

REGULATION OF PAYDAY LENDERS
OFFICE OF FINANCIAL INSTITUTIONS



PERFORMANCE AUDIT
ISSUED JULY 9, 2014

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

July 9, 2014

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Charles E. "Chuck" Kleckley,
Speaker of the House of Representatives

Dear Senator Alario and Representative Kleckley:

This report provides the results of our performance audit on the Office of Financial Institutions (OFI). The purpose of this report was to determine whether OFI effectively regulates payday lenders in Louisiana.

The report contains our findings, conclusions, and recommendations. Appendix A contains OFI's response to this report. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of OFI for their assistance during this audit.

Sincerely,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/ch

OFI-PAYDAY LENDERS 2014

Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE

Regulation of Payday Lenders Office of Financial Institutions

July 2014



Audit Control # 40120068

Introduction

The purpose of this audit was to determine whether the Office of Financial Institutions (OFI) effectively regulates payday lenders. OFI is responsible for regulating all state licensed depository and non-depository financial institutions which include payday lenders, banks, credit unions, holding and trust companies, and any other licensed lender. This audit focused on OFI's regulation of payday lenders.

A payday loan is a short-term (generally does not exceed 30 days) loan of \$350 or less that is intended to cover borrowers' expenses until their next payday. Payday lenders may charge borrowers a fee of up to \$55¹ for the loan. OFI licenses payday lenders² and is statutorily mandated³ to regulate them to ensure they are meeting all state payday lending laws. To regulate payday lenders, OFI conducts an onsite examination of a sample of loans at each payday lending location six months after opening, one year after the six-month examination, and at least once every four years after the last examination. In addition, if OFI identifies a violation during an examination, it will examine that location the next year. During fiscal year 2013, OFI had a budget of approximately \$12.9 million and 60 examiners responsible for examining all financial institutions, including payday lenders.

The **mission** of OFI is to license and supervise entities under its jurisdiction in order to protect and serve the public interest and enhance confidence in the financial services industry.

As of December 31, 2013, there were 329 payday lending companies operating 965 locations across Louisiana. These companies self-reported⁴ issuing over 3.1 million loans and collecting \$145.7 million in fees during calendar year 2013. OFI examined 12,215 of the 3.1 million loans issued during calendar year 2013. Our audit objective was as follows:

Does OFI effectively regulate payday lenders to ensure they operate in accordance with all state laws?

¹ R.S. 9:3578.4 gives authorization to payday lenders to charge a fee, not exceeding \$45 or 16.75% of the amount of the check the borrower gives the lender. R.S. 9:3530 gives authorization to payday lenders to charge a \$10 documentation fee.

² There is not a specific payday lender license. A payday lender is a licensed lender and may offer additional services such as title loans.

³ R.S. 9:3578.8 and R.S. 6:101(A).

⁴ Act 234 of the 2012 Regular Legislative Session required OFI to collect and compile aggregate data on payday lending transactions for calendar year 2013. OFI provided us this information on April 2, 2014.

Overall, we found that OFI needs to strengthen its examination, follow-up, enforcement, and complaint procedures to ensure it is effectively regulating payday lenders. We also found that OFI management does not provide adequate oversight of its examinations of payday lenders. As a result, OFI cannot ensure that payday lenders are adhering to state laws and that borrowers are protected from improper payday lending practices. Appendix A contains OFI's response to this report, Appendix B details our scope and methodology, and Appendix C provides background information on OFI's regulation of payday lenders.

Does OFI effectively regulate payday lenders to ensure they operate in accordance with all state laws?

We found that OFI needs to strengthen its examination, follow-up, enforcement, and complaint procedures to ensure it is effectively regulating payday lenders. We also found that OFI management does not provide adequate oversight of its examinations of payday lenders. As a result, OFI cannot ensure that payday lenders are adhering to state laws and that borrowers are protected from improper payday lending practices. Specifically, we found the following:

- OFI examiners do not sufficiently document their work. We reviewed 360 of the 1,315 examinations OFI performed from January 1, 2010 through December 31, 2013, and found that 280 (78%) did not include a list of the loans the examiners reviewed. Also, 224 (62%) of the examinations did not contain a listing of the promissory notes the examiner reviewed and procedures performed to determine if lenders calculated their fees accurately. In addition, these files did not contain the methodology the examiners used for identifying violations. As a result, OFI management cannot effectively oversee the examination process to ensure its examiners are identifying and citing all payday lending violations.
- OFI's examination procedures do not detect whether payday lenders renew or "roll-over" loans without the borrower paying down 25% of the loan amount as required by state law. We identified 318,489 instances of borrowers being charged approximately \$7.3 million in fees during fiscal year 2013 for closing and opening a loan on the same day, at the same location, for the same amount. While these instances may represent legal loans, there is the risk that the initial loans were rolled over improperly. OFI should strengthen its examination process by collecting and analyzing non-aggregate payday lending transaction data in the field and developing alternative testing procedures (e.g., ACL audit software, undercover shoppers, borrower interviews, video reviews in the field, borrower surveys, etc.). OFI should also include closed loans in the sample of loans it tests.
- OFI's examination procedures do not detect whether payday lenders are using their multiple locations to avoid OFI scrutiny and issue borrowers multiple payday loans on the same day instead of one consumer loan which has a lesser fee.
- OFI's examination procedures do not detect whether payday lenders are reducing loan fees when borrowers pay off their loans within the first five days as required by state law.
- OFI did not assess any penalties on payday lenders for violating state law from January 1, 2010 through June 30, 2013, despite citing 8,315 violations, including 8,082 major violations. Major violations involve lenders overcharging borrowers.
- OFI did not follow-up on 6,612 (82%) of the 8,082 major violations identified during its examinations from January 1, 2010 through June 30, 2013, that required

a refund to the borrower. As a result, OFI cannot ensure the payday lender issued the refund.

- OFI currently does not have the legal authority to license or regulate online payday lenders who operate in Louisiana. However, Act 636 of the 2014 Regular Legislative Session amended state law, effective January 2015, to no longer exempt online payday lenders from obtaining a license to conduct business in Louisiana.
- OFI does not have a comprehensive process in place to address verbal complaints against payday lenders. We found that OFI did not follow-up on almost half (48%) of borrower complaints it received from January 1, 2010 through June 30, 2013, because they were not submitted in writing.

Our results are discussed below. In addition, Appendix D summarizes state laws regarding payday lending, and Appendix E lists the number of payday lenders by parish and zip code.

OFI examiners do not sufficiently document their work. As a result, OFI management cannot effectively oversee the examination process to ensure its examiners are identifying and citing all payday lending violations.

We found that OFI management does not require examiners to sufficiently document their work. We reviewed 360 of the 1,315 examinations OFI performed from January 1, 2010 through December 31, 2013, and found that 280 (78%) did not include a list of the loans the examiners reviewed. Also, 224 (62%) of the examinations did not contain a listing of the promissory notes the examiner reviewed and procedures performed to determine if lenders calculated their fees accurately. In addition, these files did not contain the methodology the examiners used for identifying violations. Without requiring examiners to maintain this type of documentation, OFI management cannot effectively oversee the examination process to ensure its examiners are identifying and citing all payday lending violations. Requiring examiners to keep the list of the loans they reviewed and documentation of the procedures performed on the promissory notes for each loan, as well as a detailed description of the exceptions found, would enable OFI management to review these examinations and ensure that its examiners identified all payday lending violations, including potential overcharges to borrowers. Examiners also do not document their follow-up, if any, on prior exam exceptions.

Because OFI examiners do not sufficiently document their work, we could not verify whether or not the examiners identified all violations committed by lenders and whether borrowers were charged the correct fees. As a result, to evaluate OFI's examination process, we requested data from the top 10 payday lending companies (out of 329) that reported the highest fees collected during quarter one of calendar year 2013 to OFI. Five of the 10 companies voluntarily reported their data, which represented 107 (11%) of all payday lending locations. Using this data, we performed various analyses, including identifying potential violations such as

improper roll-overs and fee overages. Because we do not have the statutory authority to audit payday lenders, we have provided our results to OFI management so they can further investigate whether these were actual violations. Our results are summarized in the sections on the following pages.

Recommendation 1: OFI management should develop procedures for its examiners to use that clarify what documentation examiners should keep in their examination files. This should include keeping the list of loans reviewed, exceptions noted in detail, and documentation showing any follow-up by the examiners for violations identified during the previous exam.

Summary of Management's Response: OFI agrees that it can develop more specific documentation standards and that it has begun the process of identifying the items to retain to more transparently document the review performed during examinations. See Appendix A for OFI's full response.

OFI's examination procedures do not detect whether payday lenders renew or "roll-over" loans without the borrower paying down 25% of the loan amount as required by state law.

R.S. 9:3578.6(7) states that a licensee cannot renew or roll-over a payday loan without the borrower paying down 25% of the loan amount. It is important that OFI ensures lenders are adhering to this law as it protects the borrower from getting caught in a cycle of debt. Continually renewing a loan without paying down the principal may lead to a borrower paying more in fees than the original loan amount.

Of the 15,633 loans OFI examined during fiscal year 2013, it did not identify any violations of this law. However, our review of OFI's examination process found that the examinations OFI conducts on payday lenders is not sufficient to detect improper roll-overs. In addition to analyzing detailed transaction data in the field as part of its examination process, OFI needs to develop alternate testing procedures to detect improper rollovers (e.g., ACL audit software, undercover shoppers, borrower interviews, video reviews in the field, borrower surveys, etc.). In addition, we found that other states have implemented a statewide database of payday lending transaction data and a mandatory "waiting" period between loans to help identify and decrease improper rollovers. These issues are discussed in more detail below.

OFI does not collect and analyze non-aggregate payday lending transaction data during the examination process. Analyzing detailed payday lending transaction data in the field could help OFI effectively monitor whether payday lenders are adhering to the roll-over law. Using fiscal year 2013 payday lending transaction data from 107 (11%) of the 955⁵ payday

⁵ It is 955 locations because this is the number of locations operating during fiscal year 2013.

lending locations in Louisiana that voluntarily agreed to submit their data to us,⁶ we found 318,489 instances in which a borrower paid off one loan and opened a new loan for the same amount, at the same location, and on the same day, which is an indication of risk of an improper roll-over.

While these instances may represent legal new loans, this analysis may also contain instances where payday lenders circumvented state law by allowing borrowers to pay a \$55 fee to roll-over their previous loan instead of paying down 25% of the loan principal. We calculated that these instances may have resulted in borrowers paying approximately \$7.3 million⁷ in excess fees during fiscal year 2013. However, since these results only represent 11% of all payday lending locations during a one-year period, the number of instances and financial impact on borrowers from lenders improperly rolling over loans may be more significant. As a result, OFI needs to strengthen its examination process by collecting and analyzing detailed transaction data during its examinations. This will help OFI ensure that lenders are not improperly rolling over loans and that borrowers are protected from unscrupulous lending practices. Exhibit 1 shows an example of an actual borrower from the data that potentially rolled over his/her initial loan 10 times.

Exhibit 1 Real Instance of Potential Improper Roll-over Fiscal Year 2013 "Borrower A"					
Loan #	Loan Start Date	Loan End Date	Outstanding Loan Amount	Actual Fee Charged	Potential Overcharge Amount*
Initial Loan	2/8/2013	2/21/2013	\$300 	\$55	\$ -
1 st Roll-over	2/21/2013	3/7/2013		55	0.00**
2	3/7/2013	3/21/2013		55	11.05
3	3/21/2013	4/4/2013		55	19.54
4	4/4/2013	4/18/2013		55	25.90
5	4/18/2013	5/2/2013		55	30.68
6	5/2/2013	5/16/2013		55	34.26
7	5/16/2013	5/30/2013		55	36.94
8	5/30/2013	6/13/2013		55	38.96
9	6/13/2013	6/27/2013		55	40.47
10	6/27/2013	7/11/2013	55	41.60	
Totals after 10 Roll-overs			\$300	\$605	\$279.40
<p>*We calculated these overcharges using what the borrower would have been charged had he paid down his loan by 25% each time rolling it over.</p> <p>**This loan represents the beginning of the potential improper roll-over. In this case, the company was still able to charge the maximum fee amount.</p> <p>Source: Prepared by legislative auditor's staff using payday lender data.</p>					

⁶ We requested data from the top 10 payday lending companies (out of 329) that reported the highest fees collected during quarter one of calendar year 2013 to OFI. Five of the 10 companies voluntarily reported their data, which represented 107 (11%) of all payday lending locations. The other five companies chose not to report their data. Our analysis of this data is based on self-reported data from these lenders and is unaudited information.

⁷ We calculated the potential amount in excess fees by analyzing the 69,356 loans and determining how much in fees would have been paid had these loans been legally rolled over 318,489 times.

As can be seen in this exhibit, at the end of the 10th roll-over the borrower still had not paid down any of the initial loan amount of \$300, but had paid \$605 in fees. If the lender had required the borrower to pay down 25% of the loan amount when renewing the loan, as required by state law, that borrower would have been charged \$279.40 less in fees and would only owe \$16.89 of the original loan amount after 10 roll-overs. In addition to this example, we found one borrower who potentially rolled over one loan 47 times and appeared to pay \$1,934 in excess fees in one year for the initial loan amount of \$300.

We gave our analysis to OFI for its investigation to determine if these instances were actually a violation of the law. OFI requested from the lenders copies of payment receipts, payday lending agreements, and signed checks the borrower may have given to the lender for a sample of these 318,489 instances of potential improper roll-overs. According to OFI management, it found no improper roll-overs during this follow-up. In addition to this type of back-end review, OFI should develop alternate testing procedures to detect improper rollovers (e.g., ACL audit software, undercover shoppers, borrower interviews, video reviews in the field, borrower surveys, etc.).

OFI's sample of loans reviewed during the examination process originates only from open loans. OFI only reviews loans that are currently open at a location. However, loans that are rolled over are closed and then re-opened on the same day. As a result, OFI's review of open loans is insufficient to ensure that borrowers paid off the initial loan in its entirety before closing the loan. According to OFI, the examiners may choose a borrower and then review that borrower's previous transactions. However, because examiners do not sufficiently document their work, OFI management does not know if examiners are consistently reviewing borrowers' previous transactions. Of the 11 states we surveyed, all⁸ review closed loans during their examinations.

Louisiana does not have a statewide database of payday lending transaction data. We found that five⁹ of the 11 states we surveyed regarding their regulations of payday lenders require lenders to use a statewide database that collects all payday lending transaction data. For example, Washington requires payday lenders to use a statewide database for all payday lending transactions and Washington's Office of Financial Institutions uses this database to conduct its examinations. Having a statewide database would give OFI the ability to comprehensively review payday loan transactions and identify areas, such as improper roll-overs, that need further investigation. While implementation of a statewide database was proposed during the 2014 Regular Legislative Session, the bill did not pass.

Requiring a waiting period after each new payday loan may help minimize improper roll-overs. According to a study conducted by the Consumer Financial Protection Bureau,¹⁰ issued in March 2014, same day roll-overs of payday loans are less frequent in states

⁸ These states include Alabama, Florida, Idaho, Illinois, Iowa, Mississippi, Missouri, Oregon, Texas, Virginia, and Washington.

⁹ These five states are Florida, Illinois, Virginia, Washington, and Alabama. (Alabama is in the process of implementing a statewide database.)

¹⁰ Consumer Financial Protection Bureau, *CFPB Data Point: Payday Lending*, March 2014.

with mandated waiting periods. We found that six of the 11 states we surveyed minimize the ability of lenders to circumvent the roll-over law by requiring a waiting period. For example, Florida requires a 24-hour waiting period in between payday loans and Virginia requires a 45-day waiting period after the end of the borrower's fifth loan within a 180-day period. In addition, Alabama, Illinois, Oregon, and Washington all have some type of waiting period for payday loans. Implementing a waiting period may help decrease the number of improper roll-overs. While implementation of a waiting period was proposed during the 2014 Regular Legislative Session, the bill was never considered in committee.

These weaknesses show the need for OFI to routinely collect and analyze all payday lender data during its examinations. As stated previously, these results represent only 11% of the payday lending locations. As a result, the financial impact on borrowers of OFI not using data to further investigate roll-overs may be even more significant.

Recommendation 2: OFI should further investigate the 318,489 instances we identified to determine whether these are improper roll-overs.

Recommendation 3: OFI should use non-aggregate transaction data as part of its examination process. OFI should further investigate instances it identifies with the data that could indicate an improper roll-over.

Recommendation 4: OFI should develop alternate testing procedures to detect improper roll-overs (e.g., ACL audit software, undercover shoppers, borrower interviews, video reviews in the field, borrower surveys, etc.).

Recommendation 5: OFI should include both closed and open loans when originating its sample of loans to examine during examinations.

Summary of Management's Response: OFI will consider these recommendations. While OFI deems its examination procedures related to searching for improper rollovers to be reasonably comprehensive, OFI agrees that additional procedures, such as those mentioned in recommendations 3, 4, and 5 could increase OFI's effectiveness in this area. OFI will consider the proposed additional procedures as well as look to other states that examine payday lenders. Procedural change determinations will be made considering the cost of implementing proposed changes along with increases or decreases in examination efficiency resulting from such changes. OFI will also determine whether additional investigation is warranted for the 318,489 instances outlined in recommendation 2. See Appendix A for OFI's full response.

OFI's examination procedures do not detect whether payday lenders are using their multiple locations to avoid OFI scrutiny and issue borrowers multiple payday loans on the same day instead of one consumer loan which has a lesser fee.

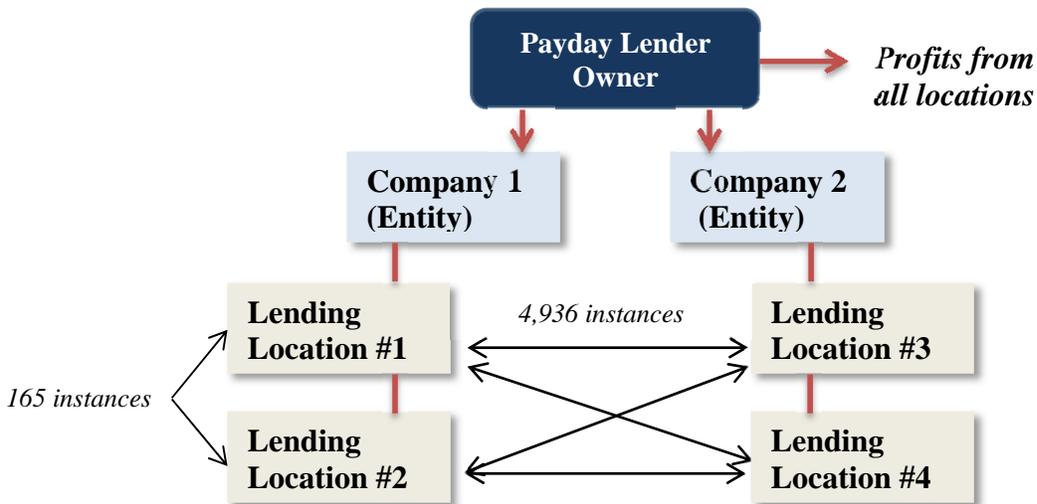
R.S. 9:3578.6(A)(4) prohibits a payday lender from dividing a loan into multiple agreements in order to charge higher fees. OFI cites this as a violation if the payday lender issues two loans totaling more than \$350 to the same borrower on the same day and at the same location. According to OFI, in situations where a borrower needs more than \$350, the lender should issue the borrower a consumer loan instead of a payday loan, which has a lesser fee.¹¹ During fiscal year 2013, OFI cited this violation 201 times.

Using fiscal year 2013 payday lending transaction data from the 107 (11%) of the 955 payday lending locations in Louisiana that voluntarily agreed to submit their data, we found 165 instances where a borrower took out two payday loans at two different locations, but within the same company, on the same day. We also found 4,936 instances where a borrower took out a payday loan at one company and then took out another payday loan at a different company with the same owner, on the same day. In both instances, the company owner benefits from the \$55 fee borrowers are charged for the loan.

In addition, we visited 29 different payday lending locations and seven (24%) directed us to another one of their locations of a different company when asked if we could take out more than \$350. The remaining 22 (76%) lenders did not offer us more than one loan. These examples, as illustrated in Exhibit 2, could indicate that some lenders may be using their multiple locations to avoid OFI scrutiny and issue borrowers multiple payday loans on the same day instead of one consumer loan which has a lesser fee. As a result, OFI should strengthen its examination process by analyzing detailed transaction data by owner and company, in addition to payday lending location.

¹¹ According to OFI management, if the total amount of the loan exceeded \$350 for these payday loans made on the same day, the loan should have been issued with consumer loan terms, which has a maximum fee of \$95 for a \$700 loan (compared to two \$55 fees for two \$350 loans). R.S. 9:3519 and R.S. 9:3530 state the terms for consumer loans.

Exhibit 2
Same Day Loans Made to Borrowers



Source: Prepared by legislative auditor's staff using unaudited information obtained from payday lenders.

Recommendation 6: OFI should strengthen its examination procedures by analyzing detailed transaction data by owner and company, in addition to location. This will help OFI determine whether companies are using their multiple locations to avoid OFI scrutiny and issue borrowers multiple payday loans on the same day instead of one consumer loan which has a lesser fee.

Summary of Management's Response: OFI will explore the possibility of citing a violation of current law when a lender with more than one licensed location has entered into loans with the same borrower at different licensed locations on the same day in an attempt to avoid OFI scrutiny. If OFI determines that such activity violates current law, OFI will determine the evidence needed to cite such violations and will determine how to strengthen its examination procedures to search for such violations including considering the need to analyze detailed transaction data by owner and company. See Appendix A for OFI's full response.

OFI's examination procedures do not detect whether payday lenders are reducing loan fees when borrowers pay off their loans within the first five days as required by state law.

R.S. 9:3578.5 states that if a loan is repaid during the first five days, the payday lender must refund the borrowers a portion of the fees they paid.¹² It is important that OFI ensure lenders are adhering to this law as it allows borrowers to recoup some of the fees they were originally charged for taking out the loan. Of the 15,633 loans OFI examined during fiscal year 2013, it did not identify any violations of this law. However, the process OFI uses to identify this type of violation does not detect whether payday lenders are reducing loan fees as required by state law. As previously recommended, OFI should use non-aggregate transaction data as part of its examination process and include both closed and open loans when originating its sample of loans to examine during examinations. Using data and sampling both closed and open loans may help detect this type of violation.

Using fiscal year 2013 payday lending transaction data from the 107 (11%) of the 955 payday lending locations in Louisiana that voluntarily agreed to submit their data, we identified 3,998 loans in which lenders appear to not have reduced loan fees, totaling \$54,500 in potential excess fees charged to borrowers who repaid their loans during the first five days. We gave our analysis to OFI for its investigation to determine if these 3,998 loans were actually violations of the law. As a result of our analysis, OFI has started investigating these loans by requesting additional information from the payday lenders and has received additional data fields from the lenders. Using these additional data fields, we found that 691 loans still appear to not have reduced fees when the loan was paid off during the first five days. In addition, using the additional data fields, we still identified 2,186 loans where the fee should have been reduced, but the payday lender reported these loans as either "null" or "void." According to OFI, it has started investigating these loans and management plans to conduct further follow-up with these lenders.

OFI needs to strengthen its examination process to ensure lenders are reducing loan fees as required by state law and that borrowers are protected from improper lending practices. Since these results only represent 11% of the payday lending locations, the financial impact on borrowers of OFI not using data to further identify potential fee overages may be even more significant.

Recommendation 7: OFI should continue to investigate the 691 potential instances of lenders not reducing loan fees when borrowers pay off their loans within the first five days.

¹² According to R.S. 9:3578.5, if the loan is paid in full within the first five days, the lender shall refund any and all unearned charges by method no less favorable to the consumer than the actuarial method, less twenty dollars of the original fee. A lender is allowed to keep the documentation fee, \$20 of the original fee, plus charge a percentage of the remaining fee for each day the loan was outstanding and shall refund the rest of the fees.

Recommendation 8: OFI should continue to investigate the 2,186 loans where the fee should have been reduced, but the payday lender reported these loans as either “null” or “void” and determine whether these loans were actually given.

Summary of Management’s Response: OFI agrees to consider additional investigation of the loans. OFI stated it will determine what additional review should be performed related to the 691 loans cited in recommendation 7 and will have further discussions with lenders to determine whether more definitive evidence can be obtained regarding the 2,186 loans cited in recommendation 8. See Appendix A for OFI’s full response.

OFI did not assess any penalties on payday lenders for violating state law from January 1, 2010 through June 30, 2013, despite citing 8,315 violations, including 8,082 major violations.

R.S.9:3554 grants OFI the authority to impose penalties for payday lending violations such as revoking or suspending a lender’s license. R.S. 9:3556.3 further grants OFI the authority to fine payday lenders up to \$1,000 for each violation. However, OFI has not developed a penalty structure or process for enforcing penalties.

From January 1, 2010 through June 30, 2013, OFI cited 163 lenders with 8,315¹³ violations. We found that OFI did not assess any penalties on these lenders despite citing 8,082 (97%) of these violations as “major” violations. According to OFI, a major violation is a violation that involves an overcharge to the borrower. Exhibit 3 shows the breakdown of the major violations OFI cited during the 1,315 examinations it conducted during this period.

Exhibit 3 Violations Identified by OFI Examiners January 1, 2010 through June 30, 2013 From 1,315 Examinations			
Violation	Description	# of Violations*	%
Excess Fees Charged [R.S. 9:3578.4,R.S. 9:3530, R.S. 9:3578.6 A(1)*]	<ul style="list-style-type: none"> • A lender cannot charge a fee greater than 16.75% of the amount of the loan and the total fee should not exceed \$45. • A lender cannot charge a documentation fee exceeding \$10. • Any other fees not allowed by R.S. 9:3578.4. 	5,639	67.82%

¹³ The number of violations is based on OFI’s examination data. We reviewed all the examination files for these violations and could not always reconcile the files to the examination data because of lack of documentation.

Exhibit 3 Violations Identified by OFI Examiners January 1, 2010 through June 30, 2013 From 1,315 Examinations			
Violation	Description	# of Violations*	%
Multiple Agreement (R.S. 9:3578.6)	A lender cannot divide a payday loan into multiple agreements for the purpose of obtaining a higher fee.	2,208	26.55%
Loan Roll-over (R.S. 9:3578.6)	A lender cannot renew or roll-over a payday loan by only accepting the finance charge and fees.	24	0.29%
Rebate Upon Prepayment (R.S. 9:3578.5)	A lender has to reduce the finance charge the borrower pays on a payday loan if the loan is paid back within five days of the loan's origination.	0	0.0%
Delinquency Charge [R.S. 9:3527(C)(2)]	A lender cannot charge a delinquency charge if payment is made in full on the due date or within the 10-day grace period.	13	0.16%
Maximum Charge After Maturity [R.S. 9:3578.4(A)(2)]	A lender cannot charge a rate greater than 36% in the first year and 18% per year for loans that remain unpaid after the first year.	1	0.1%
Non-sufficient Check Charges [R.S. 9:3578.4(B)]	A lender cannot charge a non-sufficient fee multiple times on one check.	20	0.24%
Rebate: Precomputed (R.S. 9:3533)	If a loan is in default, the lender can file suit. On the date the lender files suit, the lender must issue an interest rebate to the borrower's account.	10	0.12%
Other Major Violations	Include taking goods as collateral, refusing partial payment, etc.	167	2.01%
Total Major Violations		8,082	97.2%
Minor Violations	Include military loan disclosure and records retention, etc.	233	2.8%
Total Violations		8,315	100%
*If a lender issues other types of loans besides payday loans, such as title loans, the violations may be on that type of loan. However, OFI does not separate out violations if a lender issues multiple types of loans. Source: Prepared by legislative auditor's staff using OFI's examination data and state law.			

By not assessing penalties, OFI is failing to hold lenders accountable for adhering to state law. In addition, payday lenders may not be deterred from repeatedly violating the law. For example, we found that from 2003 through 2013, 115 (29%) of 402¹⁴ payday lenders examined during this time period had violations identified during two or more examinations.¹⁵ In addition, 44 (38%) of these 115 lenders had two or more consecutive exams with major violations.

¹⁴ These are the payday lender companies with more than one examination during this period that had a violation in at least one examination.

¹⁵ If a lender issues other types of loans besides payday loans, such as title loans, the violations may be on that type of loan. However, OFI does not separate out violations if a lender issues multiple types of loans.

Of the 11 states we surveyed, 10¹⁶ (91%) issue fines when payday lenders violate the law. For example, in 2012, Mississippi assessed a penalty on a payday lender for \$15,500 for issuing payday loans above the allowed amount.

Recommendation 9: OFI should develop and implement a penalty and enforcement structure for violating payday lending laws in Louisiana.

Summary of Management’s Response: OFI agrees to revisit its penalty assessment practices and consider the need to develop and implement a more robust penalty and enforcement structure especially as related to identical “major” violations of the Louisiana Deferred Presentment and Small Loan Act for consecutive examinations. See Appendix A for OFI’s full response.

OFI did not follow-up on 6,612 (82%) of the 8,082 major violations identified during its examinations from January 1, 2010 through June 30, 2013, that required a refund to the borrower. As a result, OFI cannot ensure the payday lender issued the refund.

In addition to weaknesses we identified with OFI’s examination and enforcement processes, we found that OFI does not always follow-up to ensure lenders correct all violations it does cite. When OFI identifies a violation during an examination, it instructs the payday lender to correct this violation within 30 days. As mentioned previously, OFI cited 8,082¹⁷ major violations on 163 lenders from January 1, 2010 through June 30, 2013. These violations resulted in \$161,251 in excess fees to borrowers. However, we found that OFI did not follow-up with lenders on 6,612 (82%) of these violations to ensure the borrower was refunded. We found one instance where a payday lender owed a total of \$13,426 to multiple borrowers and took two years to pay all the money back. According to OFI, it did have constant communication with this lender. In contrast, Mississippi requires that a payday lender demonstrate it refunded the borrower by showing a credit to a borrower’s account, a borrower signature, or a receipt from certified mail issuing the refund to the borrower.

Excerpt from OFI Examination

*“It is the licensee’s responsibility to review all records to determine the amount of rebates/refunds that might have been impacted by these apparent violations.”
(found in OFI’s examination)*

In addition to not following up on all violations, we found that when OFI does identify a violation, it often relies on the lender to identify and self-report additional instances of that violation instead of conducting a more thorough investigation of lending practices at that location. For example, of the 75 examinations that identified excess fees charged to the

¹⁶ Alabama, Florida, Idaho, Illinois, Iowa, Mississippi, Missouri, Oregon, Virginia, and Washington issue fines when payday lenders violate the law.

¹⁷ If a lender issues other types of loans besides payday loans, such as title loans, the violations may be on that type of loan. However, OFI does not separate out violations if a lender issues multiple types of loans.

borrowers, OFI issued the lenders a copy of the examination, which requires the lender to self-report additional instances, for 45 (60%) of them. Out of the \$161,251 in excess fees identified during examinations, the lenders found \$100,423 of these overcharges that OFI did not originally identify. However, without conducting its own investigation of that lender, OFI cannot ensure the lender reported all additional violations.

Recommendation 10: OFI should develop a process to follow-up with payday lenders to ensure the payday lenders issue refunds to borrowers when excess fees are charged. For example, OFI could require lenders to submit supporting documentation such as a consumer verified document stating they received the refund.

Recommendation 11: OFI should conduct a more thorough investigation of lenders it cites for violations regarding excess fees. This could include OFI expanding the sample of loans it reviews and looking further into the lender's practices at that location to determine why this lender overcharged the borrower.

Summary of Management's Response: While OFI considers its examination procedures related to violation investigation and follow-up to be reasonable, OFI agrees that additional procedures could increase OFI's effectiveness in this area. OFI will review its procedures related to violation investigations and follow-up along with documentation retained to explain how such investigations and follow-up has been conducted. OFI will consider additional procedures mentioned as well as look at other states that examine payday lenders. Procedural change determinations will be made considering the cost of implementing proposed changes along with increases or decreases in examination efficiency resulting from changes. See Appendix A for OFI's full response.

OFI currently does not have the legal authority to license or regulate online payday lenders who operate in Louisiana. However, Act 636 of the 2014 Regular Legislative Session amended state law, effective January 2015, to no longer exempt online payday lenders from obtaining a license to conduct business in Louisiana.

According to state law,¹⁸ a person cannot engage in the business of making consumer loans without obtaining a license from OFI. State law¹⁹ further requires each licensee to maintain a place of business in the state. However, R.S. 9:3560.A(8) currently exempts online lenders from the Deferred Presentment and Small Loan (payday loan) Act. This law states,

A creditor having no office within this state offering credit to Louisiana consumers through the mails and other means of interstate commerce shall be exempt from the consumer loan licensing requirement.

¹⁸ R.S. 9:3557.

¹⁹ R.S. 9:3561.

However, Act 636 of the 2014 Regular Legislative Session amended R.S. 9:3560 to no longer exempt interstate commerce lenders, which includes online payday lenders, from obtaining a license to conduct business in Louisiana. The effective date of the Act is January 1, 2015. This change in state law gives OFI the authority to license and regulate online lenders to ensure they are adhering to all Louisiana payday lending laws. Regulating online payday lenders is important for protecting the public from improper payday lending practices. In April 2013, the Consumer Financial Protection Bureau projected that online payday lending will overtake storefront lending in a few years. In addition, according to the PEW Charitable Trust, online payday lending accounts for a fourth of all payday loans issued in the United States. We surveyed 11 states and found that 10²⁰ (91%) regulate online payday lenders. In the 11th state, Iowa, online payday lending is illegal.

OFI does not have a comprehensive process in place to address verbal complaints against payday lenders. We found that OFI did not follow-up on almost half (48%) of borrower complaints it received from January 1, 2010 through June 30, 2013, because they were not submitted in writing.

From January 1, 2010 through June 30, 2013, OFI received 126 borrower complaints regarding payday lenders. OFI receives complaints against payday lenders in writing and verbally through its toll free number. According to OFI's complaint process, when borrowers call OFI with complaints, OFI staff sends them a standardized complaint form to complete and send back. Once OFI receives the form, staff logs the information into a database and follows up with the complainant.

Based on information in the complaint database, OFI followed up with 66 (52%) of the 126 complaints against lenders, with 44 of them alleging overcharges to the borrower. However, OFI did not follow-up with the remaining 60 (48%) complaints. While these complaints were called into OFI, they were never submitted on the required form and OFI's complaint process does not address situations in which complainants do not submit their complaint in writing. According to OFI, examiners may have followed up on these complaints during their examination process. However, there was no documentation in the database to support any follow-up. Following up with complainants to obtain additional information or asking for more complete information when the complainant originally calls may help OFI identify systemic issues with payday lenders.

²⁰ Alabama, Florida, Idaho, Illinois, Mississippi, Missouri, Oregon, Texas, Virginia, and Washington license and regulate online lenders.

Recommendation 12: OFI should develop a comprehensive process for handling verbal complaints against payday lenders.

Summary of Management's Response: OFI agrees that its formalized complaint procedures should provide written guidance to formally outline the procedures that should be performed for verbal complaints and how those procedures should be documented in OFI's complaint databases and in examiner workpapers to transparently reflect that appropriate consideration has been given to verbal complaints. See Appendix A for OFI's full response.

APPENDIX A: MANAGEMENT'S RESPONSE



STATE OF LOUISIANA
OFFICE OF FINANCIAL INSTITUTIONS
BATON ROUGE, LOUISIANA



June 20, 2014

Mr. Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
1600 North Third Street
P.O. Box 94397
Baton Rouge, Louisiana 70804-9397

Re: Response to Performance Audit
Office of Financial Institutions
Regulation of Payday Lenders

Dear Mr. Purpera:

Thank you for the opportunity to respond to the Regulation of Payday Lenders Audit prepared by your office. This letter serves as the Office of Financial Institutions' (OFI's) response to the report. OFI agrees that its Payday Regulation processes and procedures can be strengthened and can be more transparent. After providing a brief overview of OFI and the Louisiana Deferred Presentment and Small Loan Act (LDPSLA), each of the recommendations contained in the report will be addressed.

Overview:

OFI is responsible for the supervision and regulation of various institutions and entities that provide financial services to the citizens of the State of Louisiana. The office is divided into four divisions and has a main office located in Baton Rouge and six field offices located throughout the State of Louisiana. Two of the divisions are the Depository Division and the Non-depository Division. The Depository Division is accredited by the Conference of State Bank Supervisors (CSBS) and the National Association of State Credit Union Supervisors (NASCUS). The Non-depository Division's residential mortgage section is accredited by CSBS and the American Association of Residential Mortgage Regulators (AARMR). In addition to achieving accreditations, both divisions work closely and often in conjunction with federal agencies such as the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Bank (FRB), the National Credit Union Association (NCUA), and the Consumer Financial Protection Bureau (CFPB). OFI is also a member of the National Association of Consumer Credit Administrators (NACCA) and the Money Transmitter Regulators Association (MTRA). These relationships allow OFI management and staff to keep abreast of supervision and regulation best practices and standards, which are applied during the course of OFI's regulatory work.

The Depository Division and the Non-depository Division share 60 cross-trained field examiners to perform approximately 1,300 to 1,400 examinations each year of regulated entities across the state. OFI has developed comprehensive training procedures and guidelines to ensure that field examiners receive appropriate training to

allow them to effectively perform both Depository and Non-depository examinations. OFI uses risk-based examination schedules to determine which entities to examine each year. For example, OFI’s risk-based examination schedule for licensed lenders, which includes “payday” lending, is to conduct the first examination six months after the licensed location opens, then one year after the six-month examination, and at least once every four years after the last examination. However, if OFI identifies “major” violations during an examination, it will examine the licensed location on a yearly basis until an examination is conducted which results in no “major” violations and then the licensed location will be placed back into the four-year rotation. The table below depicts the number of entities subject to examination by both divisions for the fiscal years ending June 30, 2009 through June 30, 2013, and year-to-date March 31, 2014.

ENTITIES SUBJECT TO EXAMINATION	FYE 2009	FYE 2010	FYE 2011	FYE 2012	FYE 2013	YTD 03/31/14
Depository Division						
Banks	121	119	119	114	110	110
Holding Companies	101	99	99	98	94	94
Trust Departments	22	22	20	21	19	18
Thrifts	7	7	7	7	7	6
Credit Unions	48	46	45	44	44	43
Sale of Checks/Money Transmitters	54	53	62	71	71	69
Business and Industrial Development Companies	12	11	10	10	10	10
Certified LA Capital Companies	25	24	23	22	14	12
LA Community Development Financial Institutions	2	2	2	2	2	2
Total Depository Division	392	383	387	389	371	364
Non-depository Division						
Licensed Lenders (Consumer Loans & Payday Loans)	1,835	1,794	1,796	1,786	1,774	1,747
Residential Mortgage Lenders/Brokers	500	394	412	429	435	432
Pawnbrokers	186	187	197	199	196	209
Check Cashers	1,176	1,225	1,247	1,277	1,304	1,426
Bond For Deed Escrow Agents	13	13	12	12	10	11
Repossession Agencies/Qualifying Agents	11	12	12	11	11	12
Total Non-depository Division	3,721	3,625	3,676	3,714	3,730	3,837
Total Depository and Non-depository Division	4,113	4,008	4,063	4,103	4,101	4,201

As can be seen from the table above, “payday” lenders are not separate entities subject to examination by OFI; rather “payday” loans are a loan product offered by licensed lenders. Therefore, it is important to be aware that while regulation of “payday” loans offered by licensed lenders is currently receiving much attention on the state and federal levels, regulation of “payday” loans represents only a portion of the regulatory work performed by OFI.

On August 15, 1999, the LDPSLA, Chapter 2-A LSA-R.S. 9:3578.1 et seq., was enacted to regulate lenders who originate deferred presentment transactions and small loans, commonly called “payday” loans. The legislative intent of this Chapter is provided in LSA-R.S. 9:3578.2, which states: “*It is the intent of the legislature to regulate deferred presentment transactions and small loans. These loans meet a legitimate credit need for many borrowers; however, in order to protect borrowers from excessive charges, it is the intent of the legislature to put certain restrictions on lenders who make these loans.*”

The LDPSLA governs deferred presentment transactions of \$350 or less not to exceed 30 days and small loan transactions of \$350 or less not to exceed 60 days. A deferred presentment transaction is a transaction made pursuant to a written agreement whereby a lender: (a) accepts a check from the issuer dated as of the date the check was written, (b) agrees to hold the check for a period of time not to exceed 30 days prior to negotiation or presentment, and (c) pays the issuer of the check the amount of the check less the fee permitted by LSA-R.S. 9:3578.4(A) but not more than \$350 (LSA-R.S. 9:3578.3(2)). The LDPSLA provides for: (a) the maximum amount of finance charges and fees allowed to be assessed by the licensee, (b) the refund of unearned charges by the licensee upon borrower prepayment, (c) prohibited acts in which the licensee shall not engage, (d) the posting of a toll free number to the Commissioner’s office, and (e) the powers of the Commissioner.

Report Recommendations and OFI Responses:

Recommendation 1: *OFI management should develop procedures for its examiners to use that clarify what documentation examiners should keep in their examination files. This should include keeping the list of loans reviewed, exceptions noted in detail, and documentation showing any follow-up by the examiners for violations identified during the previous exam. (p. 5 of the report).*

OFI Response to Recommendation 1: **OFI agrees that it can develop more specific standards for documentation to be retained by examiners as part of the examination of deferred presentment and small loan lenders.** OFI has begun the process of identifying the items to retain to more transparently document the review performed during examinations. While documentation currently retained after examination is not extensive, OFI’s established examination processes are deemed reasonably comprehensive and include a review for compliance, on a sample basis, of all of the major provisions in the LDPSLA. This review includes determining whether:

- Fees charged, such as finance charges, documentation fees, delinquency fees, and NSF charges are charged in accordance with the LDPSLA.
- Acts prohibited by the LDPSLA have occurred, such as selling goods when the goods are financed with the proceeds of a loan or selling insurance in connection with a loan, dividing a transaction into multiple agreements to obtain higher fees, renewing or rolling over loans without collecting 25% of the loan amount plus fees charges, and taking any direct or indirect interest in any property in connection with a loan.
- Refunds are made for unearned charges when a borrower repays a loan within the first five days.

- OFI's toll free number has been posted at the lending location.

Recommendation 2: *OFI should further investigate the 318,489 instances we identified above to determine whether these are improper roll-overs. (p. 8 of the report).*

Recommendation 3: *OFI should use non-aggregate transaction data as part of its examination process. OFI should further investigate instances it identifies with the data that could indicate an improper roll-over. (p. 8 of the report).*

Recommendation 4: *OFI should develop alternate testing procedures to detect improper rollovers (e.g., ACL audit software, undercover shoppers, borrower interviews, video reviews in the field, borrower surveys, etc.). (p. 8 of the report).*

Recommendation 5: *OFI should include both closed and open loans when originating its sample of loans to examine during examinations. (p. 8 of the report).*

OFI Response to Recommendations 2 through 5: These recommendations relate to a provision within the LDPSLA (LSA-R.S. 9:3578.6(A)(7)) which provides an option for a lender to allow a borrower to renew or rollover a loan by paying 25% of the loan amount plus fees charged. Through analyzing detailed transaction data voluntarily submitted by payday lenders, the Louisiana Legislative Auditor (LLA) found 318,489 instances (approximately 54% of the total loans reported by the 5 companies) in which a borrower paid-off one loan and opened a new loan for the same amount, at the same location, and on the same day. LLA states these instances may represent legal new loans or may represent improper roll-overs. LLA notes that it provided OFI with the results of its analysis so that OFI could investigate to determine whether these instances were actual violations of law. OFI thanks LLA for providing its results and for allowing OFI the opportunity to investigate its results.

Since obtaining LLA's results, OFI has begun investigating the 318,489 instances in which a borrower paid-off one loan and opened a new loan for the same amount, at the same location, and on the same day. OFI selected a random sample across companies of 222 borrowers and reviewed a total of 1,450 loans for these borrowers and noted no instances of improper rollover. In addition, OFI reviewed the 10 loans listed for "Borrower A" in Exhibit 1 of the report and reviewed the 47 loans for the borrower noted on page 7 of the report and noted no instances of improper rollover for either borrower. To make these determinations, examiners reviewed borrower promissory notes and payment histories and determined that each loan was supported by a separate promissory note and was paid-off rather than rolled over upon maturity. Borrower payment histories reflected the loan origination date, the loan pay-off date, the loan amount, the fees charged, and the amounts paid. In addition, most borrowers' files contained payment receipts and copies of checks provided by the borrower to the lender at loan origination. The review performed for these loans was similar to the review OFI examiners are trained to perform as part of their normal examination procedures.

OFI's current examination procedures require examiners to select a sample of open loans. Upon obtaining borrower loan files containing these open loans, examiners also review the borrower's previous transactions (typically since the last examination). Examiners review promissory notes, payment histories, payment receipts, and signed checks provided by the borrower to the lender at loan origination. Through this review, examiners ensure that when a loan is closed the lender receives full payment of the loan amount plus fees charges. This review allows examiners to determine whether a loan may have been improperly rolled over in contravention of the above referenced statute.

It should be noted that while LSA-R.S. 9:3578.6(A)(7) provides an option for a lender to allow a borrower to renew or rollover a loan by paying 25% of the loan amount plus fees charged, this option is not one which OFI, over many years of regulation, has observed occurs frequently. Instead, most borrowers pay the entire loan amount plus fees charged at maturity and immediately enter into a new loan transaction with the lender. In addition, a recent nationwide study issued by the CFPB in March of 2014 states that:

- Over 80% of payday loans are immediately followed by another loan upon maturity.
- 50% of borrowers borrow in a series of loans which is at least 10 loans long.
- Few borrowers have reductions in principle amounts between the first and last loan of a series.
- Most borrowing involves multiple re-borrowings following the initial loan, rather than multiple distinct borrowing episodes.

CFPB's 80% statistic and its findings related to few reductions in principle and to multiple re-borrowings appear to correlate with OFI's observation that borrowers frequently pay their entire loan amount plus fees charged at maturity and immediately enter into a new loan transaction with the lender instead of paying 25% of their loan amount plus fees charged and rolling over their loan. CFPB's 50% statistic appears to correlate with LLA's determination that for 54% of the total loans reported by the 5 companies, the borrower paid-off one loan and opened a new loan for the same amount, at the same location, and on the same day. In addition, CFPB's findings related to reductions in principle and to multiple re-borrowings also appear to correlate with LLA's 10 and 47 loan examples and its 318,489 (54%) instances. Therefore, based on OFI's observations over many years of regulation, the results of OFI's review of the 1,450 loans, the results of OFI's review of the 10 and 47 loan examples, and the nationwide patterns identified in the CFPB report which are consistent with OFI's observations and review results; OFI is of the opinion that LLA's 318,489 instances illustrate predominate borrowing patterns and more than likely are not improper rollovers.

While OFI deems its examination procedures related to searching for improper rollovers to be reasonably comprehensive, OFI agrees that additional procedures, such as those mentioned in recommendations 3, 4, and 5 above, could increase OFI's effectiveness in this

area. OFI will consider the proposed additional procedures as well as look to other states that examine payday lenders. Procedural change determinations will be made considering the cost of implementing proposed changes along with increases or decreases in examination efficiency resulting from such changes. Over the coming weeks, OFI will also determine whether additional investigation is warranted for the 318,489 instances mentioned by LLA.

OFI would also like to note, as mentioned by LLA on pages 7 and 8 of the report, that a statewide database and a waiting period were proposed during the 2014 Regular Legislative Session but were not enacted into law. OFI was fully engaged in these discussions and frequently engaged in conversations with various members of the Legislature on these issues.

LLA also mentions on pages 4 and 14 of the report that Act 636 of the 2014 Regular Legislative Session amended LSA-R.S. 9:3560 to no longer exempt interstate commerce lenders, which includes online “payday” lenders, from obtaining a license to conduct business in Louisiana. The effective date of this Act is January 1, 2015. This change in state law gives OFI the authority to license and regulate online lenders to ensure that they are adhering to Louisiana “payday” lending laws. In recognition of the growth of online lending, OFI worked with Representative Ponti on this legislation.

Recommendation 6: *OFI should strengthen its examination procedures by analyzing detailed transaction data by owner and company, in addition to location. This will help OFI determine whether companies are using their multiple locations to avoid OFI scrutiny and issue borrowers multiple payday loans on the same day instead of one consumer loan which has a lesser fee. (p. 9 of the report).*

OFI Response to Recommendation 6: This recommendation relates to a prohibition in the LDPSLA which states that a licensee shall not divide a deferred presentment transaction or small loan into multiple agreements for the purpose of obtaining a higher fee or charge (LSA-R.S. 9:3578.6(A)(4)). It should be noted that the license granted “payday” lenders is a license to engage in loans subject to the Louisiana Consumer Credit Law (LCCL) (LSA-R.S. 9:3510 et seq.), a subset of which permits a loan product known as deferred presentment transactions and small loans (LDPSLA) or “payday” loans. As previously noted, the LDPSLA governs deferred presentment transactions of \$350 or less not to exceed 30 days and small loan transactions of \$350 or less not to exceed 60 days. The LCCL governs all other consumer loan transactions outside of these parameters.

OFI has cited violations (and required refunds) when a licensed location has entered into more than one transaction with the same borrower either by entering into:

- multiple agreements under the LDPSLA with the same borrower on the same day,
- multiple agreements under the LCCL with the same borrower on the same day, or
- multiple agreements under the LDPSLA and the LCCL with the same borrower on the same day.

These violations have been cited when OFI has determined that the licensed location has collected higher fees from multiple transactions with the same borrower on the same day than the licensed location would have collected from a single transaction with the same borrower on the same day. It is important to note that the LCCL is clearly based upon one license per location, not one license per entity or control group and that all of the LCCL's requirements are structured to apply on a "per license" basis, which means a "per location" basis. Therefore, OFI has not in the past attempted to cite violations where a lender that has more than one licensed location has entered into loans with the same borrower at different licensed locations on the same day. In addition, because neither the LDPSLA nor the LCCL limit the number of loans that a borrower can have outstanding at any one time with all lenders, OFI would need sufficient evidence indicating that a lender intentionally directed a borrower to go to a second location owned by that lender for a second loan and for the purpose of the lender obtaining higher fees or charges. Please note that the 5,101 instances discussed by LLA represent less than 1% of the total loans submitted to LLA by the 5 companies.

OFI will explore the possibility of citing a violation of current law when a lender with more than one licensed location has entered into loans with the same borrower at different licensed locations on the same day in an attempt to avoid OFI scrutiny. If OFI determines that such activity violates current law, OFI will determine the evidence needed to cite such violations and will determine how to strengthen its examination procedures to search for such violations including considering the need to analyze detailed transaction data by owner and company.

Recommendation 7: *OFI should continue to investigate the 691 potential instances of lenders not reducing loan fees when borrowers pay off their loans within the first five days. (p. 10 of the report).*

Recommendation 8: *OFI should continue to investigate the 2,186 loans where the fee should have been reduced but the payday lender reported these loans as either "null" or "void" and determine whether these loans were actually given. (p. 11 of the report).*

OFI Response to Recommendations 7 and 8: These recommendations relate to a provision within the LDPSLA (LSA-R.S. 9:3578.5) which states that upon prepayment in full of a deferred presentment transaction or small loan during the first five days of the term of such transaction or loan only, the lender shall refund any and all unearned charges by a method no less favorable to the borrower than the actuarial method, less twenty dollars of the original fee, which shall be considered earned and shall not be subject to refund. Through analyzing detailed transaction data voluntarily submitted by payday lenders, the LLA identified 3,998 loans where lenders appear not to have reduced loan fees when borrowers repaid their loans within the first five days of the loan or transaction term. LLA notes that it provided OFI with the results of this analysis so that OFI could investigate to determine whether these 3,998 loans reflect violations of the prepayment requirements. Once again, OFI thanks LLA for providing its results and for allowing OFI the opportunity to investigate its results.

Upon obtaining LLA's results, OFI requested additional data fields from the lenders and provided those data fields to LLA for further analysis which revealed that only 691 of the 3,998 loans (approximately 0.12% of the total population of loans reported by the companies) appeared not to have loan fees reduced upon borrower prepayment within the first five days. In addition, LLA identified 2,186 loans (less than 0.4% of the total population of loans reported by the companies) where it appears that the loan fee should have been reduced, but the lender reported the loan as "null" or "void."

OFI selected a sample across companies of 121 of the 691 (18%) loans to review and noted refunds appear to be due to borrowers for 22 of the 121 loans for a total amount due of \$301.77. To make this determination, OFI reviewed payment histories to determine whether refunds had been paid and to determine the amounts refunded. OFI then calculated the amount of the refund that appeared to be due to the borrower in accordance with LSA-R.S. 9:3578.5 and then compared the OFI calculated refund amount to the refund amount reflected on the borrower's payment history. The review performed for these loans was similar to the review OFI examiners are trained to perform as part of their normal examination procedures. **OFI will contact the respective lenders over the coming weeks regarding the 22 loans that appear to require refunds. If a lender cannot supply additional evidence to substantiate that a refund is not due, OFI will require the lender to issue a refund to the borrower. Over the coming weeks, OFI will also determine what additional review should be performed related to these 691 loans.**

OFI selected a sample of 32 of the 2,186 "null" or "void" loans for review. OFI requested that lenders provide explanations for the terms "null" and "void." The explanation received for "void" was that the loan was entered incorrectly or rescinded. The explanation received for "null" was that no payment had been received on the loan. OFI reviewed payment histories for the 32 loans selected for review and found no evidence to disprove the explanations provided; however, OFI is not sure that the evidence reviewed provides a reasonable basis to determine whether refunds are not due to these borrowers. **OFI will have further discussions with these lenders over the coming weeks to determine whether more definitive evidence can be obtained regarding these 2,186 loans.**

While OFI deems its examination procedures for determining compliance with LSA-R.S. 9:3578.5 to be reasonably sufficient, OFI agrees additional procedures such as sampling on closed loans and using non-aggregate transaction data could increase OFI's effectiveness in this area. OFI will consider such additional procedures as well as look to other states that examine payday lenders. Procedural change determinations will be made considering the cost of implementing proposed changes along with increases or decreases in examination efficiency resulting from such changes. Please note that OFI is not currently aware of any other states, except for those that have implemented a database, that use non-aggregate transaction data as part of the examination process.

Recommendation 9: *OFI should develop and implement a penalty and enforcement structure for violating payday lending laws in Louisiana. (p. 12 of the report).*

OFI Response to Recommendations 9: This recommendation relates to OFI's penalty assessment practices. LLA notes that OFI cited 163 lenders with 8,315 violations from January 1, 2010 through June 30, 2013; however, OFI did not assess any penalties on these lenders despite citing 8,082 of these violations as "major" violations. OFI considers a violation to be "major" when it is associated with an overcharge which requires a refund. While 8,315 violations may appear to be excessive, these violations need further explanation.

OFI conducted a total of 1,316 examinations from January 1, 2010 through June 30, 2013, of which:

- 1,130 of the 1,316 (86%) examinations resulted in no violations,
- 186 of the 1,316 (14%) examinations resulted in 8,315 violations cited against 163 of 955 (17%) lending locations across the state,
- 8,082 of the 8,315 (97%) violations cited were "major" violations, and
- 4,984 of the 8,082 (62%) "major" violations were cited against 3 of the 955 (0.3%) lending locations across the state.
 - 3,579 of the 4,984 (72%) "major" violations were cited against 2 of the 3 lending locations during single examinations for contracting to charge borrowers a \$5.00 documentation fee and actually charging those borrowers a \$10.00 documentation fee. One of the lending locations issued 2,616 five-dollar refunds totaling \$13,080. The other lending location issued 963 five-dollar refunds totaling \$4,815.
 - 1,405 of the 4,984 (28%) "major" violations were cited during a single examination against the 3rd lending location for dividing transactions in multiple agreements to obtain higher fees or charges. This lending location issued 1,405 refunds totaling \$67,170.

Typically violations related to overcharges result in many instances of the same violation being cited against a lending location during a single examination because these violations are normally systemic in nature and OFI cites each instance as a separate violation. These systemic violations normally result because of a lender software problem, a change in the law, or a lender's misinterpretation of the law.

Based on OFI's analysis of examinations conducted over an 11-year period from January 1, 2003 through December 31, 2013, OFI conducted a total of 4,932 examinations, of which:

- 4,284 of the 4,932 (87%) examinations resulted in no violations
- 648 of the 4,932 (13%) examinations resulted in violations, and

- 38 of the 4,932 (0.8%) examinations resulted in identical “major” violations for two consecutive exams

It has been the long standing practice of OFI to order lenders to refund borrowers when examinations detect overcharges. OFI has considered this practice to be in alignment with the legislative intent of the LDPSLA which is “to protect consumers from excessive charges.” As a result of “major” violations cited over the 11-year period, lenders have voluntarily complied with OFI’s directives and have issued over \$250,000 in refunds to Louisiana consumers. OFI polled 23 state regulators regarding the assessment of penalties. Five (22%) state regulators reported assessing penalties on the first occurrence of a violation, 15 (65%) reported assessing penalties only for serious and/or repeat violations, and 3 (13%) reported assessing no penalties.

Because OFI has found lenders to be generally compliant with the LDPSLA and it has been OFI’s primary objective to have lenders refund borrowers for overcharges, OFI has generally not made a practice of assessing penalties for examination violations. **However, OFI agrees to revisit its penalty assessment practices and consider the need to develop and implement a more robust penalty and enforcement structure especially as related to identical “major” violations of the LDPSLA for consecutive examinations.** It should be noted that while OFI generally does not assess penalties for examination violations, OFI does routinely assess fines for licensing violations and for unlicensed activity.

Recommendation 10: *OFI should develop a process to follow up with payday lenders to ensure the payday lenders issue refunds to borrowers when excess fees are charged. For example, OFI could require lenders to submit supporting documentation such as a borrower verified document stating they received the refund. (p. 13 of the report).*

Recommendation 11: *OFI should conduct a more thorough investigation of lenders it cites for violations regarding excess fees. This could include OFI expanding the sample of loans it reviews and looking further into the lender’s practices at that location to determine why this lender overcharged the borrower. (p. 13 of the report).*

OFI Response to Recommendations 10 and 11: These recommendations relate to OFI’s examination and follow-up procedures for “major” violations cited during the examination process. When examination procedures detect that overcharges have occurred, OFI lists the violations in the report of examination and adds language to the report of examination explaining corrective action required and the time frame to complete such corrective action. This explanation also instructs the lender as to what type of documentation (copies of checks, copies of credits issued to the borrower, or copies of payment histories reflecting credits issued or refunds paid, etc.) to submit to OFI and to be maintained in its files to support the issuance of refunds. Once the lender has provided the necessary supporting documentation to OFI to indicate the number and amount of refunds issued, an examiner will review the information provided and document the issuance of the refunds in OFI’s examination database. In addition, at the next examination, an examiner will verify that the refunds have actually been issued and will perform examination

procedures to obtain assurance that the prior violations are no longer occurring. However, documentation explaining how such procedures were performed is not extensive.

It should be noted that the LCCL currently includes an incentive for self-detection and reporting of violations by reducing the lenders liability in the case of self-discovery and reporting. LSA-R.S. 9:3552 specifically provides for the effect of violations on rights of the parties in the case of intentional violations, unintentional violations, and self-discovered violations. Lenders are required to notify the Commissioner of multiple violations and to correct them. Failure to do so creates a legal presumption that the violations were intentional or not in good faith subjecting the lender to judicial imposition of a civil penalty of refund of all interest and charges plus three times that amount and reasonable attorney's fees. In the case of self-discovered multiple violations, the statute provides that the lender has no liability for the civil remedies granted by this section if it promptly reports and corrects after discovery. These provisions are clearly designed to encourage self-discovery, reporting, and correction by reducing exposure through self-discovery, reporting, and correcting. Otherwise, these options would not be provided for in statute.

In addition, LSA-R.S. 9:3554 provides that "*the Commissioner may within the limitations provided by law, receive and act on complaints, take action designed to obtain voluntary consent or compliance with this Chapter without the necessity of a hearing or order, or commence proceedings on his own initiative.*" Therefore, by statute, requesting voluntary compliance is within the Commissioner's discretion, and self-reporting and correction is not only encouraged by LSA-R.S. 9:3552, but is usually one of the most efficient methods, in terms of time and resources, to obtain a refund for consumers.

While OFI considers its examination procedures related to violation investigation and follow-up to be reasonable, OFI agrees that additional procedures could increase OFI's effectiveness in this area. OFI will review its procedures related to violation investigation and follow-up along with documentation retained to explain how such investigation and follow-up has been conducted. OFI will consider the additional procedures mentioned as well as look to other states that examine payday lenders. Procedural change determinations will be made considering the cost of implementing proposed changes along with increases or decreases in examination efficiency resulting from such changes.

Recommendation 12: *OFI should develop a comprehensive process for handling verbal complaints against payday lenders (p. 15 of the report).*

OFI Response to Recommendations 12: While OFI has a formalized complaint process that addresses written complaints; its formalized process does not address verbal complaints. Even though OFI logs verbal complaints, it does not generally act on those complaints unless the borrower subsequently submits a written complaint outlining the nature of the complaint and the requested action or unless the verbal complaint is of a global nature. An example of a verbal complaint of a global nature would be a borrower calling and alleging that XYZ Company is taking collateral on "payday" loans. This act is specifically prohibited by LSA-R.S. 9:3578.6(A)(8); therefore, OFI would consider the need to perform an investigative examination

prior to the lender's regularly scheduled examination to determine the validity of the complaint and the significance of occurrence. Examiners are trained to review the complaint database prior to conducting an examination. Review of the complaint database allows examiners to consider all complaints received on a lender when determining examination procedures that should be performed during the examination. While such consideration is given to verbal complaints, documentation outlining such consideration is not extensive. **OFI agrees that its formalized complaint procedures should provide written guidance to formally outline the procedures that should be performed for verbal complaints and how those procedures should be documented in OFI's complaint database and in examiner workpapers to transparently reflect that appropriate consideration has been given to verbal complaints.**

Conclusion:

In conclusion, OFI would like to thank the Louisiana Legislative Auditor for the significant effort devoted to this audit. Please know that OFI is committed to continuously evaluating its regulatory processes and OFI believes that this report provides it with an additional tool for such evaluation. Over the coming months, OFI is committed to evaluating its Payday Regulation processes and procedures and revising them as determined necessary considering the recommendations outlined in this report, the need for increased examination transparency, and the need to complete examinations in an effective, yet efficient manner reflecting the scope of the LPDSL. A.

Respectfully,



John Ducrest, CPA
Commissioner

APPENDIX B: SCOPE AND METHODOLOGY

We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. The audit evaluated the Office of Financial Institutions' (OFI) oversight of deferred presentment and small loan lending (payday lending) from January 1, 2010 through June 30, 2013. The audit objective was as follows:

Does OFI effectively regulate payday lenders to ensure they operate in accordance with all state laws?

We conducted this performance audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objective and performed the following audit steps:

- Researched state and federal laws relating to the regulation of payday lending and OFI's regulatory and enforcement powers over payday lenders.
- Reviewed OFI's mission, goals, and performance indicators.
- Interviewed OFI management and reviewed policies and procedures regarding OFI's processes for regulating payday lenders.
- Reviewed the files of 360 payday lender examinations conducted by OFI examiners from January 1, 2010 through June 30, 2013. Specifically, we reviewed all examinations that cited a violation for the payday lending location examined (186 total) and an additional 29 examinations for each of the six districts (174 total) that did not cite a violation for the payday lending location examined for a total of 360.
- Reviewed all payday lender complaints sent to OFI from a borrower from January 1, 2010 through June 30, 2013.
- Shadowed OFI examiners on seven different examinations to observe the examination process.
- Analyzed OFI examination electronic data from January 1, 2003 through June 30, 2013. We tested the reliability of the examination data based on a reliability sample. We reviewed 100% of the examination files for the violations

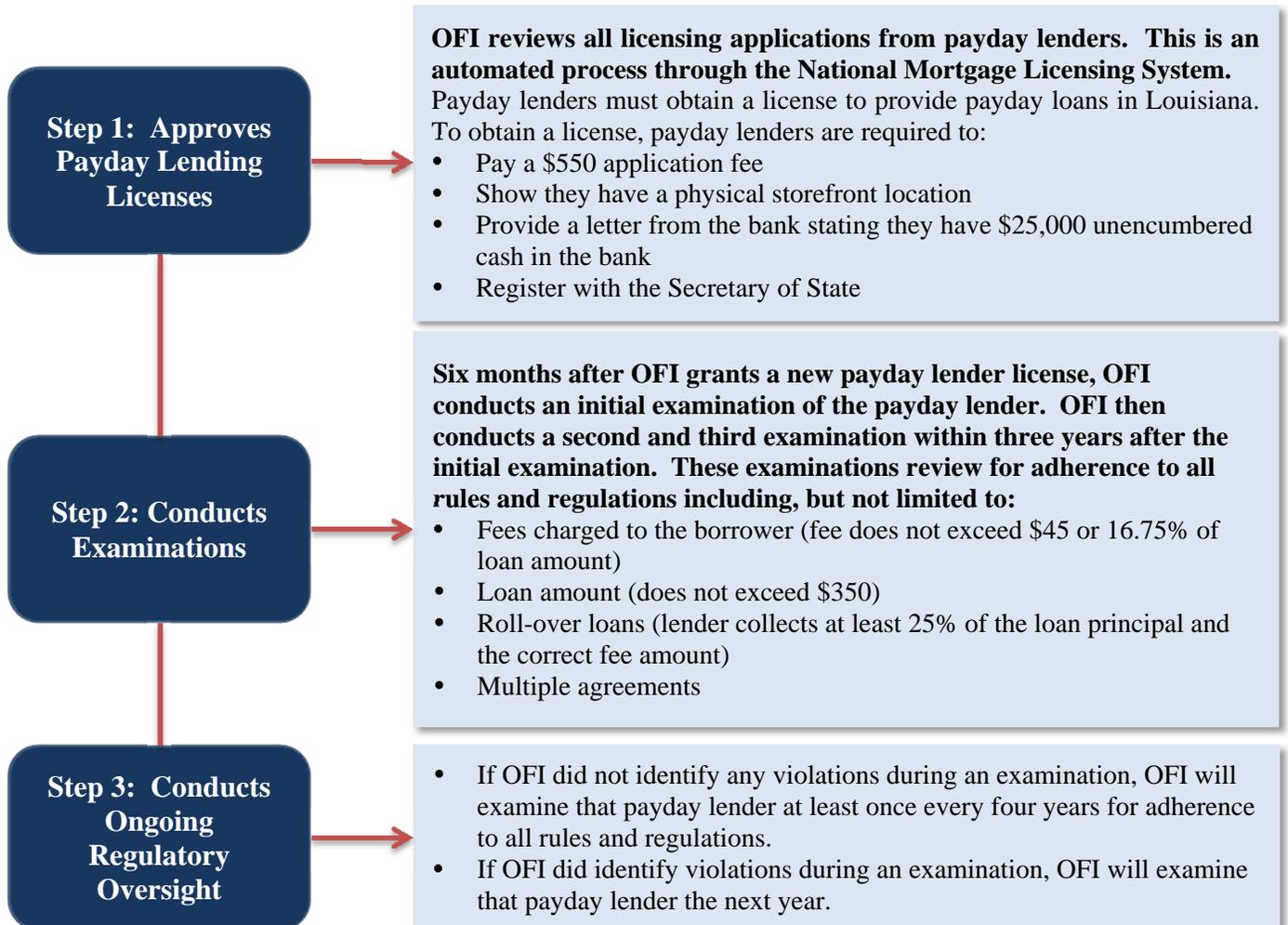
OFI identified, but could not always reconcile the files to the examination data because OFI does not retain documentation of all violations cited.

- Visited 29 payday lending locations in Baton Rouge and Shreveport to document any violations of law we observed.
- Met with OFI management to determine which states we should contact as best practice states and also chose states that are located close to Louisiana or that have comparable payday lending laws to Louisiana.
- Conducted best practice research to determine how other states regulate payday lenders by surveying 11 other states (Oregon, Washington, Virginia, Alabama, Idaho, Illinois, Mississippi, Missouri, Texas, Florida, and Iowa).
- Researched the Governmental Accountability Office and the PEW Charitable Trust regarding any payday lending studies these organizations had conducted.
- Reviewed aggregate payday lender data collected by OFI for calendar year 2013 in response to Act 234 of 2012. We requested, through OFI, non-aggregate transaction data for the top 10 payday lending companies that reported the highest fees during the first two quarters of calendar year 2013. We analyzed the data we received from the five companies that responded to our request.

APPENDIX C: OVERVIEW OF OFI'S REGULATION OF PAYDAY LENDERS

The Office of Financial Institutions (OFI) is located within the Office of the Governor and is responsible for licensing and overseeing all financial institutions, including payday lending. As of December 31, 2013, there were 965 payday lending locations across Louisiana. R.S. 9:3578.8 and R.S. 6:101(A) give OFI supervisory and regulatory jurisdiction over payday lenders. The Deferred Presentment and Small Loan (Payday Loan) Act (R.S. 9:3578) and the Consumer Credit Law (R.S. 9, Chapter 2) set forth regulations that payday lenders must follow. According to OFI's internal policies and procedures, OFI examines each payday lender at least once every four years to ensure they are following these regulations. As of December 2013, OFI had 60 examiners responsible for examining all non-depository financial institutions, including payday lenders. The exhibit below summarizes OFI's regulation procedures of payday lenders.

OFI's Regulatory Oversight of Payday Lenders



Source: Prepared by legislative auditor's staff using information provided by OFI and R.S. 9:3578.

APPENDIX D: PAYDAY LENDING LAWS

Payday Lending Laws	
Law	Description
R.S. 9:3578.6 A(1)*	A licensee “lender” shall not charge fees for a deferred presentment or small loan (payday loan) that are not allowed by R.S. 9:3578.4 (see below).
R.S. 9:3578.3*	A payday loan is \$350 or less. As defined in this law, payday loans include deferred presentment transactions, with terms not to exceed 30 days, and small consumer loans, with terms not to exceed 60 days.
R.S. 9:3578.4(A)(B)*	A lender can charge a finance charge of 16.75% of the face value of a check for a payday loan. This charge cannot exceed \$45. A lender may contract for a one-time fee for checks returned as Non-Sufficient Funds. A licensee cannot charge this fee multiple times on one check.
R.S. 9:3530*	A lender shall not charge a documentation fee exceeding \$10.
R.S. 9:3578.4(A)(2)*	A lender cannot charge a rate greater than 36% in the first year and 18% per year for loans that remain unpaid after the first year.
R.S. 9:3578.5*	If a payday loan is paid in full within the first 5 days of the term, the lender shall refund any and all unearned charges less twenty dollars of the original fee.
R.S. 9:3578.6 A(2)	A lender shall not sell any goods when those goods are financed with the proceeds of the loan or sell insurance in connection with a payday loan.
R.S. 9:3578.6 A(3)	A lender shall not refuse a partial loan payment of \$50 or greater.
R.S. 9:3578.6 A(4)	A lender shall not divide a payday loan into multiple agreements for the purpose of obtaining a higher fee or charge.
R.S. 9:3578.6 A(5)	A lender shall not threaten any customer with prosecution or refer for prosecution any check accepted as payment of a deferred presentment transaction and returned by the lender’s depository institution for reason of insufficient funds.
R.S. 9:3578.6 A(6)	A lender shall not structure the repayment of a loan in such a manner as to attempt to circumvent the provisions of the law.
R.S. 9:3578.6 A(7)*	A lender shall not renew or roll over a payday loan. However, a lender may accept a partial payment of 25% of the amount advanced plus fees charged and enter into a new or renew the payday loan for the remaining balance owed. Once a payday loan has been completed, a borrower may enter into a new loan with the lender. A payday loan shall be considered completed when the amount advanced has been paid in full by the borrower.
R.S. 9:3578.6 A(8)	A lender shall not take any direct or indirect interest, possessory or otherwise, any property in connection with a payday loan.
R.S. 9:3527 C(2)	A lender cannot charge a delinquency charge if a payment is made in full on the current scheduled due date or within the 10-day grace period.
R.S. 9:3533	If a loan is in default, the lender will file suit. On the date the lender files suit, the lender must issue an interest rebate to the borrower’s account.
*Defined by OFI as a major violation.	
Source: Prepared by legislative auditor’s staff using information obtained from Westlaw.	

APPENDIX E: NUMBER OF PAYDAY LENDERS BY PARISH AND ZIP CODE

Number of Payday Lenders by Parish and Zip Code Calendar Year 2013 965 Lenders		
Parish	Zip Code*	Number of Lenders
Acadia	70517	5
	70525	2
	70526	11
	70578	3
	Total	21
Allen	70648	1
	71463	7
	Total	8
Ascension	70346	4
	70737	22
	Total	26
Assumption	70393	1
	Total	1
Avoyelles	71322	6
	71327	1
	71350	2
	71351	5
	Total	14
Beauregard	70634	7
	Total	7
Bienville	71001	1
	71068	1
	Total	2
Bossier	71037	2
	71064	1
	71111	12
	71112	9
	Total	24
Caddo	71082	1
	71101	1
	71103	1
	71104	4
	71105	8
	71106	5
	71107	4
	71108	6

Number of Payday Lenders by Parish and Zip Code Calendar Year 2013 965 Lenders		
Parish	Zip Code*	Number of Lenders
	71109	6
	71115	1
	71118	15
	71129	4
	Total	56
Calcasieu	70546	9
	70601	22
	70605	5
	70607	2
	70633	1
	70663	8
	70669	1
Total	48	
Caldwell	71418	1
	71435	2
	Total	3
Cameron	Total	0
Catahoula	71343	1
	Total	1
Claiborne	71040	2
	Total	2
Concordia	71334	3
	71373	5
	Total	8
DeSoto	71052	5
	Total	5
East Baton Rouge	70714	7
	70769	2
	70791	6
	70804	1
	70805	15
	70806	26
	70809	2
	70810	4
	70811	1
	70814	3
	70815	19
	70816	10
	70817	1
	70820	1
Total	98	
East Carroll	71254	5
	Total	5
East Feliciana	70722	1

Number of Payday Lenders by Parish and Zip Code Calendar Year 2013 965 Lenders		
Parish	Zip Code*	Number of Lenders
	70775	1
	70808	4
	Total	6
Evangeline	70586	9
	Total	9
Franklin	71295	4
	71378	1
	Total	5
Grant	71423	1
	Total	1
Iberia	70544	1
	70560	18
	70563	1
	Total	20
Iberville	70764	6
	Total	6
Jackson	71247	1
	71251	3
	Total	4
Jefferson	70001	4
	70002	5
	70003	9
	70005	1
	70053	6
	70054	1
	70056	9
	70062	7
	70065	10
	70072	14
	70094	4
	70123	3
Total	73	
Jefferson Davis	Total	0
LaSalle	71342	2
	Total	2
Lafayette	70501	13
	70503	5
	70506	12
	70507	4
	70508	4
	70520	2
	70583	1
Total	41	
Lafourche	70301	11

Number of Payday Lenders by Parish and Zip Code Calendar Year 2013 965 Lenders		
Parish	Zip Code*	Number of Lenders
	70345	4
	70354	1
	70373	2
	70374	1
	70394	6
	Total	25
Lincoln	71270	12
	Total	12
Livingston	70449	1
	70726	16
	70785	2
	Total	19
Madison	71282	3
	Total	3
Morehouse	71220	9
	Total	9
Natchitoches	71457	9
	Total	9
Orleans	70006	1
	70058	16
	70112	2
	70114	4
	70115	3
	70116	4
	70117	1
	70118	2
	70119	7
	70121	2
	70122	5
	70125	3
	70126	3
	70127	4
	70130	1
Total	58	
Ouachita	71201	20
	71202	1
	71203	8
	71291	9
	71292	2
	Total	40
Plaquemines	70037	1
	Total	1
Pointe Coupee	70760	4
	Total	4

Number of Payday Lenders by Parish and Zip Code Calendar Year 2013 965 Lenders		
Parish	Zip Code*	Number of Lenders
Rapides	71301	16
	71302	1
	71303	10
	71328	1
	71360	12
	Total	40
Red River	71019	1
	Total	1
Richland	71232	2
	71269	2
	Total	4
Sabine	71449	3
	Total	3
St. Bernard	70032	1
	70043	6
	70075	1
	Total	8
St. Charles	70039	2
	70068	13
	70070	4
	Total	19
St. Helena	70422	7
	70441	1
	Total	8
St. James	70052	1
	70071	2
	Total	3
St. John the Baptist	70084	1
	Total	1
St. Landry	70535	7
	70570	12
	70577	1
	Total	20
St. Martin	70582	6
	Total	6
St. Mary	70340	1
	70380	11
	70392	2
	70514	1
	70538	10
	Total	25
St. Tammany	70433	8
	70458	11
	70460	4

Number of Payday Lenders by Parish and Zip Code Calendar Year 2013 965 Lenders		
Parish	Zip Code*	Number of Lenders
	70471	1
	Total	24
Tangipahoa	70401	18
	70403	13
	70443	1
	70444	1
	70454	2
	Total	35
Tensas	Total	0
Terrebonne	70343	1
	70360	16
	70363	11
	70364	7
	Total	35
Union	71241	4
	71256	2
	Total	6
Vermilion	70510	8
	70548	1
	Total	9
Vernon	71446	6
	Total	6
Washington	70427	9
	70438	3
	Total	12
Webster	71055	8
	71075	6
	Total	14
West Baton Rouge	70767	3
	Total	3
West Carroll	71263	2
	Total	2
West Feliciana	Total	0
Winn	71483	5
	Total	5
Grand Total		965
*If a zip code is not listed, according to OFI's data, there are no payday lenders licensed in that zip code.		
Source: Prepared by the legislative auditor's staff using OFI data and Census data.		