

Texas State, Local, and Self-Imposed Standards for Payday and Auto Title Credit Access Businesses

AN AUSTIN-BASED COMPLIANCE SURVEY: JUNE-JULY 2012

Effective January 1, 2012, payday and auto title lenders operating under the Texas Credit Services Organization Act (CSO Act) must be licensed as Credit Access Businesses. Businesses must also comply with new state loan disclosure requirements aimed at ensuring consumers are aware of the true cost of payday and auto title loans before they borrow.¹ It is worth noting that payday and auto title lenders operating within the Austin city limits must also comply with the city's ordinance (No. 20110819-075), which the City Council passed in August 2011.²

Consumer Services Alliance of Texas (CSAT)—the payday and auto title lending trade association—established its own set of “best practices” for its members to follow.³ Before outlining the association's expectations of its members, the “best practices” note that “CSAT Members follow these best practices for all Credit Access Business (‘CAB’) transactions.” Though many of the best practices simply reiterate federal and state law, others require some additional measures, such as the display of certain in-store information.

Over the summer of 2012, public interest law center Texas Appleseed conducted a survey to assess compliance with posting, product, and consumer disclosure standards prescribed under state law and self-imposed industry standards. Texas Appleseed collected survey data⁴ from a sample of 40 CSO payday and auto title lenders operating businesses in the City of Austin.⁵

Summary Findings

- Based on the survey, there is little compliance with both state law and industry “best practices” with respect to disclosures, information postings, and product restrictions.⁶
 - ♦ No location complied with all of the federal and state requirements.
 - ♦ Only two locations complied with all of the state disclosure and posting standards.
 - ♦ Three locations did not comply with any of the state disclosure and posting standards.
 - ♦ Only one location complied with the assessed industry “best practices.”

¹ H.B. 2594 and H.B. 2592, which were passed on May 19, and May 23, 2011, respectively, amended various sections of the Finance Code.

² The ordinance ties the amount of payday and auto title loans to a borrower's income, limits the number of allowable loans installments and rollovers, applies a portion of each payment to reducing the loan principal, and requires businesses to provide borrowers with references to financial education programs.

³ See Attachment 1 for complete list of CSAT “Best Practices.” As of August 9, 2012, the “Best Practices” were last updated on November 30, 2011. <<http://consumerserviceallianceoftexas.org/best.html>>

⁴ See Attachment 2 for a copy of the Survey Form

⁵ This survey does not assess compliance with all legal or “best practices” standards, including required contract disclosures, compliance with fair debt collection practice, and a three-day right to rescind. Assessing fair debt collection and right to rescind require taking out a payday or auto title loan, which is outside the scope of this survey. Data for this survey was collected between June 4 and July 6, 2012

⁶ Note: Texas state law does not address product restrictions.

- ♦ Twenty-four locations did not comply with any of the assessed industry “best practices.”
- The majority of annual percentage rates (APR) for payday and auto title loans among the 40 surveyed locations range are clustered between 450% APR and 750% APR.

A Snapshot: Payday and Auto Title Lending in Austin

Under the Texas Credit Services Organizations Act (CSO Act), businesses offering payday or auto-title loans must be licensed or provisionally licensed as credit access businesses (CABs). As of June 25, 2012, Austin had 153 licensed and provisionally licensed CABs within its city limits. For this survey, the sample includes 40 storefront locations representing 16 different payday and auto title businesses, which collectively operate 90% of all payday and auto title locations in Austin.⁷

Surveyed Austin Payday and Auto Title Businesses⁸

Business Name	Number of Surveyed Locations	Total Number of Austin Store Locations	Percentage of Austin Locations Surveyed
1 Stop Financial Services	2	6	33%
Ace Cash Express	4	14	29%
Advance America	1	6	17%
Approved Money Center	2	15	13%
Cash America Pawn/Payday Loan Services*	7	16	44%
Cash Max	1	1	100%
Cash Today*	1	7	14%
Check N' Go	2	9	22%
EZ Money Loan Services	7	17	41%
First Cash Advance/Pawn	1	6	17%
Loanstar Title Loans	1	7	14%
Payday Advance*	1	2	50%
Texas Car Title and Payday Loan	1	3	33%
Texas Title Loans	1	2	50%
The Cash Store	2	5	40%
Title Max	5	20	25%
Quik Cash	1	1	100%
Total	40	137	38%

⁷ See Attachment 3 for a complete list of Austin Survey visits, dates, and addresses.

⁸ Businesses characterized with an asterisk [*] are operating as provisionally licensed CABs.

Each of the surveyed locations is on the Office of Consumer Credit Commissioner’s (OCCC’s) list of licensed or provisionally licensed credit access businesses (CABs) as of the date of the visit. In addition, each business is registered with the Texas Secretary of State, as required by law.

Among the surveyed businesses, the annual percentage rate (APR) charged for payday and auto title loan products ranged from a low of 182% APR for a payday loan to a high of 1187% APR for an auto-title loan. While this range is wide, the majority of payday and auto title products of the surveyed locations clustered between 450% APR and 750% APR. The information in the chart below is based on rate and fee disclosures and teller information obtained at the surveyed store locations. The average charges for payday and auto title loans among surveyed Austin locations range from 46 to 74 times the Texas Constitution’s 10% usury cap.

Loan Charges at Surveyed Austin Locations⁹

Business Name	APR Payday Single Payment Loan	APR Payday Installment	APR Auto Title Single Payment	APR Auto Title Installment
I Stop Financial Service Center	664.32%			
Ace Cash Express	661.77%-750.45%	585.04%-750.44%	400.00%	428.41%
Advance America	533.30%			
Approved Money Center	531.43%		314.17%	
Cash America Pawn/ Payday Loan	533.42%		98.32%-314.17%	
Cash Max	661.43%		791.78%	
Cash Today	661.43%		791.78%	
Check N Go	583.53%-587.00%		650%	
EZ Loan Money Services	585.75%-680.00%	861.71%-917.21%	444.43%-1187.93%	461.19%-1168.00%
First Cash Advance			272.80%	
LoanStar Title Loans			376.77%	
Payday Advance	533.42%			
Quik Cash	520.00%			
Texas Car Title and Payday Loan Service	402.44%		308.33%	352.32%
Texas Title Loans	941.54%		608.33%	
The Cash Store	611.77%	619.00%	297.36%	
Title Max			182%-310.44%	
Average APR of Surveyed Austin Locations*	620.19%	746.68%	446.57%	602.48%

*The average reflects the mean of the responses under each heading. When provided with a range for a single company, the two extremes were used as two individual figures for the purposes of computing overall average.

⁹ Blank data fields indicate that either the loan product was not offered at the store location or surveyors did not collect data for that field.

Compliance with State Posting and Disclosure Standards (CSO Act) and Requirement under the federal Military Lending Act

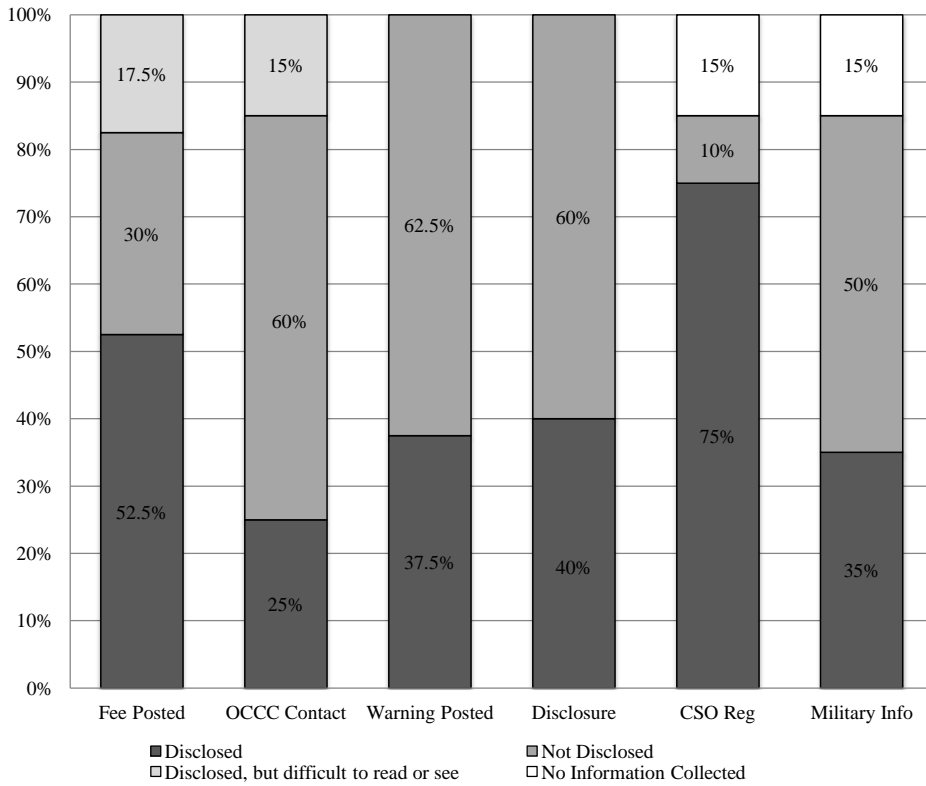
The following table documents the main posting and disclosure requirements at store locations pursuant to Chapter 393 of the Texas Finance Code.

Texas Credit Services Organization Act Posting and Disclosure Standards Assessed in Compliance Survey, 2012

Standard	Citation	Description
1. Post Fees	Tex. Fin. Code §393.222(a)(1); 7 Tex. Admin. Code §83.0007	Post schedule of all fees for payday and auto title loan services in a conspicuous location. Posting must include fees, annual percentage rate of the loan, and standard loan term.
2. Post OCCC Contact	Tex. Fin. Code §393.222(a)(2)	Post notice of the name and address of the Office of Consumer Credit Commissioner and the telephone number of the consumer helpline.
3. Post Warning Notice	Tex. Fin. Code §393.222(a)(3)	Post a notice that reads: “An advance of money obtained through a payday loan or auto title loan is not intended to meet long-term financial needs. A payday or auto title loan should only be used to meet immediate short-term cash needs. Refinancing the loan rather than paying the debt in full when due will require the payment of additional charges.”
4. Provide Disclosure Form	Tex. Fin. Code §393.223	Provide disclosure form adopted by the Finance Commission of Texas that discloses interest rates, fees, annual percentage rates, amount of accumulated fees incurred through renewals, information comparing the loans to other credit sources, typical customer repayment information and a warning about repossession for auto title loans.
5. Show CSO Registration	Tex. Fin. Code §393.103	A credit services organization must show the CSO registration statement to a consumer if requested.
6. Comply with Federal Standards for Military	Tex. Fin. Code §393.625	Loans to the military and military dependents must follow requirements under federal law.

Surveyors were able to collect applications from six of the 16 surveyed businesses. An employee at one location provided the surveyor with an application, but would not allow the surveyor to take the application away from the store. From a review of the employee disclosures and application documents provided to surveyors, it is possible to form initial assessments regarding compliance with state and federally mandated requirements.

**Compliance with CSO Act Standards
Surveyed Austin Payday and Auto Title Businesses, 2012**



The survey found many deficiencies in compliance with the above listed standards. As the table above shows, just over half or 52.5% of the surveyed Austin locations complied with fee posting requirements, while the remaining 47.5% either made postings inconspicuous or failed to display fees at all. Only 25% of locations posted the OCCC contact information.

Only 37.5% of surveyed locations posted the required consumer “warning notice” informing borrowers that payday loans are short-term solutions not intended for long-term use, while 40% of surveyed locations provided the proscribed loan disclosure upon request. The largest percentage (75%) of businesses displayed the CSO registration document as required by state law.

In addition to capping interest rates for payday and auto title loans at 36% APR for active duty members of the military and their families, federal law requires businesses to determine whether a potential borrower is an active service member or dependent of an active service member. Survey data shows low compliance with these federal military lending standards. Only 14 (35%) of the 40 surveyed locations

provided sufficient information to begin preliminary analysis on this standard. Fifty percent of the surveyed Austin locations did not ask surveyors if they were members of the military nor have any postings pertaining to service military. Quik Cash, the survey location that would not allow the application to leave the store, failed to comply with any state or federal requirements including having a question about military duty on their application. Of the 14 surveyed Austin locations that provided the surveyor with an application, 13 locations either do not provide loans to military personnel or did not have any questions about military status on their application. Both Cash America and EZ Money Loan Services had brochures or signage that explicitly outlined their military lending policies.

Deceptive Practices¹⁰

The survey found that one business consistently exercised deceptive practices across its five surveyed Austin locations. The employees at the various locations referenced a fee chart that boasted interest rates of 13.99%, 11.99% and 10.99% based on the amount borrowed. Furthermore, all employees explained the interest rates in terms of those percentages and not as an APR, as federal law requires. When reflected as an APR, those percentages are significantly higher.

At one location, an employee tried to push an auto title loan over a payday loan, even saying that the 10.99% APR on the auto title loan was a better option than the 13.99% APR applicable to most credit card loans. Again, this highlights an attempt to deceive borrowers about the true cost of an auto-title loan. Another location operated by TitleMax showed the surveyor another customer’s existing contract to explain the loan terms. When the surveyor pointed out a section in the contract boasting a 310.44% APR, the employee told her that it was inaccurate and that she had nothing to worry about. The same employee skimmed over various sections of the contract, including their arbitration agreement and repossession policy, calling it “*legal mumbo jumbo.*”

Comment [BM1]: I think we should cut this section for the purposes of submitting the report to the B & C Committee. Distracting.

Compliance with CSAT “Best Practices”

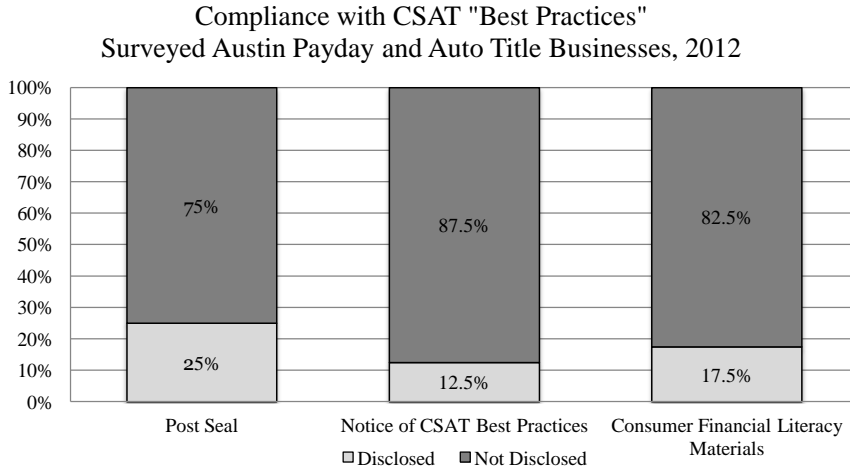
The table below describes the three CSAT “best practices” that were assessed in the Austin survey.

Compliance with CSAT “Best Practices” Standards Assessed in Compliance Survey, 2012

Standard	Description
1. Display of the CSAT Membership Seal	Members shall prominently display the CSAT Membership Seal in all business locations to alert customers to the store's affiliation with the association and adherence to the association's Best Practices.
2. Notice Requirements of CSAT Best Practices	Members shall post a copy of CSAT's Best Practices in all business locations in a visible and conspicuous location.
3. Consumer Financial Literacy	Members will make consumer financial literacy materials available to consumers in all business locations in any form prescribed by CSAT.

¹⁰ While not a deceptive practice, it is worth mentioning that some loan companies in Austin offer to refinance other companies’ loans.

The majority, 60% (24) of the 40 surveyed Austin locations, failed to comply with any of the prescribed industry standards. Only 25% (10) of the surveyed locations complied with just one of the industry standards 3 of the surveyed locations complied with 2 of the 3 industry “best practices.” Only one of the surveyed locations complied with all three of the assessed best practices.



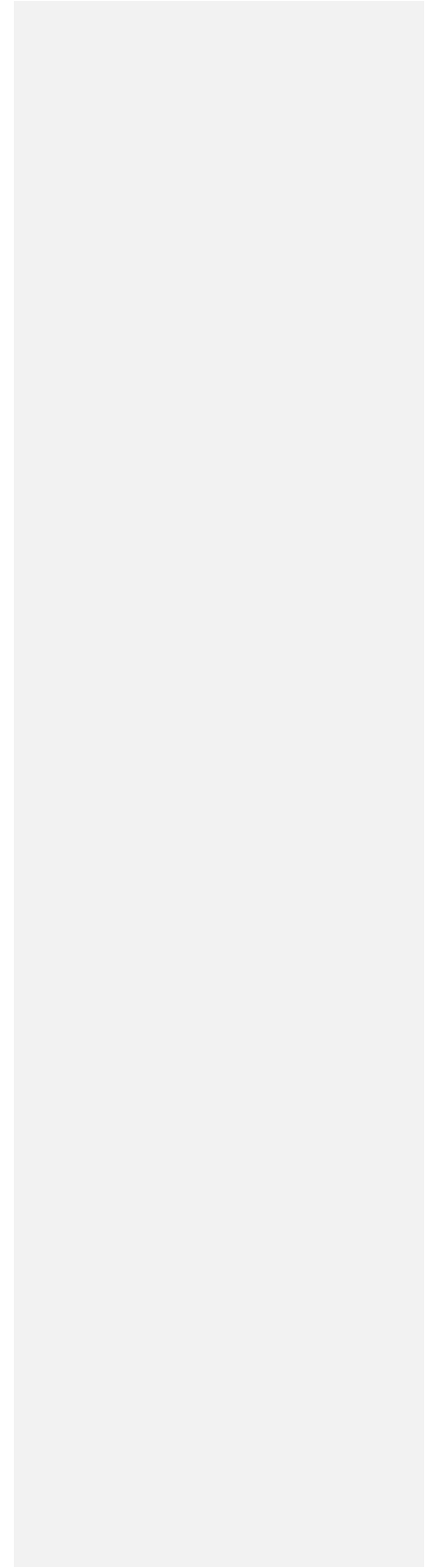
Only 25% of the surveyed Austin locations displayed the CSAT seal. Interestingly, compliance with this standard was not necessarily consistent within each loan company, but varied by location. Approved Money Center displayed the seal at 100% of their surveyed locations, while only 75% of Ace Cash Express locations posted the seal. Only 42.86% of both EZ Money and Cash America locations complied with this standard.

An astounding 87.5% (35) of the 40 surveyed Austin locations failed to display anything noting CSAT “best practices”, and Cash America operated two of the five compliant locations. Finally, just seven of the surveyed locations provided surveyors with consumer financial literacy materials. Therefore, 82.5% of the surveyed locations are in violation of both industry standards and the Austin ordinance.

Conclusion

In summary, the survey reveals the current deficiencies of state and industry-imposed standards on Texas payday and auto title businesses. The majority of businesses completely disregarded their own self-imposed industry standards. This survey reveals the need for strong enforcement of existing state legislation that protects consumers of short-term loan products. The low compliance rate with some of the simplest CSAT “best practices” questions the effectiveness of a “self-policing” model. These universally low levels of compliance confirm the need for increased enforcement strategies of existing laws and regulations and show reliance on “best practices” to solve industry-wide issues is problematic.

Attachments



Attachment 1



Best Practices

CSAT Members follow these best practices for all Credit Service Organization ("CSO") transactions:

Full disclosure. A contract between a member and the customer must fully outline the terms of the credit services provided by the Member including the cost of the service. To the extent required by the Federal Truth in Lending Act, Members agree to ensure that the cost of the service is disclosed both as a dollar amount in the finance charge and as a component of the annual percentage rate ("APR") for any loan that a customer obtains through the Member's credit services.

Compliance. Members will comply with all applicable laws and regulations including registration with the Texas Secretary of State

Truthful advertising. Members will not advertise credit services in any false, misleading, or deceptive manner, and will promote only the responsible use of financial products and services.

Encourage consumer responsibility. Members will implement procedures to inform consumers of the intended use of their credit service.

Right to rescind. Members will give customers the right to rescind, at no cost, credit service transactions on or before three calendar days after the date of the credit service transaction.

Appropriate collection practices. Members must collect past due accounts in a professional, fair and lawful manner. Members will not use unlawful threats or intimidation to collect accounts. CSAT believes that the collection limitations contained in the Texas and federal Fair Debt Collection Practices Acts (FDCPA) should guide a member's practice in this area.

No criminal action. Members will not threaten or pursue criminal action against a customer as a result of the customer's default on a credit service agreement.

Enforcement. Members will participate in self-policing the industry. A member will be expected to report violations of these Best Practices to CSAT, which will investigate the matter and take appropriate action.

Military. To the extent that any Member does business with a Military "Covered Person" as defined by federal law, Members will comply with any federal and Texas laws on doing business with the military and related "Covered Persons."

Internet lending. Members that offer credit services to Texas consumers through the Internet must comply with the Texas Credit Services Organization statute and any other applicable laws and regulations applicable to the Member's business.

Display of the CSAT Membership Seal. Members shall prominently display the CSAT Membership Seal in all business locations to alert customers to the store's affiliation with the association and adherence to the association's Best Practices.

Notice Requirements. Members shall post a copy of CSAT's Best Practices in all business locations in a visible and conspicuous location.

Complaint Handling. Members will implement and maintain complaint handling procedures that include a timely review and response to customer complaints and concerns. Each member company agrees to maintain and post its own toll-free consumer hotline number in each of its business locations.

Consumer Financial Literacy. Members will make consumer financial literacy materials available to consumers in all business locations in any form prescribed by CSAT.

Attachment 1

Addendum. There is an addendum of additional best practices for any CSAT Member who takes an auto title as security for a CSO transaction.

Auto Equity Best Practices

Any CSAT Member who takes an auto title as security for a CSO transaction also follows these additional best practices:

Collateral. Members will specifically inform the consumer that if the consumer pledges a vehicle as collateral, the consumer could lose the vehicle if the transaction is not fully repaid. This notice language will be presented in bold, conspicuous type in the loan documents. Alternatively, consumers will be required to initial this provision in the loan documents or on a separate notice.

Appraisal standards. Members will utilize nationally and or regionally recognized auto appraisal standards in valuing a vehicle.

Proper filing of liens. When perfecting a security interest in any auto title collateral, members will comply with all laws and regulations regarding the pledge of a vehicle as collateral, including:

- The proper filing of liens with the Texas Department of Transportation through the appropriate county assessor-collector's office; and
- The statutory duties in Chapter 9 of the Texas Business and Commerce Code regarding the disposition of collateral.

Notice about return of vehicle. Members will inform consumers in writing they can get their vehicle back at any time after default/repossession and before a sale by paying the amount owed.

Compliance. Members will comply with the Texas Business and Commerce Code and other applicable law when collecting vehicle-secured accounts, including:

- **Commercially reasonable manner.** Members will act in a commercially reasonable manner, without breaching the peace, in all aspects of the repossession and sale of the vehicle.
- **Written notice of opportunity to redeem vehicle.** Members will give consumers at least 15 days after repossession to redeem their vehicle prior to it being sold. Members will send a written notice to consumers informing them how and when their vehicle will be sold and what consumers need to pay to redeem their vehicle.
- **Reasonable expenses actually incurred.** With respect to expenses related to collection, repossession, and sale of the vehicle, Members will only charge reasonable expenses actually incurred.
- **Timely release of title.** Members will release the vehicle title to the consumer in a timely manner when the transaction is paid.
- **No personal liability.** Borrowers have no personal liability for auto equity loans, other than in instances of borrower fraud. Members shall not pursue legal action against borrowers if the amount owed exceeds the value of the collateral.
- **Refund of surplus sales amount.** Members will account for the proceeds of sale in a timely fashion, including refunding any surplus sales amount to the consumer.
- **Telephone number for more information.** Members shall provide a telephone number and address for consumers to call, or write, to get more information about the sale of their vehicle.

Attachment 2

Payday/Auto Title Store Visit Survey Form

Company Name:

Company Address:

GENERAL EXPERIENCE

1. Were loan interest and fees for all products offered posted prominently at the location? Yes No
2. Was contact information for Office of the Consumer Credit Commissioner posted prominently? Yes No
3. What loan products were offered? What APR was charged for each?
 Payday Loan Payday Installment loan Auto Title Loan Auto Title Installment
APR _____ APR _____ APR _____ APR _____
4. Was the following text posted: Yes No
“An advance of money obtained through a payday or auto title loan is not intended to meet long-term financial needs. A payday or auto title loan should only be used to meet immediate short-term cash needs. Refinancing the loan rather than paying the debt in full when due will require the payment of additional charges.”
5. Were stickers posted indicating CSAT or CFSA membership?
CSAT is the Consumer Service Alliance of Texas and CFSA is the Community Financial Services Association. These are the state and national trade associations for payday lenders.
 CFSA CSAT None
6. Was a sheet with the CSAT best practices prominently posted at the location? Yes No
7. How many rollovers are allowed?
8. Did they ask if you were an active member of the military? Did they offer any special loan products to members of the military?
9. Collect any brochures, advertisements, or financial education materials available at the location. Also, collect copies of disclosures and contracts if you are able to obtain them (see questions below).

CUSTOMER EXPERIENCE

What happened when you asked them each of these questions:

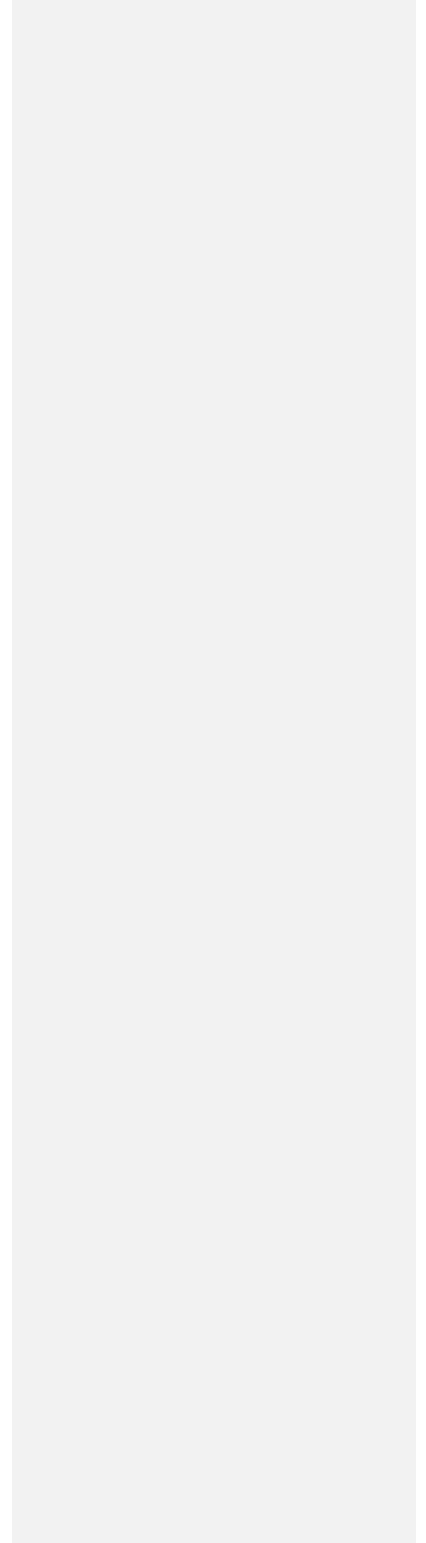
1. How much would a \$500 loan cost me? When would I have to pay it back?
2. What happens if I cannot pay the loan back in two weeks/one month? (whatever term they're offering you)
3. How many times can I renew it if I can't afford to pay the whole thing back at once?
4. Do you have this in writing somewhere? (They are required to give you a loan cost disclosure. Collect any disclosures they give to you and note whether they were provided *before* you asked about them).
5. Is there some sort of contract I sign? Can I get a copy before signing anything so I can look it over?

Attachment 2

6. Are you registered as a Credit Services Organization with the state? Can I see a copy of your registration form?

Impressions:

Write your impressions of the visit. Were the fees and other disclosures easy to read and in a prominent location? Describe the advertisements at and near the store location. Do they advertise in Spanish? Do they provide any of the cost or loan information in Spanish? Did they give you the pricing disclosures and other forms when you asked about them?



Attachment 3

Surveyed Austin Locations

Survey #	Date	Name	Location
1	6/4/12	Cash America Pawn/ Payday Loan	3402 Guadalupe St.
2	6/12/12	Check N Go	3601 W. William Cannon Dr., Suite 285
3	6/12/12	The Cash Store	3601 W. William Cannon Dr., Suite 100 (Bldg. 4)
4	6/12/12	EZ Loan Money Services	6800 Westgate Blvd. (Off William Cannon)
5	6/12/12	First Cash Advance	2716 W. William Cannon Dr., Suite 100
6	6/12/12	Title Max	1930 W. William Cannon Dr.
7	6/12/12	Payday Advance	1901 W. William Cannon Dr., Suite 174
8	6/12/12	Ace Cash Express	500 W. William Cannon Dr., Suite 304
9	6/14/12	EZ Loan Money Services	1900 E. 7th St.
10	6/14/12	Advance America	1901 E. 7th St.
11	6/14/12	Cash America Pawn/ Payday Loan	2321 E. 7th St.
12	6/14/12	Check N Go	2205 E. 7th St., Suite 102
13	6/14/12	Title Max	2617 E. 7th St.
14	6/14/12	The Cash Store	2793 E. 7th St.
15	6/14/12	1 Stop Financial Service Center	2501 E. 7th St.
16	6/14/12	Ace Cash Express	2425 E. 7th St.
17	6/25/12	EZ Loan Money Services	7439 N. Lamar Blvd
18	6/25/12	Texas Car Title and Payday Loan Service	7205 N. Lamar Blvd
19	6/25/12	LoanStar Title Loans	6900 N. Lamar Blvd
20	6/25/12	Title Max	6214 N. Lamar Blvd
21	6/25/12	Cash America Pawn/ Payday Loan	5801 Burnet Rd
22	6/25/12	Texas Title Loans	7501 N. Lamar Blvd.
23	6/25/12	Cash America Pawn/ Payday Loan	7544 N. Lamar Blvd.
24	7/3/12	EZ Loan Money Services	1192 Airport Blvd., Suite A
25	7/3/12	EZ Loan Money Services	1166 Airport Blvd.
26	7/3/12	1 Stop Financial Service Center	3712 Airport Blvd.
27	7/3/12	Cash America Pawn/ Payday Loan	5301 Airport Blvd.
28	7/3/12	Approved Money Center	4631 Airport Blvd., Suite 131A
29	7/3/12	Cash Max	5312 Airport Blvd., #D
30	7/5/12	Approved Money Center	2410 E. Riverside Dr.
31	7/5/12	Title Max	1905 E. Riverside Dr.
32	7/5/12	Cash America Pawn/ Payday Loan	1904 E. Riverside Dr.
33	7/5/12	Ace Cash Express	2237 E. Riverside Dr., Suite 102
34 ¹¹	7/5/12	EZ Loan Money Services	4410 E. Riverside Dr., Suite 110
36	7/5/12	Cash Today	901 E. Caesar Chavez
37	7/6/12	Quik Cash	2030 E. Oltorf St., Suite 105
38	7/6/12	Cash America Pawn/ Payday Loan	2121 E. Oltorf St.
39	7/6/12	Ace Cash Express	517 W. Oltorf St.
40	7/6/12	Title Max	1900 E. Oltorf St.
41	7/6/12	EZ Loan Money Services	102 E. Oltorf St.

¹¹ Survey #35 was not a licensed or provisionally licensed CAB; therefore, it is omitted from all survey data and analysis.