



2018

STATE OF CREDIT

REPORT

SC DEPARTMENT OF CONSUMER AFFAIRS
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EXECUTIVE SUMMARY

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 sixty laws, including those in the South Carolina Consumer Protection Code (“Code”), *S.C. Code Ann.* section 37-1-101 *et seq.* Our mission is to protect consumers from inequities in the marketplace through advocacy, mediation, enforcement and education.

Pursuant to *S. C. 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. In pertinent part, the Department must report on “the use of consumer credit in the State, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit.”¹

The 2018 State of Credit Report focuses on the use of credit in this State, as well as enforcement actions and administrative interpretations of the Department. The data comes from an analysis of filings received by the Department, reports compiled by the South Carolina Board of Financial Institution’s Consumer Finance Division, a general familiarity with credit markets and with regulators who are familiar with markets in other jurisdictions. Certain items delineated in 37-6-104(5) are reported to the Governor and General Assembly through various reporting requirements, including the Annual Accountability Report. Such information is not contained herein.²

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, Public Information and Education, Identity Theft Unit, Consumer Advocacy, and Legal.

All of DCA’s functions are supported by the agency’s **Administration Division**. All support and planning services critical to the operation of the agency are housed in Administration, including procurement, human resources, accounting and information technology. The Administrator position, appointed by the Commission on Consumer Affairs, is located in this Division. She is charged with advising the Legislature and Governor on consumer issues; administering, interpreting and enforcing Title 37, among other statutes; and managing the day to day operations of the agency.

¹ *Id.*

² Agency reports can be found on the Department’s website at www.consumer.sc.gov.

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 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 **Legal Division** performs the agency's licensing, administration and enforcement duties related to approximately fifty of the sixty statutes under the agency's jurisdiction. The Division addresses complaints, conducts investigations, and brings enforcement actions in various courts for violations of the laws subject to action by the Administrator. The Legal Division also processes regulatory applications and filings for 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, consumer credit grantors, maximum rate filings, and motor vehicle disclosure programs.

INTEREST RATES & CREDITORS: GENERAL FILINGS

General Filings Overview

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”³ is a consumer credit sale,⁴ a consumer loan,⁵ a consumer lease,⁶ or a consumer rental-purchase agreement.⁷ “Credit” is “the right granted by a creditor to a debtor to defer payment of or to incur debt and its payment.”⁸ A “creditor” is the person who grants credit in a consumer credit transaction or an assignee thereof.⁹ The Code requires a person file certain information with the Department if threshold requirements are triggered.¹⁰ Such filings constitute the Credit Grantor Notification and the Maximum Rate Schedule.

Credit Grantor Notifications

Certain businesses, regardless of industry type, must file a consumer credit grantor notification with the Department.¹¹ 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.¹²

In 2017, 1,212 creditors filed 4,402 credit grantor notifications for 2,690 locations. While creditors must file for each location, the total number of credit grantor filings includes the varied transaction types available per location (*Figure 1*). Between 2016 and 2017, the number of creditors filing consumer credit grantor notifications dropped slightly, but the number of filing locations for those creditors increased marginally (*Figure 1*). Total filings decreased marginally as well, coinciding with the number of creditors filing trend (*Figure 1*).

³ S.C. Code Ann. § 37-1-301(11) (2015), available at <http://www.scstatehouse.gov/code/t37c001.php>.

⁴ S.C. Code Ann. § 37-2-104 (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>.

⁵ S.C. Code Ann. § 37-3-104 (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

⁶ S.C. Code Ann. § 37-2-106 (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>.

⁷ S.C. Code Ann. § 37-2-701(6) (2015), available at <http://www.scstatehouse.gov/code/t37c002.php>.

⁸ S.C. Code Ann. § 37-1-301(12) (2015), available at <http://www.scstatehouse.gov/code/t37c001.php>.

⁹ S.C. Code Ann. § 37-1-301(13) (2015), available at <http://www.scstatehouse.gov/code/t37c001.php>.

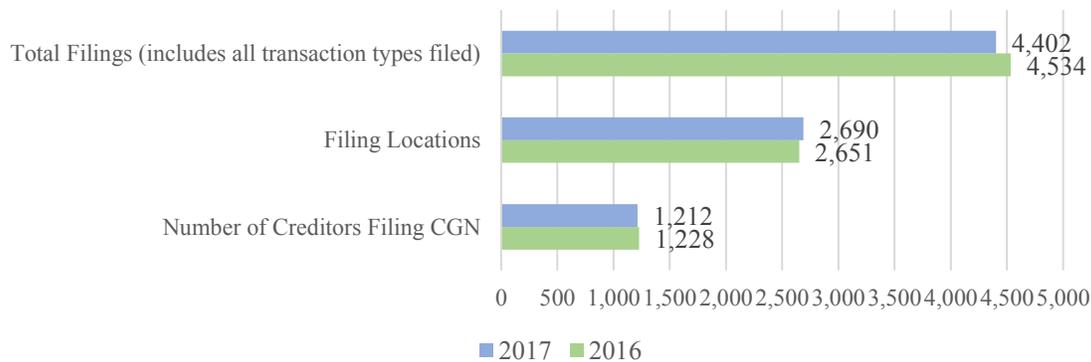
¹⁰ S.C. Code Ann. §§ 37-2-305, 37-3-305 (Supp. 2016) and § 37-6-201 (2015) available at <http://www.scstatehouse.gov/code/t37c002.php>, <http://www.scstatehouse.gov/code/t37c003.php> and <http://www.scstatehouse.gov/code/t37c006.php>.

¹¹ S.C. Code Ann. § 37-6-201 (2015), available at <http://www.scstatehouse.gov/code/t37c006.php>.

¹² S.C. Code Ann. §§ 37-6-201 to 203 (2015), available at <http://www.scstatehouse.gov/code/t37c006.php>.

Figure 1

CREDIT GRANTOR NOTIFICATION FILINGS

**Maximum Rate Schedules**

The purposes of the Consumer Protection Code include: (a) to provide rate ceilings to assure an adequate supply of credit to consumers; (b) to further consumer understanding of the terms of credit transactions; (c) to foster competition among suppliers of consumer credit so consumers may obtain credit at a reasonable cost; and (d) to permit and encourage the development of fair and economically sound credit practices.¹³ To this end, 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 sales¹⁴ and any loan finance charge for consumer loans,¹⁵ and it must be disclosed as a part of the Annual Percentage Rate (APR).¹⁶ These charges¹⁷ are essentially the amount added to the transaction for the use of someone else’s money.¹⁸

Under current law, creditors can charge any amount up to 18% APR without notifying the Department,¹⁹ but if the creditor wants to charge a higher rate, the creditor must first file the rate with the Department and post it in its place of business.²⁰ If a creditor fails to file and post a rate

¹³ S.C. Code Ann. § 37-1-102(b)-(c), (e) (2015), available at <https://www.scstatehouse.gov/code/t37c001.php>.

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

¹⁵ S.C. Code Ann. § 37-3-109 (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

¹⁶ 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>.

¹⁷ 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.*

¹⁸ 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>.

¹⁹ 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.

²⁰ 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>.

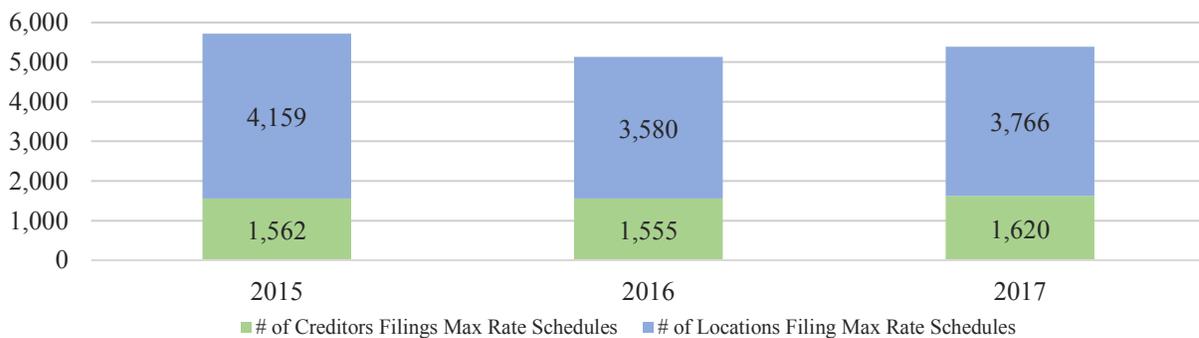
exceeding 18% APR when required, the creditor can be required to roll back the interest rate to 18% APR or the rate previously properly filed with the Department.²¹

A Maximum (“max”) Rate Schedule must be filed annually²² 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.²³ The rate schedule is meant to foster competition and 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 at the creditor’s business location and on the agency’s website.²⁴

For filing year 2017, 1,620 creditors filed maximum rate schedules with the Department for 3,766 locations, an increase compared to 2016 (*Figure 2*). Interest rates filed ranged from less than 1% to 780%. Half of creditors filed rates of 36.99% or less (*Figure 3*). An additional 9% of filers set rates between 37% and 49.99%, and 28% filed for 50%–99.99% APR. The APR categories for triple digit interest rates remained largely unchanged compared to 2016. The trend from 2015–2017, however, shows a noticeable increase in rates overall, as 79% of filers filed for a maximum rate of less than 50% in 2015 as compared to 59% in 2017. The largest growth being in the 50%–99.9% category, with filings for this category increasing 19% in that time period (*Figure 3*).

Figure 2

NUMBER OF MAX RATE FILINGS BY CREDITOR & LOCATION



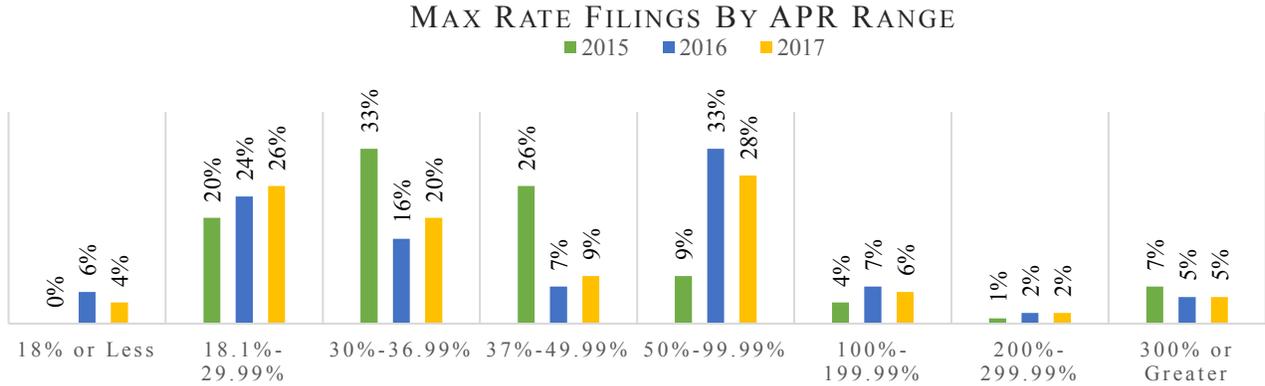
²¹ S.C. Code Ann. §§ 37-2-201(7) and 37-3-201(6) (2015), available at <http://www.scstatehouse.gov/code/t37c002.php> and <http://www.scstatehouse.gov/code/t37c003.php>.

²² S.C. Code Ann. §§ 37-2-305 and 37-3-305 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t37c002.php> and <http://www.scstatehouse.gov/code/t37c003.php>.

²³ S.C. Code Ann. §§ 37-2-305(2) and 37-3-305(2) (Supp. 2016), available at <http://www.scstatehouse.gov/code/t37c002.php> and <http://www.scstatehouse.gov/code/t37c003.php>.

²⁴ <http://www.consumer.sc.gov/consumer/Pages/LicenseeLookup.aspx>.

Figure 3



In both 2016 and 2017, consumer loan max rate filings outpaced the number of consumer credit sale filings by approximately 4:1 (*Figure 4*). Similar to credit grantor notification filings, creditors submit filings by location; however, the filing may include APR ranges dependent on the category of consumer credit transaction entered into. Secured transactions are the most common for credit sales and consumer loan filings alike. For consumer loans, the secured category comprises approximately 36% of those filings, whereas secured transactions account for approximately 74% of credit sales filings (*Figure 5*).

Figure 4

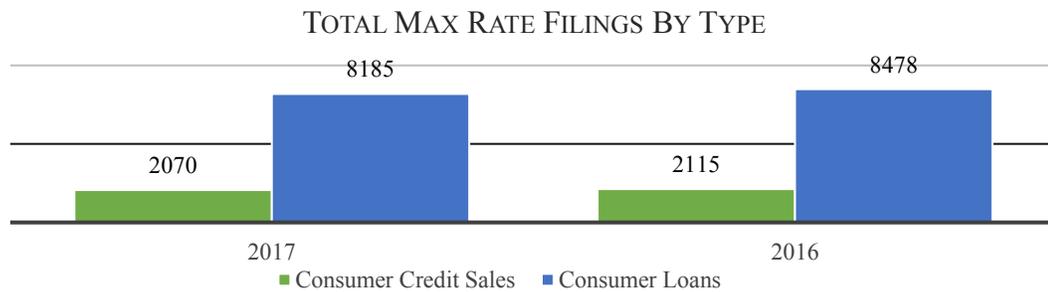
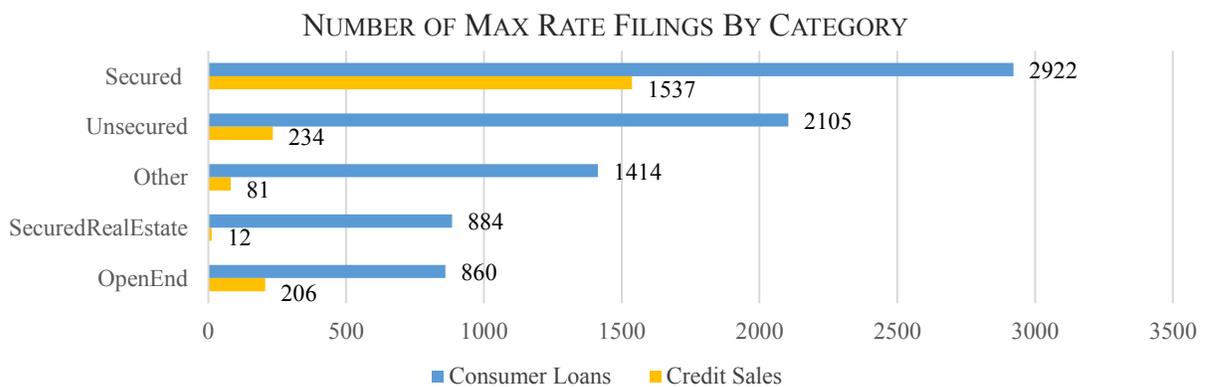


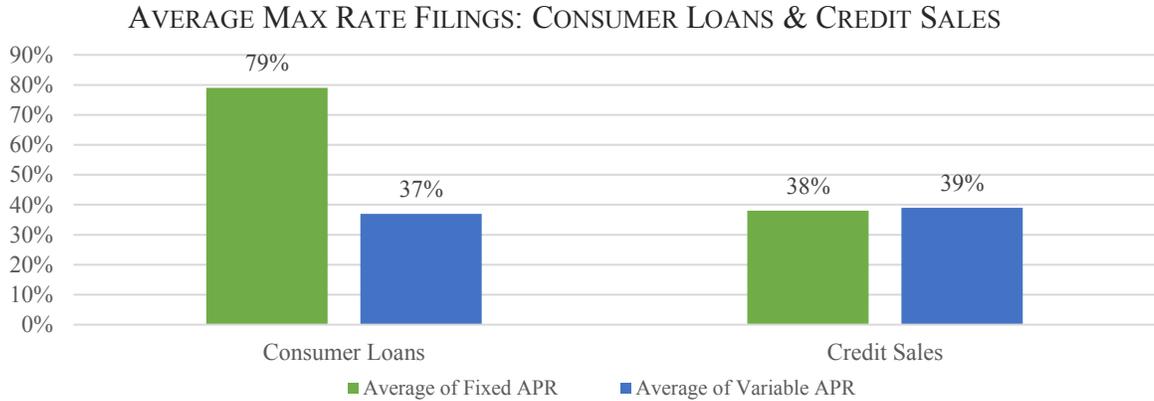
Figure 5



Additionally, the maximum rates filed vary greatly when comparing average fixed sales and loans APR filings, where the average max rate filed is approximately forty-one percent higher for consumer loans (*Figure 6*). While a similar gap is found when comparing the average fixed

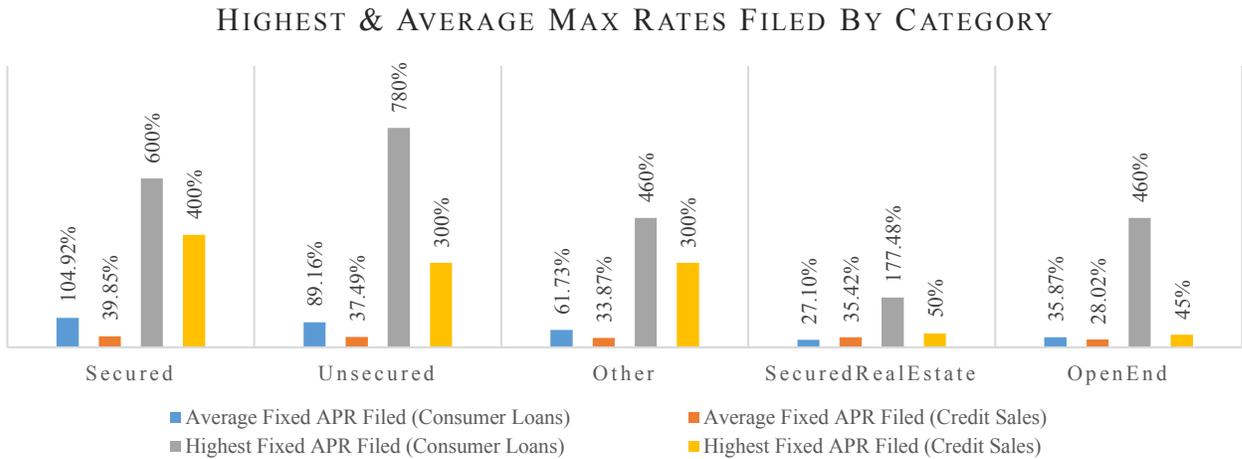
APR and variable APR within the consumer loan category, the averages for credit sales filings are almost identical (*Figure 6*).

Figure 6



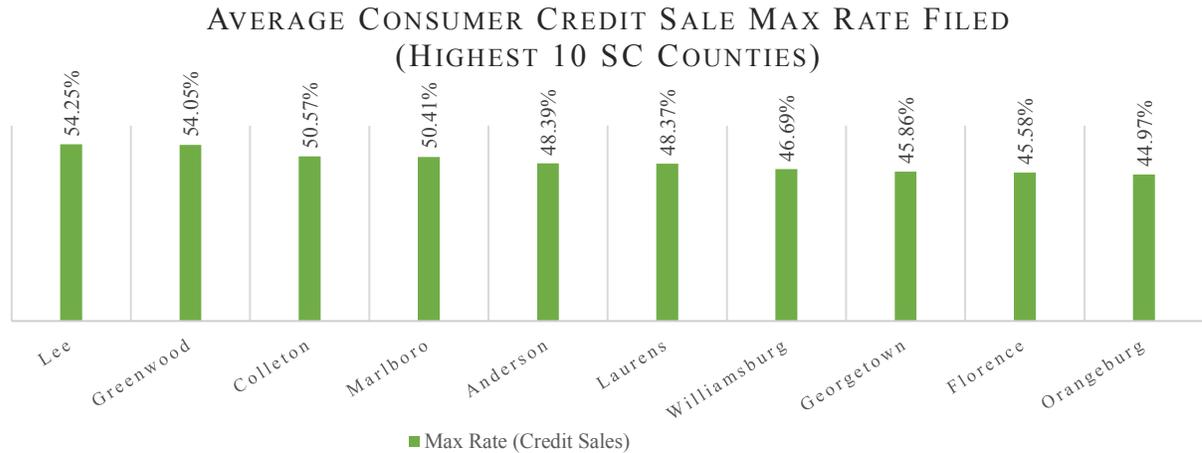
While the maximum rate filings vary depending on the type of transaction (i.e., consumer credit sale or consumer loan), the rate filed also fluctuates based on the transaction category. Both consumer loans and credit sales had the highest average max rate filed where the transaction was secured (*Figure 7*). The lowest max rate filed on average for consumer loans was where the loan was secured by real estate; for consumer credit sales, open end transactions had the lowest max rate filing on average (*Figure 7*).

Figure 7



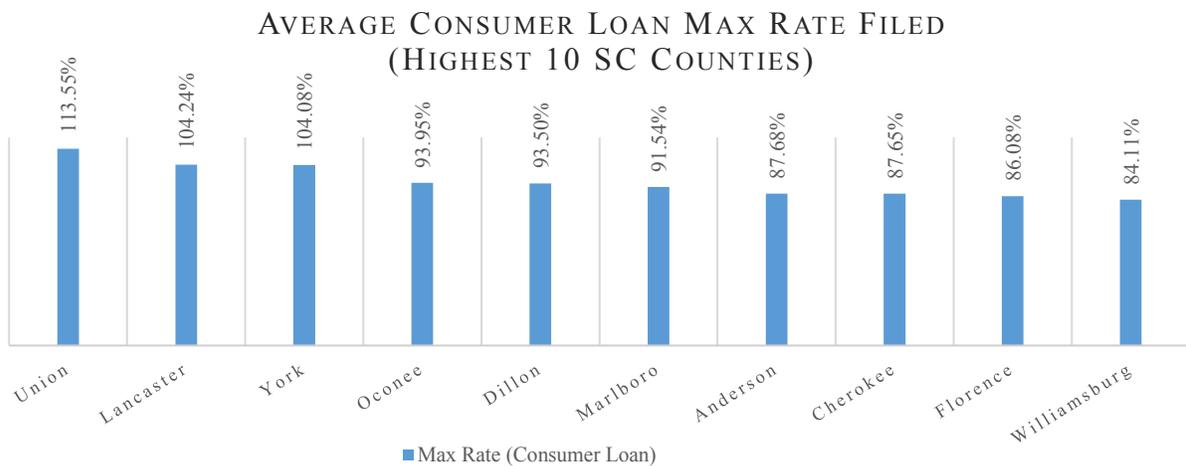
An analysis of consumer credit sale max rate filings based on location indicates that there is little change from county to county when comparing counties with the highest average fixed APR filings (*Figure 8*). The largest difference lies between Greenwood and Colleton, the second and third highest counties, where the average max rate filed drops from 54.05% in Greenwood, to 50.57% in Colleton.

Figure 8

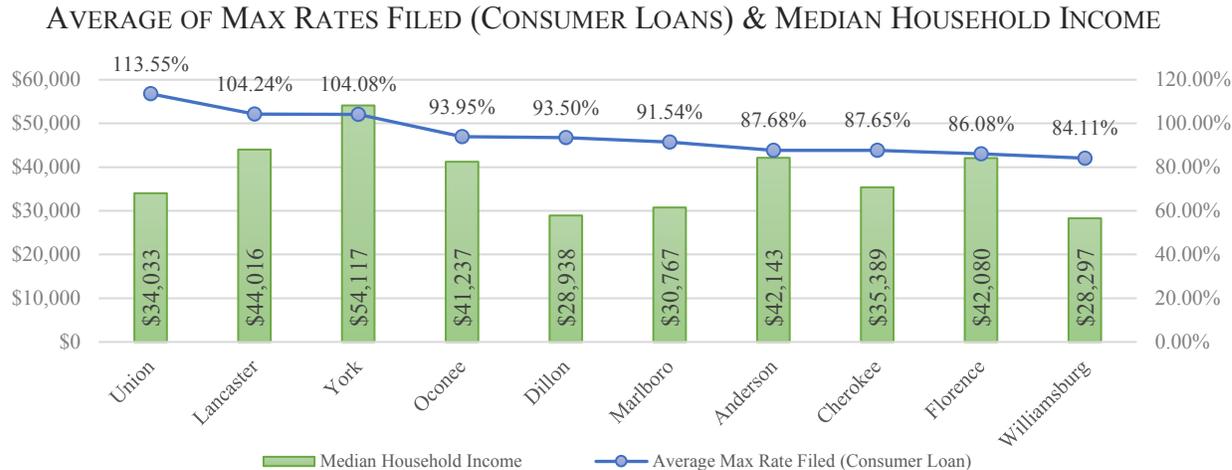


The average max rate filing variation by county is far greater for consumer loans (Figure 9). Union County had the highest average max rate filed for consumer loans at 113.55%, and the second highest filings on average fall in Lancaster County at 104.24%, a 9.31% difference. For consumer credit sales, the highest ten counties are spread across the state; however, six of the top ten consumer loan counties border North Carolina.

Figure 9



When viewing the ten counties with the highest average max rate filed for consumer loans in conjunction with the median household income for each county, the largest disparities relative to other counties occur at the top county (Union) followed by Dillon, Marlboro and Williamsburg (Figure 10).

Figure 10²⁵

While the analysis above focuses on filings by South Carolina creditors, it is important to note that the highest average max rate filings, and the overall highest max rate filed (780% APR), for consumer loans were made by lenders located outside South Carolina operating as online lenders. For credit sales, Colleton County had the overall highest max rate filing (400% APR). A complete listing of highest and average maximum rate filed by county can be found in Appendix C (credit sales) and Appendix D (loans).

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 transactions and leases, additional requirements and consumer protections are contained in Chapter Three with which lenders must comply.²⁶ This includes specific regulation of lenders offering loans in excess of 12% APR.²⁷ Some consumer loan products, however, are regulated by other titles, including deferred presentment and pawn transactions.²⁸

Supervised Lending

Supervised loans are governed by the Code, specifically section 37-3-500 *et seq.* Supervised loans are consumer loans in which the rate of the loan finance charge exceeds 12% APR.²⁹ A supervised lender is a person who is authorized to make or take assignments of supervised loans.³⁰ These lenders are licensed and examined by the South Carolina Board of

²⁵ The median income for each county is based on the most recent report by the U.S. Census Bureau in 2015, available at <https://www.census.gov/quickfacts/fact/map/SC/INC110216#viewtop>.

²⁶ S.C. Code Ann. § 37-3-101 *et seq.* (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

²⁷ S.C. Code Ann. § 37-3-500 through 515 (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

²⁸ 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>.

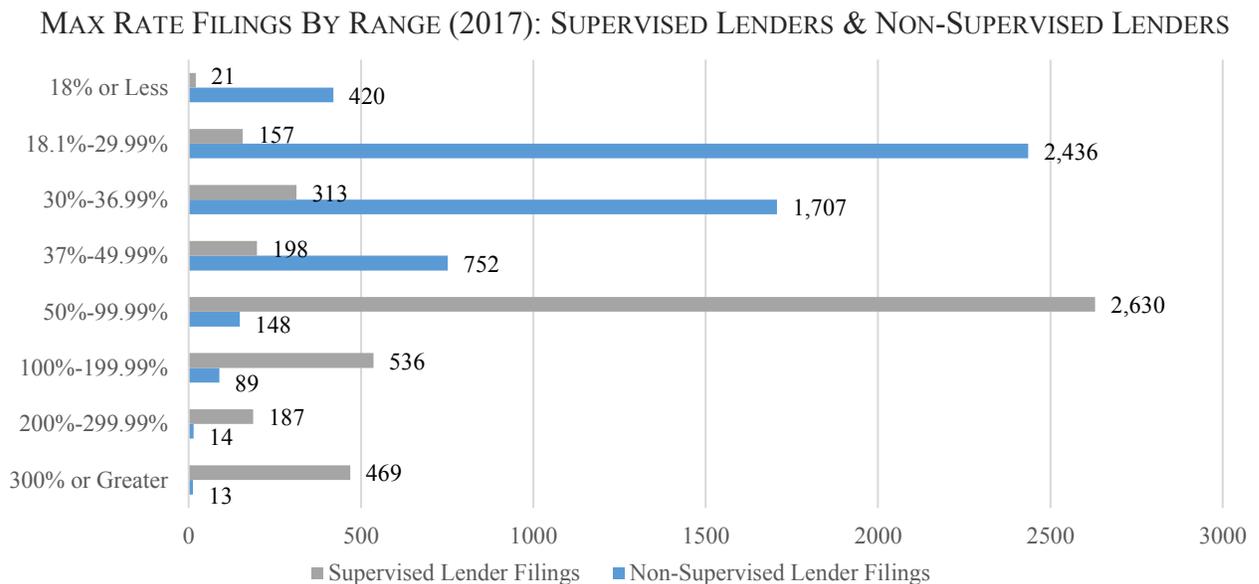
²⁹ S.C. Code Ann. § 37-3-501(1) & (2) (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

³⁰ S.C. Code Ann. §§ 37-6-201 to 204 (2015), available at <http://www.scstatehouse.gov/code/t37c006.php>.

Financial Institution’s Consumer Finance Division.³¹ 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.³² 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 34-29-140.³³ As a result, traditionally 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 2017 as compared to the number of non-supervised lender location filings received are illustrated in *Figure 11*. Approximately 26% of supervised lender filings intended to impose rates in excess of 100% APR, and approximately 2% of non-supervised lender filings included rates in excess of 100% APR.³⁴ In comparing the non-supervised lender maximum rate filings to supervised lender filings, the supervised lending industry accounts for the majority of filings for APRs in excess of 49.99%.

Figure 11³⁵



Supervised lenders offer a variety of financial products, including installment loans and title loans. The most frequent interest rates imposed by supervised lenders fluctuates greatly depending on the amount advanced (*Figure 12*).

³¹ S.C. Code Ann. § 37-29-20 (2015), available at <http://www.scstatehouse.gov/code/t37c029.php>.

³² 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>.

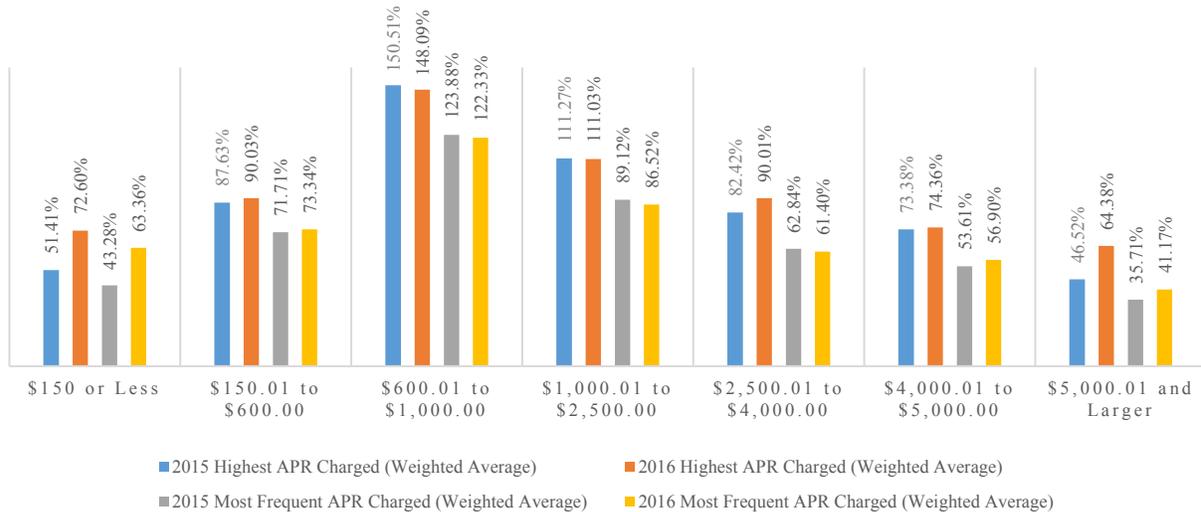
³³ S.C. Code Ann. § 37-3-201(2)(a) (2015), available at <http://www.scstatehouse.gov/code/t37c003.php>.

³⁴ See *Figure 5*, State of Credit Report 2017.

³⁵ Supervised lenders may make multiple maximum rate filings depending on loan products offered and/or the amount advanced.

Figure 12³⁶

2015 & 2016 HIGHEST & MOST FREQUENT APR CHARGED BY RANGE (WEIGHTED AVERAGES)



In 2016, the highest APR charged (weighted averages) increased most dramatically from 2015 both where credit extended was \$150 or less, and \$5,000.01 and larger. Only two ranges saw decreases, albeit nominal, from 2015: \$600.01 to \$1,000.00 and \$1,000.01 to \$2,500.00 (*Figure 12*).

The most frequent APR, as a weighted average, charged by supervised lenders increased in 4 of the 7 ranges depicted in *Figure 12*, with one range realizing a marked increase. The smallest range, \$150 or less, increased from 2015 by more than 20%. Thus, consumers borrowing smaller amounts from supervised lenders incurred, on average, a much higher APR in 2016.

Between 2014 and 2016, the greatest number of transactions was in the \$600.01 to \$1,000.00 range of credit extended, constituting approximately 34% of total transactions in each year. The \$1,000.01 to \$2,500.00 range encompassed the second largest number of transactions for all three years, comprising 31% of total transactions in 2014 and 2016, and 33% of transactions in 2015. The range with the fewest transactions for all three years was \$150 or less, with fewer than 2,000 transactions in this range each year.

The number of licensed supervised lenders has increased slightly, from 1,479 licensees in 2014, to 1,495 licensees in 2016 while the number of transactions, as well as the total advanced amount have decreased (*Table 1*). Since 2014, the industry has seen a slight decline in transactions each year (*Table 1*). From 2014 to 2015, the number of transactions dropped approximately 7%, and the total advance amount dropped by approximately 7%. From 2015 to 2016, the number of transactions fell by approximately 8%; however, the total advance amount dropped by less than 0.25%.

³⁶ 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.

Table 1

2014 TO 2016 SUPERVISED LENDING DATA

Year	Transactions	Total Advance Amount	Total # of Debtors Filing for Bankruptcy
2014	1,565,961	\$ 2,361,560,291	14,219
2015	1,453,747	\$ 2,201,151,922	14,283
2016	1,334,143	\$ 2,197,607,121	14,277

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 service 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.³⁷ These high rate lenders often charge at or above 300% APR.³⁸ 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.

The trend illustrating a decline in activity for this industry is unchanged since the 2017 State of Credit Report, as the number of transactions dropped by nearly 60,000 from 2015 to 2016 (Table 2). Likewise, the total advance amount decreased from approximately \$360 million in 2015 to \$339 million in 2016. Approximately 10.7% of borrowers entered into an extended payment plan in 2016, which was largely unchanged from the 10.9% of borrowers who entered into an extended payment plan in 2015 (Table 2).

Table 2

2014 TO 2016 MARKET DATA ON DEFERRED PRESENTMENT TRANSACTIONS

Year	Transactions	Total Advance Amount	Total Fees	Borrowers Entered Into An Extended Payment Plan
2014	948,545	\$ 385.2 million	\$ 57.8 million	11.8%
2015	876,985	\$ 359.9 million	\$ 53.9 million	10.9%
2016	818,699	\$ 339.3 million	\$ 51.1 million	10.7%

Pawnbrokers

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 fixed price within a fixed period of time.”³⁹ No person may engage

³⁷ S.C. Code Ann. § 34-39-120(3) (Supp. 2016), available at <http://www.scstatehouse.gov/code/t34c039.php>.

³⁸ *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.

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

in the business of a pawnbroker without first obtaining a Certificate of Authority from the Department for each location.⁴⁰ As a regulated industry, pawnbrokers must keep certain records as required by law,⁴¹ including documentation of every pawn or purchase transaction by a pawnbroker.⁴² The industry size remained relatively unchanged in the wake of substantive amendments to the pawnbroker statute in 2016. The number of registered pawnbrokers decreased to 196 locations in 2017, six fewer than in 2016.

MORTGAGE LENDING

The Department has regulated mortgage loan brokers since 1988, and mortgage loan originators since 2005,⁴³ pursuant to the Mortgage Brokers Act, *S.C. Code Ann.* section 40-58-10 *et seq.* The South Carolina Board of Financial Institution's Consumer Finance Division has regulated mortgage lenders/servicers and their mortgage loan originators since 2009 pursuant to the Mortgage Lending Act, *S.C. Code Ann.* section 37-22-110 *et seq.* Amendments to the Mortgage Lending Act and Mortgage Brokers Act went into effect September 16, 2017. The changes provide updates that reduce the regulatory burden on industry and decrease initial license application costs without compromising consumer protections.⁴⁴

The Mortgage Brokers and Lenders Acts require lenders, servicers, and brokers in the mortgage industry to maintain accurate records and annually report certain mortgage data to the state. This data is compiled annually in the form of the *Mortgage Log Report*. Certain trends and data were pulled from the reports and included herein. The complete Report can be viewed on the Department's website⁴⁵.

Mortgage lending in 2016 included rising housing prices and continued low interest rates.⁴⁶ The average value of homes/property purchased increased approximately 5.5%, to \$234,455 (*Figure 13*). In 2016, both the average credit score and average APR fell from the 2015 averages. The average credit score fell below 700 for the first time since 2012, and the average APR dropped to 4.22%, a greater decrease than experienced in 2015 (*Figure 14*). The type of loan rate secured by the consumer remained largely unchanged, except for a 100% increase in the number of reverse mortgages and a 63% decrease in adjustable rate mortgages (*Figure 15*).

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

⁴¹ *S.C. Code Ann.* §§ 40-39-20 and 40-39-70 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t40c039.php>.

⁴² *S.C. Code Ann.* § 40-39-70 (Supp. 2016), available at <http://www.scstatehouse.gov/code/t40c039.php>.

⁴³ Act 544 of 1988; Act 42, effective January 1, 2004.

⁴⁴ For more information on the mortgage law changes, visit http://www.consumer.sc.gov/Documents/PI/Press_Releases/2017/17000A.pdf

⁴⁵ http://www.consumer.sc.gov/Regulatory/licensing_registration/MortgageBroker/Pages/default.aspx.

⁴⁶ Interest rates nationwide hovered slightly above the historical lows of late 2012 through early 2013.

Figure 13

AVERAGES: BORROWER'S INCOME, PROPERTY APPRAISED VALUE, & LOAN AMOUNT



Figure 14

AVERAGE APR & CREDIT SCORE

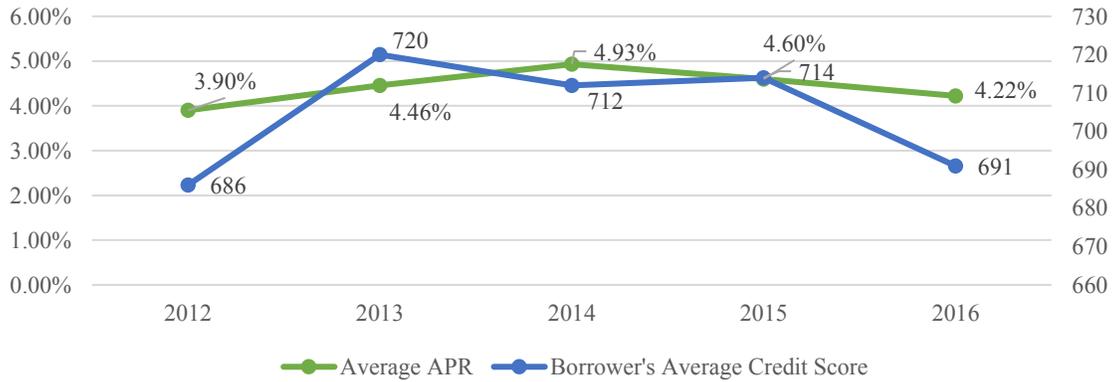
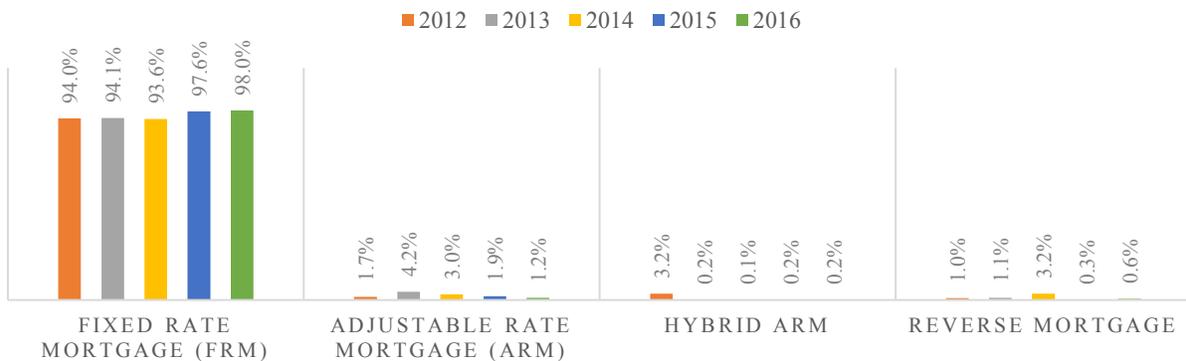


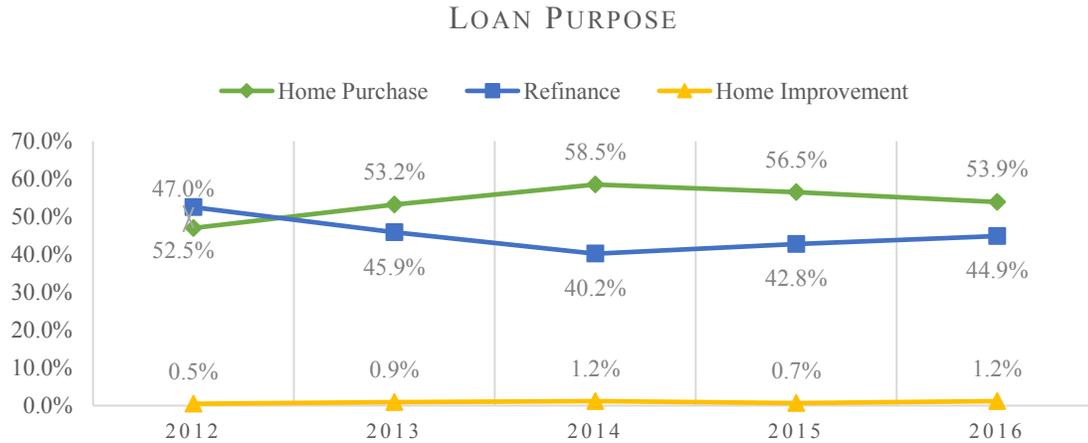
Figure 15

LOAN RATE TYPE



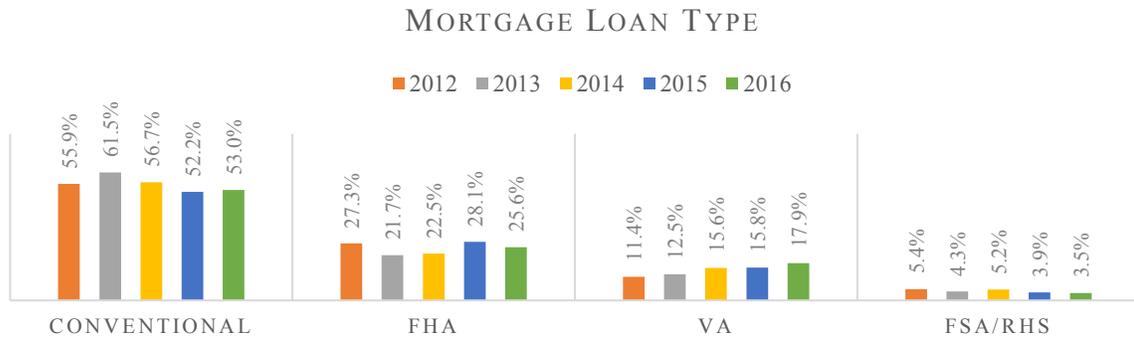
Mortgage loans for refinancing purposes increased approximately 2.1% from 2015, while the number of home purchases decreased 2.6% from 2015. Home improvement mortgage loans increased by roughly 48% from 2015 (*Figure 16*). These changes largely mirror the nationwide changes from 2015 to 2016 as reported by the Federal Reserve.⁴⁷

Figure 16



Both conventional mortgage loans and VA loans increased in 2016 (*Figure 17*). Conventional mortgage loans, which had dropped over four percentage points in 2015, increased 0.8 percentage points, indicating a slight rise for this type of loan. VA loans increased a little more than two percentage points from 2015, making it the loan type with the greatest increase in South Carolina in 2016.

Figure 17



CREDIT COUNSELING

The Consumer Credit Counseling Act (the “CCCA”) went into effect on December 2, 2005.⁴⁸ The need for a law protecting consumers experiencing financial hardship became apparent as lawsuits and investigations revealed misleading and deceptive tactics used by some businesses

⁴⁷ See https://www.federalreserve.gov/publications/files/2016_HMDA.pdf.

⁴⁸ S.C. Code Ann. § 37-7-101 et seq. (2015), available at <http://www.scstatehouse.gov/code/t37c007.php>.

in this industry.⁴⁹ The CCCA requires consumer credit counseling organizations, which are businesses offering or providing credit counseling services for a fee, compensation or gain, to obtain a license from the Department for each location.⁵⁰ Employees of these organizations who are involved with providing the credit counseling services, “credit counselors” under the CCCA, must also obtain a license.⁵¹ 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.⁵²

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 four years.

Table 3

CREDIT COUNSELING ANNUAL ACTIVITY DATA

	2016	2015	2014	2013
Number of Licensed CC Organizations	46	52	43	46
Total # of Consumer Contracts	49,203	40,068	10,233	12,701
Average Length of Contract (Months)	33	34	37	37
Average Amount of Debt per Consumer	\$18,049	\$19,060	\$17,544	\$15,789
Money Paid to Consumer’s Creditors	\$28,520,498	\$30,780,102	\$35,182,461	\$43,678,148
Percent of Completed Contracts	36%	33%	35%	31%

There are two types of credit counseling organizations currently operating in South Carolina: debt management companies and credit repair companies. In 2016, debt management companies accounted for approximately 78% of licensed credit counseling organizations, and credit repair companies comprised approximately 22% of licensees. Debt management companies contact creditors on a consumer’s behalf in an attempt to stop any late penalties, decrease interest rates, etc. Credit repair companies offer to improve a consumer’s credit file, history, or rating. Federal law requires creditors and credit reporting bureaus to report accurate and timely information, and consumers can dispute inaccurate items on their own for free. Consumers often hire a credit repair company to dispute items on their behalf.

Although credit repair companies account for approximately 22% of credit counseling organizations in South Carolina, these companies are responsible for 94% of all new contracts with consumers in this State in 2016. The average length of contracts differ greatly between the two types of companies. The average contract length for consumers engaging credit repair companies is 5 months, while the average contract length for consumers engaging the services of a debt management company is approximately 39 months. Despite this difference, the average contract

⁴⁹ 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).

⁵⁰ *S.C. Code Ann.* § 37-7-102 (2015), available at <http://www.scstatehouse.gov/code/t37c007.php>.

⁵¹ *S.C. Code Ann.* § 37-7-102 (2015), available at <http://www.scstatehouse.gov/code/t37c007.php>.

⁵² *S.C. Code Ann.* § 37-7-101(3) & (7) (2015), available at <http://www.scstatehouse.gov/code/t37c007.php>.

fee is similar for the two organization types: \$183 for credit repair companies and \$237 for debt management companies (*Figure 18*).

Figure 18



CONCLUSION

The Department continued to build upon its new backend licensing database with online deployment capabilities in 2017 allowing DCA to pull and view data in new ways, providing a clearer picture of the state of credit in South Carolina. The data provided through the database also serves to help steer enforcement and educational activities as well as legislative recommendations and Department comments submitted in the rulemaking processes of state and federal agencies. Once fully deployed, implementation of the system will permit the agency to further dissect the availability, and terms, of credit offered to South Carolinians; allocate more resources to ensuring compliance with the statutes under the agency's jurisdiction, and; provide guidance to industry on law applicability as new technologies and products continue to emerge in this digital economy.

APPENDIX A: RECENT ENFORCEMENT ACTIONS

INTRODUCTION

In Fiscal Year (“FY”) 2017, enforcement actions stabilized at 183, a 325% increase from 2014, and the Department negotiated the largest regulatory settlement in DCA history, securing \$9.65 million in credits, refunds and adjustments and removal of negative items from South Carolina consumer credit reports. **Overall, the agency’s outcome of credits, refunds and adjustments for FY17 through efforts in complaint mediation, enforcement and intervention in insurance rate filings exceeded \$11 million.** This number is three times higher than the Department’s total budget for FY18.

In Fiscal Year 2017, the Department processed approximately 7,700 applications for licenses, registrations and certificates of authority. Additionally, the agency processed approximately 17,000 regulatory filings. During the same time period, investigators conducted 456 advisories, compliance reviews, contacts and inspections. The Department strives to conduct compliance reviews of at least twenty-five percent of licensees annually to ensure continued compliance. 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. Some highlights of issues identified through recent compliance reviews and investigations can be found below. A listing of recent public enforcement actions can be viewed on the Department’s website.⁵³ The Department’s FY17 Accountability Report may be viewed on the website as well.⁵⁴

RECENT ENFORCEMENT/ INVESTIGATIVE HIGHLIGHTS

Title 32 Contracts and Agents, Chapter 7 Preneed Funeral Contracts⁵⁵

The Preneed Funeral Contract statute requires funeral homes that sell preneed funeral contracts to be licensed by the Department, 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.

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.

⁵³ See http://www.consumer.sc.gov/Pages/Enforcement_Actions.aspx.

⁵⁴ See <http://www.consumer.sc.gov/Pages/AgencyReports.aspx>.

⁵⁵ Items listed are recurring issues and remain the same as those listed in the 2016 State of Credit Report.

- Failure of licensed preneed providers to provide the Department with a listing of all contracts sold and payment of the filing fee 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 37 Consumer Protection Code, Chapter 2 Motor Vehicle Dealers

Pursuant to section 37-2-307, prior to charging a closing fee (sometimes referred to by other terms such as doc fee, doc prep fee, administrative fee, processing fee), a motor vehicle dealer must provide written notice to the Department of the maximum amount of closing fee the dealer intends to charge. The notice must be filed annually. The Department reviews fees in excess of \$225 for reasonableness in light of standards provided by the law.

To ensure compliance, investigators reviewed automobile dealer financial statements, disclosures, and invoices, interviewed car dealer personnel and reviewed employee payroll and job descriptions. Recurring issues include:

- Including expense line items that are not permissible in the calculation to determine the closing fee. (ex. Car detailing, fuel expense, delivery charges)
- Including compensation for employee duties that are not related to the closing process.
- Including the total costs for dealership expenses that are the standard dealer operating expenses. (ex. IT systems, office supplies, shredding and retention expense)

Title 40 Professions and Occupations, Chapter 39 Pawnbrokers⁵⁶

No person shall carry on the business of a pawnbroker in any location without first obtaining a Certificate of Authority for each location. All pawnbrokers conducting business in this state are under the authority of and regulated by the Department. The statute requires a pawnbroker to keep a detailed record of all transactions for items being pledged or purchased and make 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.

⁵⁶ Items listed are recurring issues and remain the same as those listed in the 2016 State of Credit Report.

- Licensed pawnbrokers purchasing stolen gift cards.

Title 40 Professions and Occupations, Chapter 58

Mortgage brokers

The Mortgage Broker Act requires all businesses offering mortgage brokerage services, including loan correspondents, table-funding and independent contractor (third party) loan processors and underwriters, file with the Department. Transaction records must be kept for inspection and an annual mortgage log must be submitted by each broker to the Department.

To ensure compliance, investigators reviewed mortgage broker files, mortgage disclosures and contracts, mortgage call reports, and mortgage logs. Recurring issues include:

- Unlicensed loan originators that often solicit, negotiate rates, and offer to accept mortgage applications for mortgage loans.
- Use of Mortgage Broker Fee agreement that is not in compliance with SC laws.
- SC law requires all mortgage loans to be closed by an attorney licensed in South Carolina with the consumer being able to choose who they want as their attorney. In some instances, mortgage brokers will have the consumer sign and date a blank preference form with no evidence of ever obtaining the preference from the consumer. In other circumstances, the form is completed at closing or no evidence of disclosure or ascertaining the preference is found.⁵⁷
- Failure to properly disclose broker compensation to the consumer. During the loan process, the loan amount may increase. Since broker compensation is based on a percentage of the loan amount, if the mortgage broker does not complete a new broker fee agreement disclosing the increased broker fee, the broker will be compensated more than originally disclosed to the consumer on the initial SC Mortgage Broker Fee Agreement.

Title 44 Health, Chapter 79

Physical Fitness Services Act⁵⁸

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 the Department. 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 be available for review by the Department.

⁵⁷ See the *Quicken v. Wilson* case under “Mortgage Brokers” at http://www.consumer.sc.gov/Pages/Enforcement_Actions.aspx. for more information related to Attorney Insurance Preference.

⁵⁸ Items listed are recurring issues and remain the same as those listed in the 2016 State of Credit Report.

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.

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 is a growing venue for credit 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.⁵⁹

ADMINISTRATIVE INTERPRETATIONS—TITLE 37

3.104,106,403-1701 Future Income Investment Agreements

The Department addressed the following questions regarding Future Income Investment Agreements ("FIIA"), also commonly referred to as Income Share Agreements and Human Capital Contracts: (1) whether the transaction constitutes a "consumer loan" under the South Carolina Consumer Protection Code ("the Code"), S.C. Code Ann. § 37-1-101 *et seq.*,⁶⁰ (2) whether a FIIA is subject to the South Carolina usury limits, and (3) whether a company offering and/or providing FIAs must be licensed pursuant to South Carolina law.

A FIIA involves the advancement of funds to a consumer for the usual purpose of paying college-related expenses including tuition, books, and room and board. However, the advancement may cover any expense. The contract delineates a repayment structure whereby the consumer is required to pay a fixed percentage of his or her future income for a specified period. The installments are based solely on the consumer's income, which pursuant to materials reviewed by the Department, includes, but is not limited to, gross wages, salaries, commissions, and benefits from pension plans. The total amount repaid will vary based on the flow of the consumer's income during the repayment period.

To address the questions presented, the Department relied upon the definition of "loan" in the Code, prohibition against wage assignment and case law. The definition of "loan" in the Code is a broad one. *See* §§ 37-3-104, 37-3-106(1) & (4). Section 37-3-403(2) expounds on the general definition of loan when stating "a sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings *is deemed to be a loan* to him secured by an assignment of earnings." § 37-3-403(2) (emphasis added). The Code defines "earnings" as, among other items, wages, salaries, and pension and retirement payments. § 37-1-301(15).

The Department concluded that FIIA transactions meet the definition of a consumer loan; thus, when a company engages in the offering or provision of such activities, they must comply with the Code, including applicable usury limits as well as licensure. The Department further concluded the repayment structure of the loan constitutes an irrevocable assignment of earnings, a practice prohibited in South Carolina.

⁵⁹ See <http://www.consumer.sc.gov/Regulatory/Law/AdministrativeInterpretations/Pages/default.aspx>.

⁶⁰ Further reference to the South Carolina Code of Laws will be by Code section only.

2.202, 3.202-1702 ELT Transaction Fees

The Department addressed the following questions regarding transaction fees imposed as a part of the SC Department of Motor Vehicles Electronic Lien and Titling Program: (1) whether the new fee assessed by the DMV for electronic filing of liens and titles can be passed on to consumers as part of a credit transaction under the South Carolina Consumer Protection Code (“the Code”), S.C. Code Ann. § 37-1-101 *et seq.*,⁶¹ and (2) whether a creditor can pass along costs incurred either by using a third-party system for this transaction or through implementation of its ELT interface.

In drafting its opinion, the Department relied on the fee provisions of the Code in conjunction with the language creating the ELT program, DMV guidelines, prior interpretations on fees issued by the agency and rulings made in other Uniform Consumer Credit Code States. Sections 37-2-109 and 37-3-109 of the Code state 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 credit service/loan finance charges and must be treated accordingly. §§ 37-2-109(1), 37-3-109(1)(a) (emphasis added). The term does not include additional charges as delineated in sections 37-2-202 and 37-3-202, such as official fees.

The Department concluded that the DMV-required fee is a permissible additional charge and may be passed on to the consumer in a credit transaction; however, fees assessed by a third party or for implementing an in-house interface cannot be.

⁶¹ Further reference to the South Carolina Code of Laws will be by Code section only.

Appendix C: HIGHEST & AVERAGE MAX RATE FILED BY COUNTY (CONSUMER CREDIT SALES)

Rank	County	Highest Max Rate Filed	Average of Max Rates Filed
1	Colleton	400.00%	50.57%
2	Anderson	360.00%	48.39%
3	Lexington	320.00%	42.17%
4	Florence	300.00%	45.58%
5	Orangeburg	300.00%	44.97%
6	Dorchester	300.00%	44.10%
7	Oconee	300.00%	41.08%
8	York	300.00%	36.84%
9	Greenwood	280.00%	54.05%
10	Marlboro	280.00%	50.41%
11	Georgetown	280.00%	45.86%
12	Marion	280.00%	39.86%
13	Aiken	280.00%	37.44%
14	Horry	280.00%	35.90%
15	Chesterfield	200.00%	43.10%
16	Williamsburg	150.00%	46.69%
17	Darlington	150.00%	38.36%
18	Sumter	150.00%	35.09%
19	Spartanburg	145.00%	37.49%
20	Charleston	145.00%	35.12%
21	Greenville	145.00%	34.48%
22	Richland	145.00%	34.39%
23	Laurens	130.00%	48.37%
24	Lee	118.00%	54.25%
25	Beaufort	100.00%	33.90%
26	Berkeley	99.90%	37.35%
27	Cherokee	99.90%	34.46%
28	Jasper	99.00%	41.89%
29	Outside SC	95.00%	30.29%
30	Clarendon	60.00%	35.96%
31	Newberry	59.00%	32.07%
32	Saluda	50.00%	39.29%
33	Kershaw	50.00%	32.92%
34	Pickens	50.00%	31.47%
35	Union	50.00%	30.25%
36	Dillon	49.99%	32.26%
37	Chester	49.00%	32.00%
38	Lancaster	49.00%	30.52%
39	Edgefield	46.00%	35.41%
40	Barnwell	45.00%	31.83%
41	Fairfield	45.00%	27.44%
42	Calhoun	40.00%	31.03%
43	Allendale	39.00%	33.50%
44	Bamberg	39.99%	31.50%
45	Abbeville	38.00%	31.00%
46	Hampton	36.00%	26.50%
47	McCormick	30.00%	25.50%

APPENDIX D: HIGHEST & AVERAGE MAX RATE FILED BY COUNTY (LOANS)

Rank	County	Highest Max Rate Filed	Average of Max Rates Filed
1	Outside SC	780.00%	160.73%
2	Aiken	561.00%	78.95%
3	Oconee	450.00%	93.95%
4	Dorchester	450.00%	75.44%
5	Georgetown	450.00%	72.85%
6	Horry	450.00%	66.41%
7	Lancaster	400.00%	104.24%
8	York	400.00%	104.08%
9	Anderson	400.00%	87.68%
10	Florence	400.00%	86.08%
11	Chesterfield	400.00%	82.94%
12	Spartanburg	400.00%	80.61%
13	Orangeburg	400.00%	80.19%
14	Greenville	400.00%	77.76%
15	Berkeley	400.00%	75.76%
16	Richland	400.00%	71.44%
17	Pickens	400.00%	69.06%
18	Lexington	400.00%	67.54%
19	Charleston	400.00%	67.16%
20	Union	396.00%	113.55%
21	Dillon	372.00%	93.50%
22	Marlboro	372.00%	91.54%
23	Cherokee	372.00%	87.65%
24	Greenwood	372.00%	83.76%
25	Colleton	372.00%	80.54%
26	Sumter	372.00%	80.46%
27	Beaufort	372.00%	56.80%
28	Darlington	365.00%	75.50%
29	Newberry	348.00%	73.72%
30	Williamsburg	300.00%	84.11%
31	Clarendon	300.00%	79.85%
32	Hampton	300.00%	76.33%
33	Laurens	300.00%	75.83%
34	Chester	300.00%	72.61%
35	Abbeville	300.00%	70.73%
36	Marion	300.00%	70.35%
37	Kershaw	300.00%	63.45%
38	Bamberg	300.00%	62.52%
39	Saluda	300.00%	62.33%
40	Barnwell	300.00%	61.22%
41	Jasper	260.00%	72.50%
42	Calhoun	169.99%	69.21%
43	Lee	150.00%	67.42%
44	Fairfield	150.00%	62.09%
45	Edgefield	129.00%	47.70%
46	Allendale	93.00%	59.61%
47	McCormick	93.00%	40.62%