (2015) available at <http://www.scstatehouse.gov/code/t37c002.php> and <http://www.scstatehouse.gov/code/t37c006.php>.

<sup>10</sup> S.C. Code Ann. § 37-2-109 (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>.

<sup>11</sup> S.C. Code Ann. § 37-3-109 (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>12</sup> S.C. Code Ann. § 37-2-305 (Supp. 2016) and § 37-3-305 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t37c002.php> and <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>13</sup> It is important to note that most laypersons/consumers will consider “finance charges” and “interest” to be synonymous with one another. In fact, the common definition of “finance charge” is “an additional payment, usu. in the form of interest, paid by a retail buyer for the privilege of purchasing goods or services in installments. This phrase is increasingly used as a euphemism for interest.” *Black’s Law Dictionary* (10th ed. 2014). An “interest rate” is the “percentage that a borrower of money must pay to the lender in return for the use of the money . . .” *Id.*

<sup>14</sup> See S.C. Code Ann. § 37-2-109 (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>; S.C. Code Ann. § 37-3-109 (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

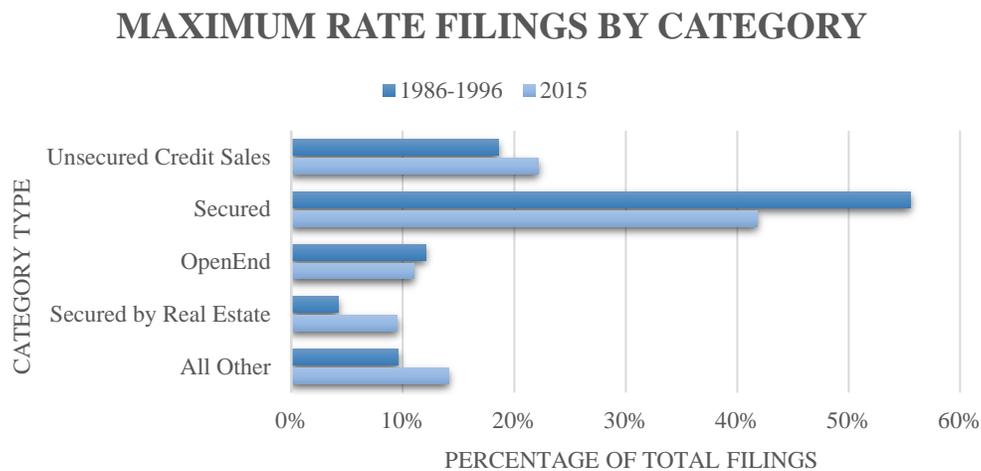
<sup>15</sup> In 1995, the General Assembly amended § 37-3-201(2) to limit the rate that can be charged on small loans of \$600 or less to the same rate that restricted lenders can charge under § 34-29-140. Restricted lender rates are one of the few set by the legislature.

place of business.<sup>16</sup> If a lender fails to file and post a rate exceeding 18% APR when required, the company can be required to roll back the interest rate to 18% APR.<sup>17</sup>

A maximum rate schedule must be filed annually<sup>18</sup> and identifies the maximum rate the creditor intends to charge in the following credit categories, as applicable: (1) unsecured, (2) secured other than those secured by real estate, (3) secured by real estate, (4) open-end (revolving) and (5) other.<sup>19</sup> The rate schedule is meant to help encourage the informed use of consumer credit, assisting consumers in comparing rates and understanding of the terms of a transaction. Maximum rates filed with the Department are posted on the agency's website.<sup>20</sup>

Data culled from agency systems shows an interesting evolution of credit types offered between the 1986–1996 timeframe and 2015. Creditors began securing consumer credit transactions more frequently with real estate in 2015 than decades before and made an increasing number of unsecured loans as compared to 1986–1996. Historically, secured transactions other than those secured by real estate have been the largest category of maximum rate schedule filings. Between 1986 and 1996, these accounted for more than 55% of the filings in this State (*Figure 1*). While still holding the top spot in 2015, this number dropped to 42% (*Figure 1*).

*Figure 1*



Finance charges imposed in such transactions can vary greatly as evidenced by a comparison of three decades of maximum rate schedule filings (*Figure 2*). As stated previously, prior to deregulation in 1982, a creditor could not impose a finance charge of a combined rate above 18%. Within four years of the law change, nearly 83% of filers intended to impose charges of 36.99% or less. This number slowly decreased as interest rates increased with only 74.88% of

<sup>16</sup> S.C. Code Ann. § 37-2-201(2) (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>; § 37-3-201(2) (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>17</sup> S.C. Code Ann. § 37-3-201(6) (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

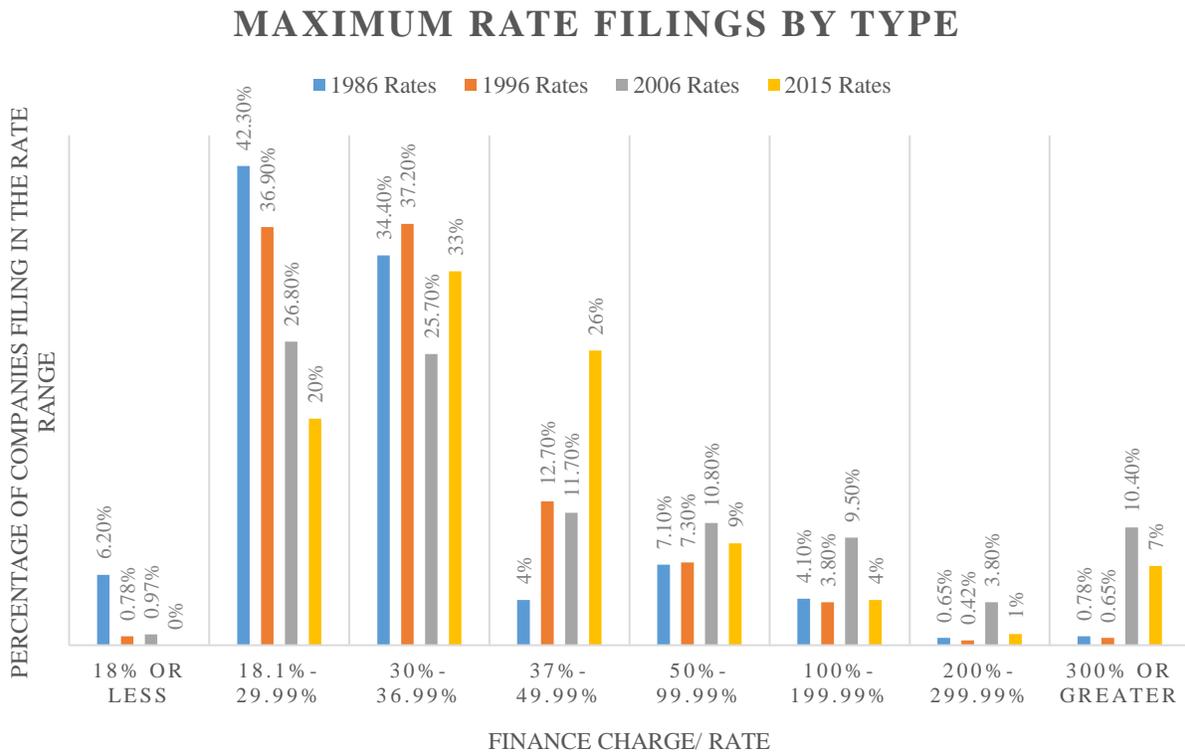
<sup>18</sup> S.C. Code Ann. § 37-2-305 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t37c002.php>.

<sup>19</sup> S.C. Code Ann. § 37-2-305(2) (Supp. 2016), available at <http://www.scstatehouse.gov/code/t37c002.php>.

<sup>20</sup> <http://www.consumer.sc.gov/consumer/Pages/LicenseeLookup.aspx>.

filers intending to charge below 36.99% in 1996. Rapid change followed in 2006, with this number decreasing more than 20% before seemingly leveling out in 2015 with 53% of filers indicating rates at 36.99% or below. As anticipated, the decrease in the number of persons intending to charge below 36.99% resulted in an increase of those charging triple digit interest rates. In 1986, 5.53% of filers intended to impose charges of 100% or greater. This number decreased in 1996, but more than quadrupled in 2006 with 23.7% of filers indicating triple digit rates, 10.4% of those being 300% or greater. By 2015, this overall number was cut in half; however, seven percent of filings still indicated rates of 300% or greater.

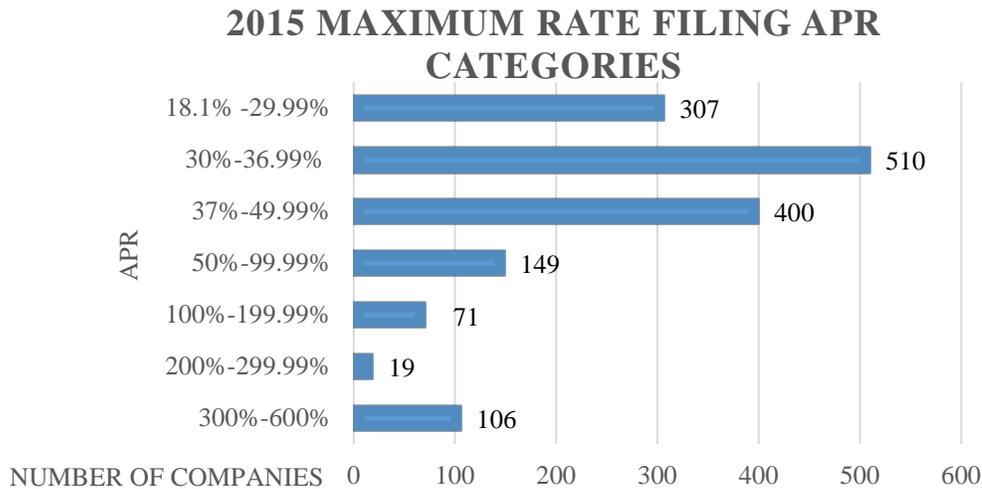
Figure 2



In 2015 a total of 1,562 companies filed 4,159<sup>21</sup> maximum rate schedules with interest rates ranging from 18.1% to 600%. The filings are categorized by interest rate in *Figure 3*. The majority of companies, 53%, filed rates of 36.99% or less. An additional 26% of filers set rates between 37% and 49.99%, and 9% filed for 50%–99.99% APR. While the number of companies decreased as the interest rate rose, 195 companies filed rates of 100% APR or more, with 106 of those companies charging consumers between 300% and 600%.

<sup>21</sup> Filings are made on a location basis, thus a company may file multiple maximum rate schedules. See S.C. Code Ann. § 37-2-201(2) (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>; § 37-3-201(2) (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

Figure 3



### ***Credit Grantor Notification***

Certain businesses, regardless of industry type, must file a consumer credit grantor notification with the Department.<sup>22</sup> Creditors whose annual gross volume of business exceeds \$150,000, must file a consumer grantor notification with the Department if they: (1) make consumer credit sales, leases, or loans or engage in rent-to-own transactions; (2) take assignment of payments that arise from consumer credit sales, leases, loans, or rent-to-own transactions and engage in direct collection of those payments from debtors; or (3) take assignment of payments that arise from consumer credit sales, leases, loans, or rent-to-own transactions and enforce rights against debtors.<sup>23</sup>

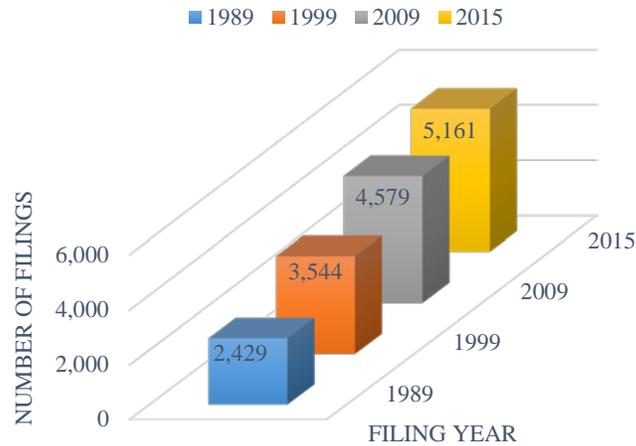
The number of businesses providing credit to South Carolina consumers has steadily increased over the past three decades (*Figure 4*). In 1989, nearly 2,500 businesses filed credit grantor notifications. A decade later, the number increased by 1,000 and stayed the same trek in 2009 with over 4,500 business locations filing credit grantor notification. The Department has continued to see an increase, receiving 5,161 filings in 2015.

<sup>22</sup> S.C. Code Ann. § 37-6-201 (2015), available at <http://www.scstatehouse.gov/code/t37c006.php>.

<sup>23</sup> S.C. Code Ann. §§ 37-6-201 to 203 (2015), available at <http://www.scstatehouse.gov/code/t37c006.php>.

Figure 4

## NUMBER OF BUSINESS LOCATIONS FILING CREDIT GRANTOR NOTIFICATION



Growth in the number of businesses offering credit in South Carolina is generally deemed as positive, allowing the consumers options to shop around for various rates and terms. Further comparison of related data may provide more insight into any benefit or potential harm to the consumers based on the market and products offered.

## CONSUMER LENDING

Consumer loans are just one type of transaction under the umbrella of consumer credit. While the Code contains similar provisions for consumer loans as it does for credit sales, rent-to-own and leases, additional requirements and consumer protections are contained in Chapter Three with which lenders must comply.<sup>24</sup> This includes specific regulation of lenders offering loans in excess of 12% APR.<sup>25</sup> Some consumer loan products, however, are regulated by other titles, including deferred presentment and pawn transactions.<sup>26</sup>

### *Supervised Lending*

Supervised loans are governed by the Code, specifically sections 37-3-500 *et seq.* Supervised loans are consumer loans in which the rate of the loan finance charge exceeds 12%

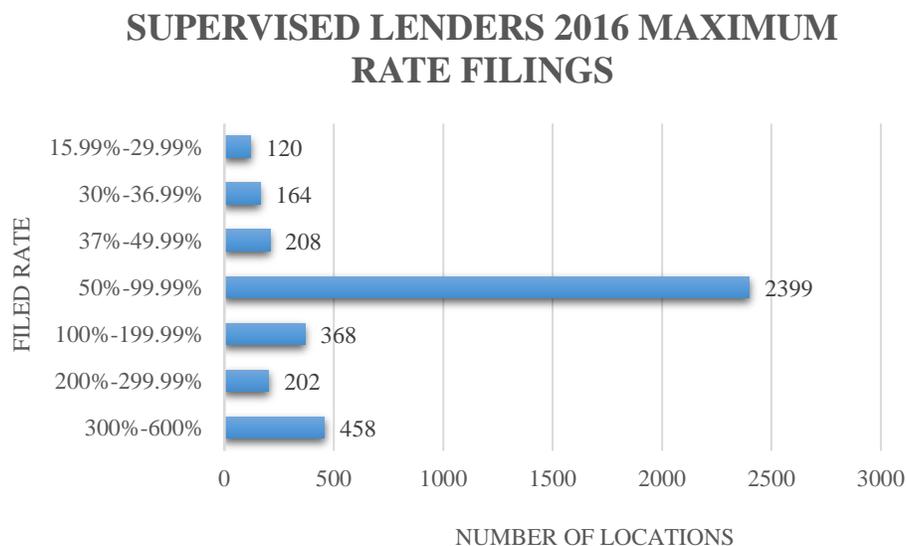
<sup>24</sup> S.C. Code Ann. § 37-3-101 *et seq.* (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>25</sup> S.C. Code Ann. § 37-3-500 through 515 (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>26</sup> S.C. Code Ann. § 34-39-10 *et seq.* (1987), available at <http://www.scstatehouse.gov/code/t34c039.php>; S.C. Code Ann. § 40-39-10 *et seq.* (2001), available at <http://www.scstatehouse.gov/code/t40c039.php>.

APR.<sup>27</sup> A supervised lender is a person who is authorized to make or take assignments of supervised loans.<sup>28</sup> These lenders are licensed and examined by the SCBOFI-CFD.<sup>29</sup> A supervised lender who charges more than 18% APR must also file its rate with the Department and post that rate in its place of business.<sup>30</sup> However, for loans not exceeding \$600, the supervised lender may not file or post a rate in excess of that set by statute for restricted lenders under section 34-29-140.<sup>31</sup> As a result, these lenders rarely offer loans under \$601.00 and are often referred to as “601 lenders.” The range of maximum interest rates supervised lenders filed with the Department in 2016 are illustrated in *Figure 5*. Approximately 26% of filers intended to impose rates in excess of 100% APR.

*Figure 5*



Traditional supervised lenders offer a variety of financial products, including installment loans and title loans.<sup>32</sup> The most frequent interest rates imposed by supervised lenders fluctuates greatly depending on the amount advanced (*Figure 6*).

<sup>27</sup> S.C. Code Ann. § 37-3-501(1) & (2) (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

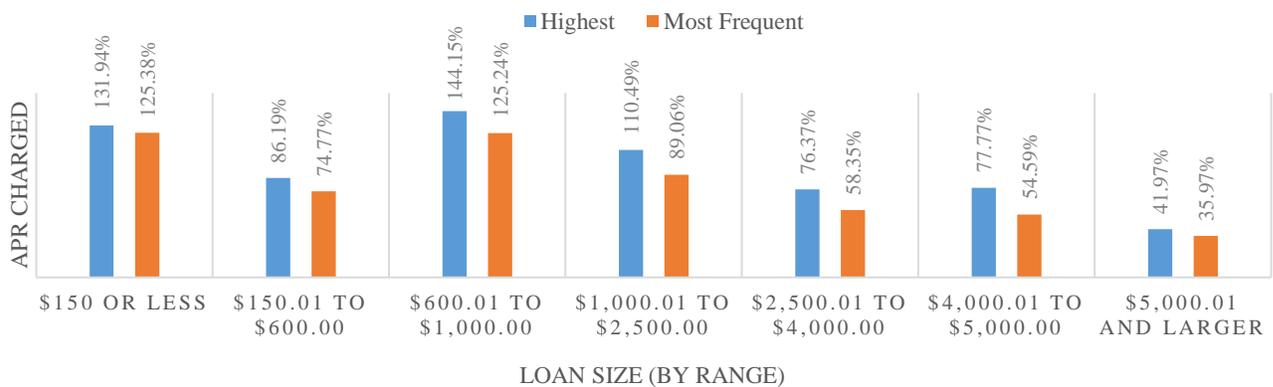
<sup>28</sup> S.C. Code Ann. §§ 37-6-201 to 204 (2015), available at <http://www.scstatehouse.gov/code/t37c006.php>.

<sup>29</sup> S.C. Code Ann. § 37-29-20 (2015), available at <http://www.scstatehouse.gov/code/t37c029.php>.

<sup>30</sup> S.C. Code Ann. § 37-3-201(2)(b) (2015) and § 37-3-305 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>31</sup> S.C. Code Ann. § 37-3-201(2)(a) (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>32</sup> See next section for full discussion of title lenders.

Figure 6<sup>33</sup>**SUPERVISED LENDERS: 2014 APR CHARGED**

The recent financial recession affected this industry, as evidenced by a decline in transactions by more than 100,000 between 2009 and 2010. Since 2010, however, the industry has steadily increased the number of transactions entered into resulting in 1,565,961 transactions and approximately \$2.4 billion in total advanced funds in 2014. Approximately 60% of loans reported were renewals. This means a consumer had an outstanding loan with the supervised lender at the time of entering into a new credit transaction.<sup>34</sup> *Table 1* provides the historical comparison.

Table 1<sup>35</sup>**2009 TO 2014 SUPERVISED LENDING DATA**

Year	Transactions	Total Advance Amount	Total # of Debtors Filing for Bankruptcy
<b>2009</b>	1,492,824	\$ 2,059,115,552	11,652
<b>2010</b>	1,376,586	\$ 1,677,003,257	11,886
<b>2011</b>	1,452,153	\$ 1,812,292,393	11,490
<b>2012</b>	1,505,815	\$ 1,958,813,371	14,158
<b>2013</b>	1,575,970	\$ 2,250,843,702	13,535
<b>2014</b>	1,565,961	\$ 2,361,560,291	14,219

<sup>33</sup> Data displayed in this chart is derived from the corresponding Annual Reports published by the South Carolina Board of Financial Institutions. See [bofi.sc.gov](http://bofi.sc.gov).

<sup>34</sup> See *S.C. Code Ann.* § 37-3-515 (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>35</sup> Data displayed in this chart is derived from the corresponding Annual Reports published by the South Carolina Board of Financial Institutions. See [www.bofi.sc.gov](http://www.bofi.sc.gov).

### ***Short-Term Vehicle Secured Loans (Title Loans)***

Traditionally, title loans were offered as single-payment loans with thirty (30) day loan terms, requiring the borrower to repay the full principal plus a fee at the end of the loan term. When a consumer falls behind or quits making payments on the loan, the title lender can repossess the vehicle after sending a notice of right to cure, if the account is not brought current. In South Carolina, title lenders are not required to obtain a specific title loan license, but instead are licensed under the umbrella of supervised lenders by the SCBOFI-CFD.<sup>36</sup>

In 2004, the South Carolina Legislature attempted to place specific restrictions on the title loan industry. Amendments to the law included consumer disclosures, limitations on renewal and other consumer protections.<sup>37</sup> The law defines a title loan as one with an original repayment term of less than one hundred and twenty (120) days;<sup>38</sup> as a result, some of the industry circumvented the law by extending the term of their loans beyond the specified timeframe.

### ***Deferred Presentment***

Deferred presentment is commonly referred to as a “payday loan.” A “payday loan” means a transaction pursuant to a written agreement whereby the services provider (lender) charges a fee to accept a check dated on the date it was written and agrees to hold the check for a period of time before presentment for payment or deposit.<sup>39</sup> These high rate lenders often charge at or above 300% APR.<sup>40</sup> In the late 1990s and early 2000s, these loan products increased their presence nationwide. In response, nearly all states, including South Carolina, passed laws updating regulations of the industry to varying degrees.

South Carolina began regulating deferred presentment providers in 1998. The South Carolina General Assembly heavily amended the South Carolina Deferred Presentment Services Act<sup>41</sup> (the “Act”) in 2009, adding increased consumer protections and most notably, a single loan database for tracking transactions. Deferred presentment lenders are licensed by the SCBOFI-CFD.<sup>42</sup> The Act limits borrowers to one outstanding payday loan at a time and prohibits the use of a new loan to pay off an existing one.<sup>43</sup> Loans are prohibited from exceeding \$550, and fees may not exceed 15% of the principal amount of the transaction.<sup>44</sup> Additionally, lenders are required to use a single database system to ensure any loans advanced are in compliance with the

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<sup>36</sup> *S.C. Code Ann.* § 37-3-501(1) & (2) (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>37</sup> *S.C. Code Ann.* § 37-3-105; 413 (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>38</sup> *S.C. Code Ann.* § 37-3-413 (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

<sup>39</sup> *S.C. Code Ann.* § 34-39-120(3) (Supp. 2016), available at <http://www.scstatehouse.gov/code/t34c039.php>.

<sup>40</sup> *How State Rate Limits Affect Payday Loan Prices*, Fact Sheet, The Pew Charitable Trusts, Figure 2 (April 2014). Available at: [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs/content-level\\_pages/fact\\_sheets/stateratelimitsfactsheetpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs/content-level_pages/fact_sheets/stateratelimitsfactsheetpdf.pdf).

<sup>41</sup> *S.C. Code Ann.* § 34-39-10 *et seq.* (1987), available at <http://www.scstatehouse.gov/code/t34c039.php>.

<sup>42</sup> *S.C. Code Ann.* § 34-39-130 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t34c039.php>.

<sup>43</sup> *S.C. Code Ann.* § 34-39-270 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t34c039.php>.

<sup>44</sup> *S.C. Code Ann.* § 34-39-180 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t34c039.php>.

statutory requirements.<sup>45</sup> Rollover loans are prohibited under the Act, and an optional extended repayment plan is available for borrowers anticipating difficulty making loan payments.<sup>46</sup>

The implementation of the amendments was followed by a decrease in the number of licensees. In 2009, the SCBOFI-CFD licensed 663 deferred presentment providers. Within two years of the amended law becoming effective, the number dropped to 418 licensees. Such changes are also reflected in the number and nature of deferred presentment transactions entered into by South Carolina consumers from 2009-2015 (see *Table 2*).

*Table 2*<sup>47</sup>

## 2009 TO 2015 MARKET DATA ON DEFERRED PRESENTMENT TRANSACTIONS

Year	Transactions	Total Advance Amount	Total Fees
<b>2009</b>	4,026,986	\$ 984,644,082	\$ 147,696,612
<b>2010</b>	1,097,754	\$ 417,637,585	\$ 62,229,775
<b>2011</b>	1,063,945	\$ 416,203,178	\$ 62,472,765
<b>2012</b>	1,051,871	\$ 417,937,720	\$ 62,856,977
<b>2013</b>	1,001,771	\$ 401,996,532	\$ 60,374,420
<b>2014</b>	948,545	\$ 385,224,980	\$ 57,836,972
<b>2015</b>	876,985	\$ 359,948,937	\$ 53,882,311

In 2009, prior to the implementation of the amendments and real-time database for tracking deferred presentment transactions, there were approximately 4 million payday loan transactions, and 663 licensees. This number, and the correlating loan amount and fees collected, decreased dramatically within the first year of the amendments becoming effective and continued to decrease in years following. In 2015, the industry entered in less than one quarter of the number of transactions as it did in 2009.

### ***Pawnbrokers***

Pawnbrokers engage in one of the oldest forms of personal loans, which involves a loan of money backed by the pledging of personal property that is left with a pawnbroker as collateral. If the loan is not repaid as agreed, the property is forfeited to the pawnbroker. Section 40-39-10(2) of the South Carolina Code of Laws defines “pawnbroker” as “any person engaged in the business of lending money on the security of pledged goods or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a

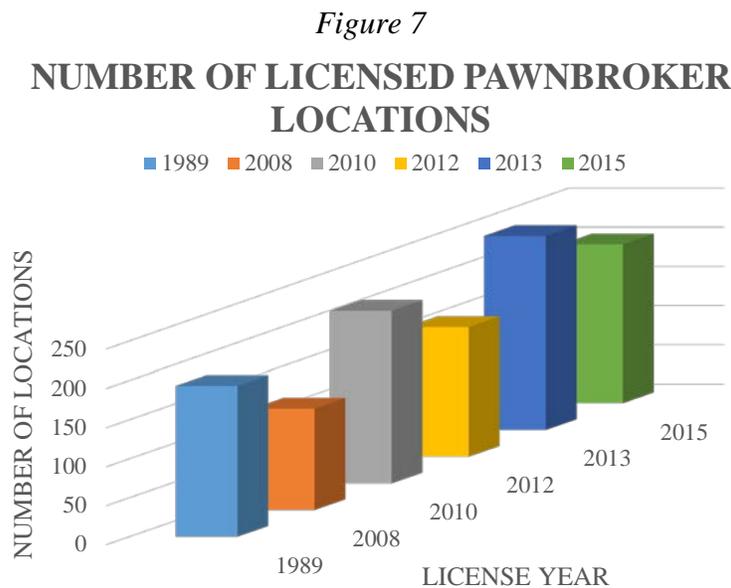
<sup>45</sup> S.C. Code Ann. § 34-39-175 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t34c039.php>.

<sup>46</sup> S.C. Code Ann. § 34-39-280 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t34c039.php>.

<sup>47</sup> Data displayed in this report comes from the corresponding annual reports on South Carolina deferred presentment transaction activity, prepared by Veritec Solutions, LLC for the South Carolina Board of Financial Institutions, Consumer Finance Division. See [www.bofi.sc.gov](http://www.bofi.sc.gov).

fixed price within a fixed period of time.”<sup>48</sup> No person may engage in the business of a pawnbroker without first obtaining a Certificate of Authority from the Department for each location.<sup>49</sup> As a regulated industry, pawnbrokers must keep certain records as required by the law and the Department,<sup>50</sup> including documentation of every pawn or purchase transaction by a pawnbroker.<sup>51</sup>

The General Assembly amended the South Carolina Pawnbroker Statute, which had been on the books since 1988, effective June 9, 2016. The major revisions to the law include an increase in the required surety bond amount to \$15,000, an increase in the permitted pawn amount to \$15,000, new insurance requirements, updated criminal background check requirements, and a law enforcement hold process.<sup>52</sup>



Following the financial crisis in 2008, the Department experienced a decrease in licenses for the majority of its regulated industries, including mortgage loan brokers and their originators; however, the number of pawnbroker licensees increased during that period. In 2008, there were 130 licensed pawn locations in South Carolina. By 2010, that number rose to 220, an increase of approximately 69%. By 2012, the number of licensed locations dropped to 165. In 2013, the number of licensed locations again grew, topping out at 247. As the market stabilized in recent years, so has the number of pawnbroker licensees. Currently, the Department has approximately

<sup>48</sup> S.C. Code Ann. § 40-39-10(2) (2001 & Supp. 2016), available at <http://www.scstatehouse.gov/code/t40c039.php>.

<sup>49</sup> S.C. Code Ann. §§ 40-39-20 and 40-39-30 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t40c039.php>.

<sup>50</sup> S.C. Code Ann. §§ 40-39-20 and 40-39-70 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t40c039.php>.

<sup>51</sup> S.C. Code Ann. § 40-39-70 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t40c039.php>.

<sup>52</sup> S.C. Code Ann. § 40-39-10 et seq. (2001), available at <http://www.scstatehouse.gov/code/t40c039.php>.

200 licensed pawnbroker locations. *Figure 7* shows the number of pawnbroker locations in South Carolina since licensing began.

## MORTGAGE LENDING

The Department has regulated mortgage loan brokers since 1988, and mortgage loan originators since 2005.<sup>53</sup> In 2005, the Department approved 3,125 mortgage loan originator licenses, and 762 mortgage broker licenses. The number of licensees for both brokers and originators increased until 2009, when licensing sharply declined due to the mortgage/housing crisis nationwide. During that year, the number of broker licenses approved dropped to 448, and the number of originator licenses fell to 1,610.

The Secure and Fair Enforcement for Mortgage Licensing Act (“SAFE Act”) was enacted in 2008 following the financial crisis, and mandates a nationwide licensing and registration system for residential mortgage loan originators.<sup>54</sup> The SAFE Act also requires that federal registration and state licensing and registration of companies and originators be accomplished through one online registration system, the Nationwide Mortgage Licensing System and Registry.<sup>55</sup>

In 2009, in response to the SAFE Act, South Carolina updated the mortgage broker requirements in Chapter 58 of Title 40,<sup>56</sup> and added Chapter 22, the “Mortgage Lending Act,” to Title 37.<sup>57</sup> The Mortgage Lending Act requires that a person who “act[s] as a mortgage lender or, directly or indirectly, engage[s] in the business of a mortgage lender under any name or title...” to first obtain a license from SCBOFI-CFD.<sup>58</sup> Both mortgage laws require licensees submit their mortgage log data to their respective regulator annually.<sup>59</sup> The Department compiles this data and prepares the Mortgage Log Analysis Report each year.<sup>60</sup>

Since the Department began compiling mortgage loan application data, a decrease in the use of adjustable rate mortgage loan products as well as reverse mortgages has occurred.<sup>61</sup> (*Figure 9*). Concurrently, the borrower’s average credit score increased and, in 2015, was 28 points higher than in 2012. (*Figure 10*).

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<sup>53</sup> Act 544 of 1988; Act 42, effective January 1, 2004.

<sup>54</sup> Title V of Public Law 110-289 (2008).

<sup>55</sup> *Id.*

<sup>56</sup> Available at <http://www.scstatehouse.gov/code/t40c058.php>.

<sup>57</sup> Available at <http://www.scstatehouse.gov/code/t37c022.php>.

<sup>58</sup> *S.C. Code Ann.* § § 37-22-120; 37-22-140 (2015), available at <http://www.scstatehouse.gov/code/t37c022.php>.

<sup>59</sup> *S.C. Code Ann.* § 37-22-210(C) (2015), available at <http://www.scstatehouse.gov/code/t37c022.php>.

<sup>60</sup> *Id.*

<sup>61</sup> Data displayed in Figures 9-11 is derived from the annual Mortgage Log Analysis Report, available at [http://www.consumer.sc.gov/Regulatory/licensing\\_registration/MortgageBroker/Pages/default.aspx](http://www.consumer.sc.gov/Regulatory/licensing_registration/MortgageBroker/Pages/default.aspx).

Figure 9

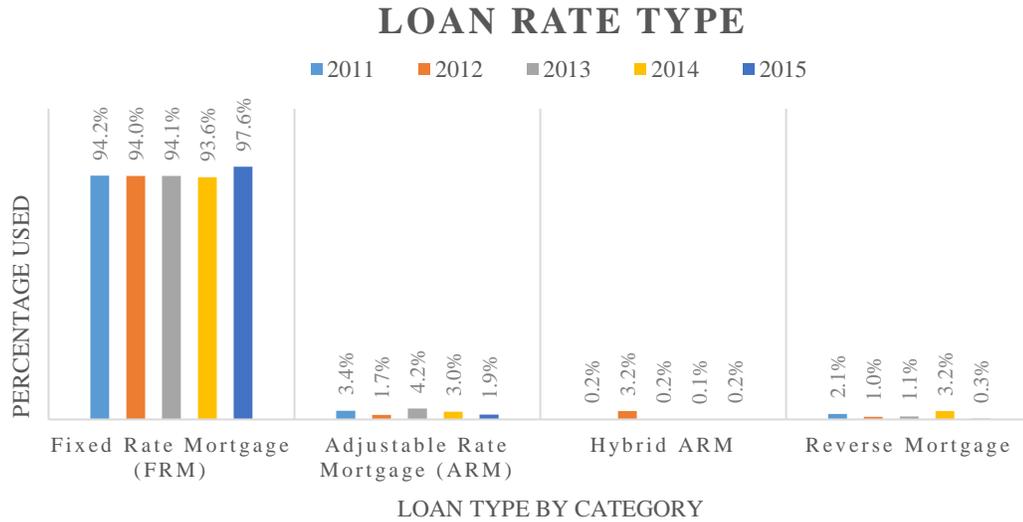
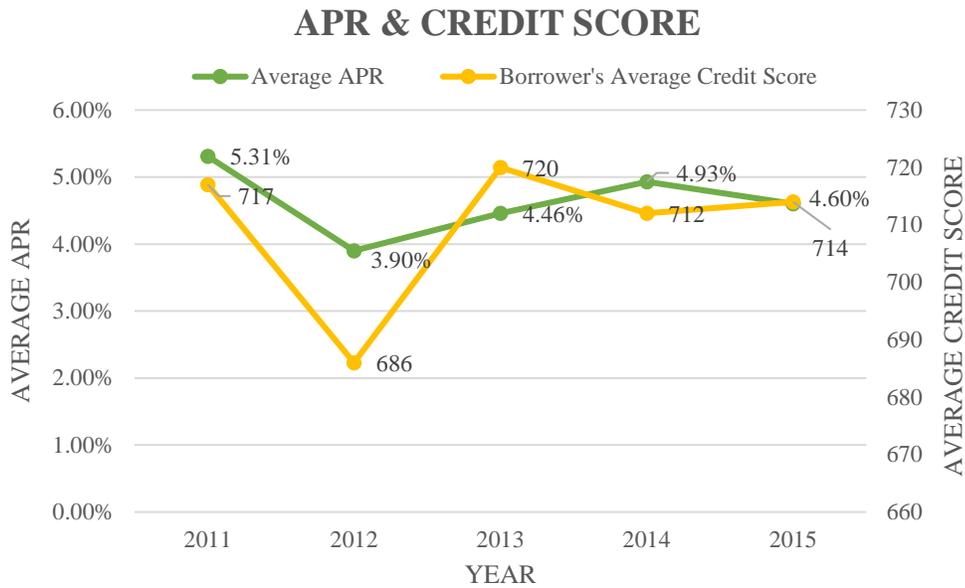


Figure 10

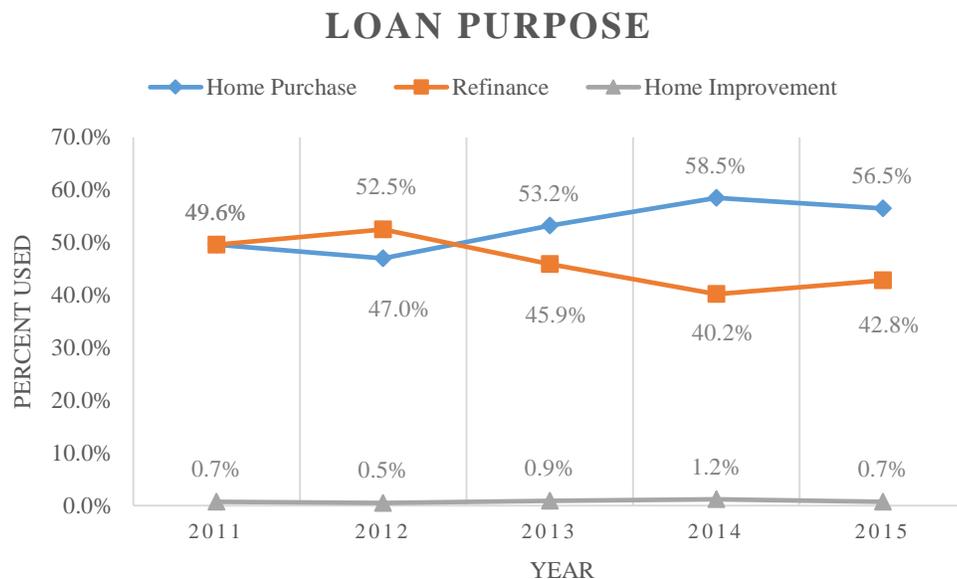


In March of 2009, the Federal Housing Finance Agency (“FHFA”), in coordination with the U.S. Department of Treasury, announced the Home Affordable Refinance Program (“HARP” or the “program”).<sup>62</sup> HARP was initiated as a streamlined refinance program for borrowers, with

<sup>62</sup> Federal Housing Finance Agency, *Home Affordable Refinance Program: A Mid-Program Assessment*, Evaluation Report, 2013-006, p. 8 (August 2013). Available at: <https://www.fhfa.org/Content/Files/EVL-2013-006.pdf>.

loans owned or guaranteed by Fannie Mae or Freddie Mac, who were unable to refinance because they had little or no equity in their homes.<sup>63</sup> The program was limited to homeowners whose loan-to-value ratio was 125% to 105%.<sup>64</sup> In October of 2011, FHFA revamped HARP, and the loan-to-value restriction was removed, along with a specific provision in the original program which had increased a mortgage lender's typical mortgage liabilities.<sup>65</sup> With the revisions in place, more loans were refinanced through HARP in the first five months of 2012 than were refinanced through the program for all of 2011.<sup>66</sup> Borrowers with an adjustable rate mortgage ("ARM") or a hybrid ARM, also engaged in refinancing in the years following the housing crisis, as rates were far lower than they had been in decades previously. These factors account for the increase in hybrid ARM loans in 2012, shown in *Figure 9* above, as well as the shift after 2012, illustrated in *Figure 11* below, which shows more loans were for the purpose of purchasing a home rather than refinancing an existing loan.

*Figure 11*



## CREDIT COUNSELING

The Consumer Credit Counseling Act (the "CCCA") went into effect on December 2, 2005, as part of the Code.<sup>67</sup> The need for a law protecting consumers experiencing financial hardship became apparent as lawsuits and investigations revealed misleading and deceptive tactics used by

<sup>63</sup> *Id.* at ppp.12-13.

<sup>64</sup> *Id.* at p.10.

<sup>65</sup> *Id.* at p.10.

<sup>66</sup> See [www.fhfaoig.gov](http://www.fhfaoig.gov).

<sup>67</sup> *S.C. Code Ann.* § 37-7-101 *et seq.* (2015), available at <http://www.scstatehouse.gov/code/t37c007.php>.

some businesses in this industry.<sup>68</sup> The CCCA requires consumer credit counseling organizations, which are businesses offering or providing credit counseling services for a fee, compensation or gain, and to obtain a license from the Department for each location.<sup>69</sup> Employees of these organizations who are involved with providing the credit counseling services, “credit counselors” under the CCCA, must also obtain a license.<sup>70</sup> The industries that must comply with the CCCA can generally be divided into three categories: (1) Debt management/debt consolidation businesses, (2) Credit repair businesses, and (3) Debt settlement/ negotiation businesses.<sup>71</sup>

Consumer credit counseling organizations must file an annual report with the Department pursuant to section 37-7-115(A). The report covers information regarding the credit counseling business conducted with South Carolina consumers during the prior calendar year. The Department compiles this information and publishes the “Consumer Credit Counseling Annual Report Data” each year, offering a perspective of consumer debt in our state. *Table 3* provides a synopsis of credit counseling activity over the past five years.

*Table 3*<sup>72</sup>

### CREDIT COUNSELING ANNUAL ACTIVITY DATA

	2015	2014	2013	2012	2011
<b>Number of Licensed CC Organizations</b>	52	43	46	45	41
<b>Total # of Consumer Contracts</b>	40,068	10,233	12,701	13,867	14,758
<b>Average Length of Contract (Months)</b>	34	37	37	35	39
<b>Average Amount of Debt per Consumer</b>	\$19,060	\$17,544	\$15,789	\$18,065	\$18,992
<b>Money Paid to Consumer’s Creditors</b>	\$30,780,102	\$35,182,461	\$43,678,148	\$48,406,519	\$47,828,825
<b>Percent of Completed Contracts</b>	33%	35%	31%	27%	33%

Consumer debt fluctuated greatly in the first years of the Department’s collection of such data. In 2009, the average consumer debt reported was \$24,876. This number decreased over the following years until 2014, when the amount ticked up to \$17,544. The current level is greater than that seen in 2011, on the heels of the debt crisis.

The number of consumer contracts has also varied since the CCCA became effective; however, in 2015, there was an increase of nearly 30,000 consumer contracts. While the number of consumer contracts increased, there was no correlating increase in the amount of money paid to

<sup>68</sup> See e.g., *Federal Trade Commission v. AmeriDebt, Inc., DebtWorks, Inc., Andris Pukke, and Pamela Pukke, also known as Pamela Shuster*. Civil Action No.: PJM 03-3317; *Federal Trade Commission, Plaintiff, v. National Consumer Council, Inc., et al., Defendants*. Civil Action No.: SACV04-0474CJC(JWJX).

<sup>69</sup> *S.C. Code Ann.* § 37-7-102 (2015), available at <http://www.scstatehouse.gov/code/t37c007.php>.

<sup>70</sup> *S.C. Code Ann.* § 37-7-102 (2015), available at <http://www.scstatehouse.gov/code/t37c007.php>.

<sup>71</sup> *S.C. Code Ann.* § 37-7-101(3) & (7) (2015), available at <http://www.scstatehouse.gov/code/t37c007.php>.

<sup>72</sup> Data displayed in this chart is derived from the annual Credit Counseling Report, available at [http://www.consumer.sc.gov/Regulatory/licensing\\_registration/CreditCounseling/Pages/default.aspx](http://www.consumer.sc.gov/Regulatory/licensing_registration/CreditCounseling/Pages/default.aspx).

consumers' creditors, as the increase in contracts was largely due to one additional licensee which engages in credit repair services, and therefore does not pay money to a consumer's creditors.

## **CONCLUSION**

In Fiscal Year 2015, the Department began development of a new backend licensing database with online deployment capabilities. It is anticipated DCA will move all fifteen regulatory programs to the system in 2017. The update will enable the Department to pull and view data in new ways, allowing a clearer picture of the state of credit in South Carolina. The outcome will serve as a foundation for legislative recommendations and Department comments submitted in the rulemaking processes of state and federal agencies.

## APPENDIX A: RECENT ENFORCEMENT ACTIONS

### INTRODUCTION

For the third year in a row, DCA realized stabilized revenue collections from administration and enforcement during the last fiscal year. While DCA processed slightly fewer regulatory filings in Fiscal Year 2016 compared to the year prior, numbers are still significantly higher than those seen from 2009-2013. With the steady flow of filings, DCA compliance reviews increased 16% in FY16, coming on the heels of a 36% increase in FY15. These reviews have a direct impact on enforcement actions, which increased 31%, bringing the total increase since FY14 to 263%. Consumer refunds, credits, and adjustments resulting from enforcement actions, also increased 37%. **Overall, the Department's outcome of credits, refunds and adjustments for FY16 through efforts in complaint mediation, enforcement and intervention in insurance rate filings reached \$9,102,400.**

In Fiscal Year 2016, the Department issued approximately 7,900 licenses, registrations and certificates of authority.<sup>73</sup> During the same time period, investigators conducted 498 advisories, compliance reviews, contacts and inspections. The Department strives to conduct a certain percentage of compliance reviews annually to ensure continued compliance by licensees. Special investigations of licensed and unlicensed businesses may also be conducted upon receipt of consumer complaints, industry tips or reports or requests from other state or federal agencies. In 2016, the Department engaged in 148 administrative actions. Some highlights of issues identified through recent compliance reviews or investigations can be found below. A listing of recent public enforcement actions can be viewed on the Department's website.<sup>74</sup>

### RECENT ENFORCEMENT/ INVESTIGATIVE HIGHLIGHTS

#### Title 32 Contracts and Agents, Chapter 7 Preneed Funeral Contracts

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*The Preneed Funeral Contract statute requires funeral homes that sell preneed funeral contracts to be licensed by DCA, use approved contracts, deposit funds into trust accounts or purchase preneed funeral insurance within 30 days of receipt, report all contracts sold to the Department and pay a filing fee for each contract sold. The statute also requires funeral directors, who manage the accounts, to keep a ledger for all trust accounts that reflects all activity for each account, i.e. all payments, deductions, accretions, etc.*

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<sup>73</sup> This number does not include the number of regulatory filings processed by the Department, which adds an additional 16,000 items. See the Department's FY16 Accountability Report at <http://www.consumer.sc.gov/AboutUs/Pages/AccountabilityReports.aspx>.

<sup>74</sup> See [http://www.consumer.sc.gov/Regulatory/Pages/Enforcement\\_Actions.aspx](http://www.consumer.sc.gov/Regulatory/Pages/Enforcement_Actions.aspx).

To ensure compliance, investigators reviewed bank statements, insurance provider account lists, investigator funeral home contract reports, receipt books and copies, ledger books/ledger databases, and the individual beneficiary files. Recurring issues include:

- Failure of licensed preneed funeral contract providers to deposit preneed funeral funds into trust accounts as required by law.
- Failure of licensed preneed providers to provide the Department with a listing of all contracts sold and payment of the \$20 filing to the Department for each contract.
- Funeral homes that are not licensed to sell preneed funeral contracts accepting funds from consumers.
- Licensed preneed providers receiving monies greater than the contract amount and failing to execute an additional contract for the excess funds received.

### **Title 44 Health, Chapter 79 Physical Fitness Services Act**

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*The Physical Fitness Services Act requires any facility or individual that offers physical fitness services for the development of physical fitness through exercise or weight control to file for a Certificate of Authority with DCA. If a physical fitness provider offers services that exceed 3 months in duration or \$200, a written membership must be executed with the consumer. The statute gives specific requirements that must be disclosed on all prepaid or credit contracts for physical fitness services. The law requires that all books and records must be available for review by the Department.*

To ensure compliance, investigators reviewed membership contracts, membership account databases, and individual member files. Recurring issues include:

- Physical fitness centers failing to file with the Department for a Certificate of Authority to provide services.
- Licensed physical fitness centers failing to execute a contract with consumers for services exceeding \$200 or 3 months as required by law.
- Physical fitness centers failing to provide consumers with the proper disclosures as required on the contract.
- Failing to provide DCA Investigators with books and records as required by law.

### **Title 40 Professions and Occupations, Chapter 39 Pawnbrokers**

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*No person shall carry on the business of a pawn broker in any location without first obtaining a Certificate of Authority for each location. All pawn brokers conducting business in this state are under the authority of and regulated by the DCA. The statute requires a pawn broker to keep a*

*detailed record of all transactions for items being pledged or purchased. The statute requires a pawn broker to keep books and records available to the Department, designees, law enforcement officers, or court officials.*

To ensure compliance, investigators reviewed pawn tickets and buy tickets, pawn/buy reports, itemized payment histories, redeemed tickets, and forfeiture letters. Recurring issues include:

- Failure of businesses that have taken in pawns and received interest on pawned items filing for a Certificate of Authority with the Department.
- Licensed pawnbrokers failing to disclose complete descriptions of items on the pawn ticket. (including serial numbers)
- Licensed pawnbrokers failing to hold purchased items for the required holding period.
- Licensed pawnbrokers purchasing stolen gift cards.

## APPENDIX B: ADMINISTRATIVE INTERPRETATION SUMMARIES

### INTRODUCTION

The consumer credit marketplace is an ever-evolving one. Business models and products are emerging at rapid rates, and the internet has created a new venue for transactions. The Department's task is to apply laws, oftentimes dating back forty years, to such fact scenarios. We are receiving an increased amount of requests for interpretations. Summaries of the latest issued appear below. Full administrative interpretations can be viewed on the Department's website at [www.consumer.sc.gov](http://www.consumer.sc.gov).

### ADMINISTRATIVE INTERPRETATIONS- TITLE 37

#### *3.209-1401 Prepayment Penalty*

Consumer credit transactions are governed by the Code. *S.C. Code Ann. § 37-1-101 et seq.* (2015). The right to prepay a consumer loan is addressed in section 37-3-209, and prepayment of credit sales is addressed in section 37-2-209. The Department was presented with a question regarding whether a lender, subject to the Code, can charge a consumer a different interest rate than currently being assessed and impose different terms regarding accepted method of payment or otherwise impose varying contract terms when a consumer loan is being prepaid by a third party on behalf of the consumer.

In drafting its opinion, the Department relied on the provisions of the Code governing the consumer's right to prepay a loan. Section 37-3-209 specifically states: "... the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty." A debtor is defined as "any person who is an obligor in a credit transaction, including any co-signor, co-maker, guarantor, endorsee or surety, and the assignee of any obligor, and also includes any person who agrees to assume the payment of a credit obligation." *S.C. Code Ann. § 37-1-301(4)* (2015). Because the Code defines debtor as including not only the original consumer, but also assignees and other persons or organizations who agree to assume responsibility of paying the debt as well, the Department concluded that such third parties are also entitled to prepay a loan in full without incurring any type of penalty.

The Department also addressed the issue concerning whether lenders may contract for alternate interest rate terms and payment methods to apply should a third party pay off the loan. In its administrative opinion, the Department concluded that such alternate terms would constitute a prepayment penalty if the third party is an assignee of the obligor or entered into an agreement to pay off the loan. The third party assuming the obligation is considered the debtor and, thus, is entitled to pay off the loan under the same terms as the consumer whom originally incurred the debt/obligation. *S.C. Code Ann. § 37-1-301(14)* (2015).

### 3.104, 106-1403 Litigation Funding Transactions

The Department addressed a question regarding whether a legal funding transaction constitutes a “loan” under the Code. *S.C. Code Ann.* § 37-1-101 *et seq.*, (2015). Generally, a legal/litigation funding transaction involves the advancement of funds to a plaintiff in a civil action for the purpose of paying living expenses by someone who is not a party or who does not otherwise have a role in the lawsuit, which need to be repaid with interest and/or additional fees.<sup>75</sup> The Department concluded that such a transaction, also referred to as “third-party litigation financing,” “lawsuit lending,” “pre-settlement funding,” “litigation funding,” and “non-recourse cash advances” meets the definition of a loan, and therefore a lender who engages in the offering or provision of such activities must comply with the Code. In reaching its conclusion, the Department relied on the definition of a loan in the Code, applicable case law, and the interpretations and rulings in other Uniform Consumer Credit Code (“UCCC”) states.<sup>76</sup>

A loan, as defined by the Code, includes among other activities, “the creation of debt by the lender’s payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;” and “the forbearance of debt arising from a loan.” *See S.C. Code Ann.* § 37-3-106(1), (4) (2015).

A loan finance charge is defined in section 37-3-109(a) as:

The sum of all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount or other system of charges, however denominated...

A majority of case law involving this definition and the question at hand has concluded that litigation advances meet the definition of a “loan” and “consumer loan” pursuant to the law,<sup>77</sup> and that the broad definition of a consumer loan recognizes that a debt is created through the advancement of funds prior to a resolution being realized and the lack of a statutory requirement of an absolute obligation to repay the funds.<sup>78</sup> Thus, the Department concluded that a litigation funding transaction meets the definition of a loan as monies are given to the consumer. The broad concept of a “loan” under the UCCC certainly encompasses those circumstances where the consumer does not have an unconditional obligation to repay. Therefore, persons engaged in offering or providing such loans must comply with the Code.

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<sup>75</sup> *Oasis Legal Fin. Group, LLC v. Suthers*, 2013 COA 82, P2 (Colo. App. 2013).

<sup>76</sup> Prior to issuing interpretations and rulings, the Department is directed to additionally assess and take into consideration those of other UCCC states. *See S.C. Code Ann.* § § 37-6-104(3)(a), (b)(ii); 37-1-102(g) (2015). Colorado, Indiana, Idaho, Iowa, Kansas, Maine, Oklahoma, Utah, Wisconsin and Wyoming administer and enforce versions of the UCCC.

<sup>77</sup> *In Re Pre-Settlement Lender Licensing* (Colo. Attorney Gen. April 29, 2010).

<sup>78</sup> *Decision Point, Inc. v. Reece & Nichols Realtors, Inc.*, 282 Kan. 381, 144 P.3d 706 (Kan. 2006).

### ***3.501, 502-1501 Sale of Supervised Loans***

The Department was presented with three questions concerning the purchase or assignment of supervised loans.

- (1) Does the status of a purchased loan as defaulted, returned, unpaid or otherwise uncollectable affect whether the loan is still considered a “supervised loan,”
- (2) Whether a person purchasing or taking assignment of supervised loans from a licensed supervised lender or supervised financial organization is required to hold a supervised lender license or not.
- (3) Whether the sale/ assignment of supervised loans impacts the statute of limitations.

The Department relied on the Code, and applicable case law in drafting its opinion. Supervised loans, governed by the Code in section 37-3-500 *et seq.*, are defined as consumer loans with a finance charge exceeding twelve percent per year, and a supervised lender is a “person authorized to make or take assignments of supervised loans.” *S.C. Code Ann.* § 37-3-501(2) (2015).

The Department reviewed the plain meaning of the statute to determine whether a person purchasing or taking assignment of supervised loans from a licensed supervised lender or supervised financial organization is required to obtain a license. The Department relied on section 37-3-502 of the Code which prohibits any person other than a supervised financial organization from engaging in the making of supervised loans or “taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans” without first obtaining a license to do so.

Regarding the status of a purchased loan deemed uncollectible, the Department relied on section 36-3-203, which states that when an absolute transfer occurs, the absolute transfer gives the transferee the same rights the transferor had under the instrument that is transferred. Neither these rights nor the status of the loan as a supervised loan are affected by the loan being in default or otherwise deemed uncollectible. The only prerequisite for triggering the license requirement is that the loan meets the definition of a supervised loan; if that prerequisite is met, the purchaser/ assignee would be engaging in activities delineated in section 37-3-502(1)–(2), and both apply in this matter.

Regarding the statute of limitations, section 15-3-530 states that an action upon a contract shall be brought in court within three years. Based on this language, the Department determined that the sale/ assignment of a supervised loan does not affect the statute of limitations. In reaching this conclusion, the Department relied on the applicable case law stating that the statute of limitations begins to run when the party, in this scenario, the lender, has the right to bring an action against the debtor. *Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962). The tolling of the statute of limitations would occur through a voluntary action of the debtor, not the lender; thus, the sale/assignment of a supervised loan does not affect the statute of limitations since it is not an action taken by the debtor. *See Zaks v. Elliott*, 106 F.2d 425,427 (4th Cir. 1939).

In conclusion, a person purchasing or otherwise taking assignment of a supervised loan, including loans with a charged off or otherwise “uncollectible status,” must either be a supervised financial organization or a licensed supervised lender. Such a purchase or assignment does not toll the statute of limitations.

### ***30.120-1601 GAP Waivers and Valuation Guides***

The Department addressed a question regarding whether the reference to the National Automobile Dealers Association (“NADA”) in section 37-30-120 (I)(1)(b) required usage of the NADA valuation guide by sellers of GAP waivers, or allows the utilization of similar valuation guides.

To address this question, the Department reviewed the statutory section in question, as well as applicable case law and concluded that the reference to “National Automobile Dealers Association average retail value” indicates a legislative intent to require only a commercially recognized tool that provides information similar to NADA rather than limiting sellers to the NADA valuation guide exclusively. This conclusion was based on standard rules of statutory construction and in line with court holdings which have recognized the NADA handbook and Kelley Blue Book as standard tools for determining a vehicle’s value.<sup>79</sup>

The Department further provided the caveat that sellers are not permitted to price shop in order to evade the law’s intent. Rather, sellers of GAP waivers should consistently utilize the same valuation guide and document such use.

### ***2.308-1602 Motor Vehicle Dealer Advertised Price***

The Department addressed a question regarding whether a motor vehicle dealer must sell a vehicle for the price advertised online if the consumer does not mention the advertisement. To address this question, the Department reviewed the Code, as well as applicable case law. Section 37-2-308(c) states, “A motor vehicle dealer may not advertise in a manner that is false, deceptive, or misleading, or that misrepresents a vehicle offered for sale.” Because South Carolina courts have not ruled on this section, the Department looked to statutes and case law in other states. Illinois, California, Ohio, and several other states consider the act of selling a vehicle for a price above the advertised price to be an unfair or deceptive act, even if the consumer does not mention the advertised price.<sup>80</sup>

The Department agreed with these rulings, finding that failure to disclose a vehicle’s advertised price constitutes deceptive conduct and as such, violates section 37-2-308(c).

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<sup>79</sup> See *Hess v. Riedel-Hess*, 153 Ohio App.3d 337, 794 N.E.2d 96 (O.H. 2003); *In re McLean Trucking Co.*, 281 N.C. 375, 189 S.E.2d 194 (1972).

<sup>80</sup> See Ill. Rev. Stat. 1991, ch. 121 1/2, par. 262; Cal. VEH § 11713.1(e); Cal. Code Regs., tit. 13, § 260.04(b); Ohio Adm. Code § 109:4-3-16(B); Conn. Reg. § 42-110b-28(b)(1). See also *Affrunti v. Village Ford Sales, Inc.*, 232 Ill. App. 3d 704, 707, 597 N.E.2d 1242, 1244 (1992); *Castro v. Union Nissan, Inc.*, 2002 WL 1466810, (N.D. Ill. 2002).

Additionally, the Department's conclusion also provided for three specific exceptions to the requirement that a motor vehicle dealer sell a vehicle for the advertised price even if a consumer does not mention the advertisement. These exceptions apply where: (1) a motor vehicle dealer clearly and conspicuously conditions purchase of a vehicle at the advertised price on the mention of the advertisement by the consumer, and the consumer neglects to do so; (2) a motor vehicle dealer posts/provides a coupon that must be presented to receive a discounted purchase price, and the consumer fails to do so; and (3) the advertisement states that the advertised price and terms are good only for a specific period of time and such time has elapsed. The Department held this interpretation to apply to all advertisements, regardless of medium.

### ***3.109, 503-1603 Supervised Loans Location; Payment via Web***

The Department was presented with two questions concerning supervised loans. The first question was whether a website operated by a supervised lender and established for the purpose of accepting payments from consumers with existing supervised loan constitutes a place of business; the second question was whether a supervised lender may impose a fee upon a consumer making a loan payment using a specific method.

Supervised loans are governed by the Code in section 37-3-500 *et seq.*, including section 37-3-502, which prohibits any person other than a supervised financial organization from engaging in the making of supervised loans or "taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans" without first obtaining a license to do so. In 2008, the Department had previously issued guidance to the SCBOFI-CFD specifying the need for internet lenders to obtain supervised lending licenses for a website address. Because the statute creates a location based licensing structure, the Department concluded that any location where supervised lending activity is taking place is required to obtain a license.

In response to the second question posed, the Department considered whether the online payment fee on a supervised loan was a loan finance charge or an additional charge or transaction fee. The Code specifically states in section 37-3-109 that "the sum of all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit" are loan finance charges and must be treated accordingly. This definition does not include "charges as a result of default, additional charges, delinquency charges, or deferral charges..." *S.C. Code Ann.* § 37-3-202 to 204 (2015). Specifically section 37-3-202 states that a lender may contract these charges "in connection with" a consumer loan in addition to a loan finance charge. Based on the statutory language, the Department concluded in its interpretation that the fee imposed upon a consumer utilizing a payment method to make required payments on a consumer credit transaction is incident to the credit transaction and constitutes a loan finance charge.

A website through which supervised lending activity, including collecting payments, occurs constitutes a place of business/ location for the purposes of the supervised loan statutes and

requires licensure. A lender may accept payments via web portal or other payment method if the lender does not directly or indirectly impose a fee for such service.

## **ADMINISTRATIVE INTERPRETATIONS: OUTSIDE TITLE 37**

### ***34.39.130-1402 Sale of Deferred Presentment Accounts***

South Carolina Code section 34-39-110 *et seq.*, contains the Act, which governs all deferred presentment transactions in the state. The Act governs the regulation of persons offering and/or providing deferred presentment services to South Carolina consumers; specifically, section 130 prohibits any person from engaging in the business of “deferred presentment services” without first obtaining a license to do so.

The Department was presented with a question regarding whether a deferred presentment provider licensed pursuant to the Act can sell or otherwise assign defaulted, returned, unpaid or otherwise uncollectable accounts to a third party who is not licensed to provide deferred presentment services. In drafting its opinion, the Department reviewed the procedures with which a licensee must comply regarding consumer payments under a deferred presentment contract/transaction. Section 34-39-175 requires a licensee to utilize the deferred presentment transaction database, entering data at the commencement of the transaction and upon the transaction being paid in full. “An item is paid in full when the payer bank makes final payment on the customer’s check pursuant to section 36-4-215 or the customer has redeemed the check with a cash payment in full.” *S.C. Code Ann. § 34-39-270(F)* (Supp. 2016).

The administrative opinion concluded that should a licensee sell an account where final payment has not yet been received, the licensee would not be permitted to enter the transaction as “paid in full” as the previous terms would not be met. Additionally, the administrative opinion determined that the Act’s provisions clearly contemplate the deferred presentment transaction retaining its character from commencement until final payment and the person responsible for entering the final payment status of the transaction must be a licensee, thus such sale would constitute a violation of the Act.