

**DEPARTMENT OF  
CONSUMER CREDIT**

**SPECIAL AUDIT REPORT**

**JULY 1, 2001 THROUGH NOVEMBER 30, 2005**

**OFFICE OF THE STATE AUDITOR AND INSPECTOR  
JEFF A. McMAHAN**





STATE OF OKLAHOMA  
OFFICE OF THE AUDITOR AND INSPECTOR

Jeff A. McMahan  
State Auditor and Inspector

August 8, 2006

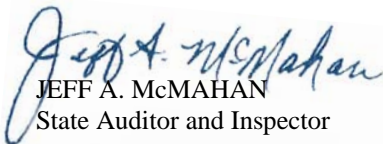
**TO THE HONORABLE DREW EDMONDSON  
OKLAHOMA ATTORNEY GENERAL**

Transmitted herewith is the special audit report of the Department of Consumer Credit for the period July 1, 2001 through November 30, 2005. The procedures we performed were conducted pursuant to 74 O.S. § 18f.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the course of the engagement.

The Office of the State Auditor and Inspector is committed to serving the public interest by providing independent oversight and issuing reports that serve as a management tool to the state to ensure a government which is accountable to the people of the State of Oklahoma.

Sincerely,

  
JEFF A. McMAHAN  
State Auditor and Inspector







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## DEPARTMENT OF CONSUMER CREDIT SPECIAL AUDIT REPORT SUMMARY JULY 1, 2001 THROUGH NOVEMBER 30, 2005

**JEFF A. McMAHAN, CFE**

**OFFICE OF THE STATE  
AUDITOR & INSPECTOR**

### Why the audit was performed

This special audit was conducted at the request of the Attorney General pursuant to 74 O.S. § 18f.

### Compensatory Time (comp time) – page 7

- The Department does not have a consistent method in which employees report the accrual and use of comp time making it difficult to determine the amount of comp time accrued and/or used.
- The Department's ten non-exempt (as defined by the Fair Labor Standards Act) employees are accruing comp time on an hour for hour basis rather than on a hour for hour and one-half hour basis as required by the Office of Personnel Management's (OPM) Merit Rules.
- The Department does not appear to be in compliance with OPM's Merit Rules regarding comp time in lieu of overtime pay and the time period available to use comp time.

### Strategic Plan – page 10

- The costs associated with the Department's most recent strategic plan were more than the previous plan because services in addition to the plan appear to have been performed.
- It appears the state does not have a specific list of vendors with whom agencies were required to contract with for the strategic plan.
- We did not note evidence to support the concern that Hayes Consulting was paid for services not performed.

### Travel of two Commissioners – page 12

- We were unable to substantiate claims that two Commission members rode to Commission meetings together and both claimed mileage reimbursement. However, according to a November 2004 travel claim, one of the Commissioners was reimbursed for travel to a Commission meeting that was cancelled. Management states the Commissioner met with the Administrator and therefore was reimbursed. Additionally, both Commissioners appear to have reported the incorrect mileage between starting and ending points on their claims.

### Payment to a Commissioner from an entity regulated by the Department – page 13

- It appears a check received by a Commissioner from an entity regulated by the Department was in error and the check appears to have been returned to the sender. However, since we were unable to inspect personal bank records, we will refer this allegation to the Attorney General for further review.

### Follow-Up on findings from the State Auditor and Inspector's internal control report – page 14

- Checks are not being restrictively endorsed upon receipt as required by 62 O.S. § 7.1c (2c).
- The location of a missing computer and server have been identified; however, the server does not have an asset tag properly attached to it and its serial number does not agree with the inventory report.
- Five missing assets have been located; however, one of the asset tag numbers was not recorded on the inventory report.
- The nine items which were not tagged now have tags; however, three of the tag numbers do not agree to the inventory listing. One other asset's tag number is not included on the inventory listing.
- The same person is performing the physical inventory count of assets, receiving the assets, and maintaining the fixed asset records.

### Notification filing fee revenue – page 15

- Variances identified in notification filing fee revenue from fiscal year 2003-2004 and fiscal year 2004-2005 appear reasonable. Additionally, filing fee decals are not required by law, as alleged, and are no longer provided.

### Department cell phones – page 16

- The Department has no policies and procedures related to cell phones. As a result, we noted approximately 37% of the Department's plan minutes used were for personal calls.
- Four phones costing in excess of \$200 were purchased with one of those phones costing \$550.
- The cell phone representative is determining the plan size rather than management resulting in, on average, less than 35% of the plan minutes being used with three of the five using less than 25% of their plan minutes.



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**JEFF A. McMAHAN, CFE**

**OFFICE OF THE STATE  
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### Why the audit was performed

This investigative report was conducted at the request of the Attorney General pursuant to 74 O.S. § 18f.

### Technology equipment expenditures – page 18

- The Department, which has 15 employees, has purchased 19 computers and seven servers over a four year period. Management states this is in line with their plan of replacing 1/3 of the computer inventory annually. Regarding the servers, management states based on the advice of their former IT staff, they purchased several servers of poor quality and have had to replace them.
- The Administrator identified 38 pieces of technology related equipment assigned to him. While all appear to have the possibility of being used for business related purposes, some are not currently utilized or are obsolete. He stated many of the items currently not utilized could possibly be utilized in the future. However, as a state agency whose funding is largely appropriated, we question the necessity of some of these purchases, for example, the amount of travel that would require a Global Positioning System (GPS) on a cell phone, a PDA, and a laptop. While these expenditures may be customary in the corporate environment, we recommend the Department be more prudent in its purchases.

### Tracking of capital assets – page 20

- The Department's inventory listing did not contain two assets tested, contained a duplicate serial number for two additional assets, and contained a duplicate tag number for two additional assets.

### Department revolving funds – page 20

- The Department does not appear to be transferring funds from the clearing account to the appropriate funds within the time period established by 62 O.S., § 7.1 E.
- It appears an additional \$1,000 was transferred to the Mortgage Brokers Recovery Fund rather than the state general fund.
- Four claims totaling \$1,023.56 paid from the Consumer Credit Investigation Fund did not appear to meet the use criteria established by 14 O.S. § 6-104.A.
- Effective May 26, 1999, it appears the Mortgage Broker Recovery Fund could be used to pay administrative costs of the Department in addition to compensate those who suffered monetary damage by a person required to hold a license under the Mortgage Broker License Act.

### Applications and Complaints – page 23

- Three out of 50 applications reviewed were not processed in the time period required by law.
- The Department resolved complaints received in an average of 17 days. There are no specific requirements set forth by law requiring the Department to have complaints resolved within a certain time period; however, 17 days appears reasonable.

### Fines – page 25

- According to 59 O.S. §, 2088 A., a hearing is required prior to sanctions being imposed on a mortgage broker or mortgage loan originator. Oklahoma Administrative Code 160:55-9-1 (f) and 160:55-9-2 (c) allow a licensee to waive their right to a hearing and accept the ruling of the Administrator, such as a fine. However, Attorney General Opinion 03-032 states the Administrator may not impose sanctions without first providing notice and an opportunity for a hearing. Based on the fines reviewed, there is no documentation to support the licensee was given the option of a hearing and waived that right. If the licensee waives their right to a hearing, we recommend the Department maintain adequate supporting documentation indicating the license holder waived their right to a hearing and they agreed to the imposed sanctions.
- The amount of the fine assessed in fiscal year 2004 does not appear to be in compliance with 59 O.S., § 2088 A.

**BACKGROUND**

The Department of Consumer Credit (Department) was created to enforce the Uniform Consumer Credit Code in all consumer credit transactions within the state, including the licensing and regulation of consumer finance companies. Additional responsibilities include the enforcement of the Oklahoma Pawnbrokers Act, the licensing of precious metal and gem dealers, enforcement of the Credit Services Organization Act, enforcement of the Rental-Purchase Act, registrations of health spas offering contracts, licensing of mortgage brokers, and licensing and regulation of deferred deposit lenders.

The Office of the State Auditor and Inspector received a listing of concerns related to the operations of the Department. The concerns were forwarded to the Attorney General (AG) where a request for an audit pursuant to 74 O.S., § 18f was issued. The concerns are as follow:

- An employee absent for an extended period of time was allegedly compensated and promoted during this period;
- The amount of compensation time accrued by Department employees;
- Costs associated with the preparation of the Department's strategic plan when compared to the previous plan were excessive, the Department did not use a vendor from the required listing of vendors for preparation of the strategic plan, and payments for services not performed were made to the vendor preparing the strategic plan;
- The reimbursement of travel costs to certain Commission on Consumer Credit (Commission) members;
- Payment made to a Commission member from an entity regulated by the Department and the nature of such payment;
- The status of findings noted in the internal control report prepared by the State Auditor and Inspector for the fiscal year ended June 30, 2003;
- Decrease in notification filing fee revenue in 2005 compared to other years and the issuance of decals provided upon payment of such fee;
- Department cell phone purchases and usage;
- Expenditures related to technology equipment;
- Tracking and safeguarding of capital assets;
- Deposits and expenditures related to the Department's revolving funds;
- Time associated with processing license applications and investigating complaints filed by consumers;
- Inconsistent application of fines

The time period covered varies by concern and will be specifically identified within the body of the report. The range will be July 1, 2001 through November 30, 2005.

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**COMMISSION ON  
CONSUMER CREDIT**

Spencer Stanley.....Chairman  
Jack Vaughn.....Vice Chairman  
Lynn Jones.....Commissioner  
Darrell Chabino.....Commissioner  
Odell Roland.....Commissioner  
Gary Betow.....Commissioner  
Phil Endicott.....Commissioner  
Wanda Debruler.....Commissioner  
Mick Thompson.....State Banking Commissioner\*  
\* non-voting

**KEY DEPARTMENT  
PERSONNEL**

Donald Hardin.....Administrator  
Jack Stone.....Deputy Administrator  
Janice Hendricks.....Business Manager

**CONCERN # 1**                    **An employee absent for an extended period of time was allegedly compensated and promoted during this period.**

Procedures related to this concern were not performed because the employee in question was deceased before the audit commenced.

**CONCERN # 2**                    **The amount of compensatory time accrued by Department employees.**

**FINDINGS**

The Department does not have a consistent method in which employees are required to record and account for compensatory time (comp time). As a result, the accrual and use of comp time was sometimes poorly documented, if at all. This made it extremely difficult, if not impossible in some instances, to determine the comp time actually accrued and/or used. *We recommend the Department revise their timesheets to clearly reflect the comp time hours accrued and used.*

For employees accruing comp time, it appears all are accruing comp time on an hour for hour basis. The Department has ten non-exempt employees, which according to OPM Merit Rules and the Fair Labor Standards Act (FLSA), are required to accrue comp time at a rate not less than one and one-half hours for each hour of work over 40 hours in a workweek. *We recommend the Department's non-exempt employees accrue comp time hours in accordance with OPM Merit Rules. Additionally, the Department should consult their legal counsel to determine the appropriate course of action regarding the additional accrued time due to non-exempt employees.*

The Department does not appear to be in compliance with 530:10-7-12 (c) and (d) of OPM's Merit Rules regarding comp time in lieu of overtime pay and the time period available to use comp time. *We recommend the Department modify existing policies and procedures to ensure compliance with 530:10-7-12 (c) and (d) of OPM's Merit Rules.*

Department policy requires the pre-approval of comp time and exhausting comp time accrued before using other types of leave. Generally this is not occurring. *We recommend the Department follow its policy regarding pre-approval of comp time and that comp time is used before annual, sick, or enforced leave.*

**OBSERVATIONS**

The Department does not have a consistent method in which employees are required to record and account for compensatory time (comp time). As a result, the accrual and use of comp time was sometimes poorly documented, if at all. For staff that complete an "administrative" time sheet, we were unable to determine the comp time accrued and/or used. These time sheets are not designed for the reporting of accrual and use of comp time. Another type of timesheet used by some Department employees, the weekly examiner timesheet, better reflected comp time accrued and/or used.

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The following table represents the comp time accrued for those employees using the weekly examiner timesheet.

Table 1 – Comp Time Summary by Employee					
Title	Period Covered	Total Comp Time Accrued	Average Monthly Accrual	Average Weekly Accrual	Comp Time Balance at 10/05
Deputy Administrator	9/04-10/05	315	22.5	5.25	192
Chief Examiner	9/04-10/05	260	18.5	4.3	99.25
Sr. Examiner	9/04-10/05	39.5	2.8	.65	0
Examiner A	9/04-10/05	57.5	4.1	.95	0
Examiner B	1/05-10/05	77.5	5.5	1.3	25
Examiner C	9/04-10/05	152.5	10.9	2.5	1

SOURCE: Auditor analysis using employees' timesheets

We reviewed the Department's compensation time (comp time) policy and section 530:10-7-12(c) and (d) of the Office of Personnel Management's (OPM) Merit Rules.

The Department's policies and procedures regarding comp time classifies all employees as either "exempt" or "non-exempt" as they relate to the Fair Labor Standards Act (FLSA). Certain requirements of the FLSA affect both classifications. Relevant excerpts from OPM's Merit Rules regarding the FLSA are below:

**530:10-7-12 (c) (1) and (2)** states in part "... (c) Compensatory time in lieu of overtime payment at the rate of time and one-half may be given to FLSA non-exempt employees (as defined by the Fair Labor Standards Act) subject to the following conditions:

- (1) Prior to the performance of overtime work, the Appointing Authority and the employee shall agree in writing that the employee may be required to take compensatory time in lieu of overtime pay. A written agreement is not required with respect to employees hired prior to April 15, 1986, if the employer had a regular practice in effect on April 15, 1986, of granting compensatory time off in lieu of overtime pay
- (2) An employee shall be permitted to use accrued compensatory time within 180 days following the pay period in which it accrued..."

**530:10-7-12 (d) (1) and (2)** states in part "Appointing Authorities may provide compensatory time off to FLSA exempt (as defined by the Fair Labor Standards Act) employees with the following stipulations:

- (1) The compensatory time off shall be taken within the time periods and policy outlined in 530:10-7-12 (c) (2)...
- (2) Compensatory time shall only be given on an hour-for-hour basis, 1 hour off for each hour worked overtime..."

We obtained the Departments comp time policy as well as copies of employees' timesheets for the period of September 1, 2004 to October 31, 2005. Using this policy, we attempted to test the timesheets for the following items:

- Comp time was approved at the correct rate for the employee's classification (exempt or non-exempt);
- Comp time was used within the time frame noted in the Department's policy;
- Comp time was used before annual, sick, or enforced leave;
- Employees comp time was approved by employee's supervisor;
- The timesheet was signed by employee and approved by supervisor.

After obtaining the timesheets, we noted inconsistent methods of reporting comp time and inconsistent time sheet design that made it difficult and/or impossible to determine when comp time was being accrued and/or used.

In those instances where we were able to determine the comp time accrued/used, the following was noted:

- Eight out of ten non-exempt employees accrued comp time on an hour for hour basis rather than time and a half as required by 530:10-7-12 (c) of OPM's Merit Rules and the FSLA. Because of the methods used by the two remaining non-exempt employees, we were unable to determine their rate of accrual. However, management has stated that all employees accrued time on an hour for hour basis.
- The Department does not appear to be in compliance with 530: 10-7-12 (c) and (d) of OPM's Merit Rules regarding accrual rates, comp time in lieu of overtime pay, and time period available to use the accrued time.
  - There was no agreement in writing with non-exempt employees for their acceptance of comp time in lieu of overtime pay.
  - According to OPM rules, employees, both exempt and non-exempt, have 180 days to use comp time. However, Department policy states non-exempt employees have one week and exempt employees have 90 days to use comp time. Department policy further states that at the Administrator's discretion, non-exempt employees may be paid for unused comp time. However, according to the Director of Compensation at OPM, if the Department wishes to give the non-exempt employee fewer than 180 days to use comp time, the employee is to be paid the difference at time and one-half for any unused comp time. We did not note any provision in OPM rules allowing agency management discretion in paying non-exempt employees for unused comp time when the period in which to use such time is less than 180 days. There is no requirement for the payment of overtime to exempt employees.
- Five out of ten non-exempt employees used annual, sick, or enforced leave before using comp time. Department policy states that comp time will be substituted for annual, sick, or enforced leave.
- Department policy requires pre-approval of comp time. In general, this is not occurring. Management's informal policy for non-exempt examiners is to approve the comp time at the end of the month when reviewing the time sheet; however, policy does not reflect this practice. For non-exempt and exempt administrative staff, pre-approval is non-existent or vague (i.e. pre-approval letters are not signed or dated).
- Five out of 505 timesheets were not signed by the employee.
- Thirty seven out of 505 timesheets were not approved by the supervisor.

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<b>CONCERN # 3A</b>	<b>Costs associated with the preparation of the Department's strategic plan were much higher than compared to previous plan.</b>
<b>FINDING</b>	The more recent contract called for nine additional services to be performed in addition to updating the strategic plan. It would appear reasonable that the expenditures made under this contract would be more than those under the previous contract.
<b>OBSERVATIONS</b>	<p>62 O.S., § 45.3, requires each agency to prepare a Strategic Plan covering a 5-year period. The Office of State Finance and the Office of Personnel Management have developed uniform criteria and outlined a strategic planning process. Therefore, to fulfill this requirement, in 2001 the Department contracted with Dick Pryor and Associates, L.L.C to assist in preparing their plan for fiscal years 2003 through 2007. The contract stated the price was not to exceed \$3,200; although, an expenditure report indicates payments were made in the amount of \$3,450.</p> <p>In October 2003, the Department contracted with Hayes Consulting to assist in updating its plan covering fiscal years 2006 through 2010. The contract entered into was not to exceed \$25,000. Expenditure reports indicate Hayes Consulting was paid \$16,275. Upon review of the contract, it was noted that the services provided under the Hayes contract were for a multitude of services, one of which was the updating of a strategic plan. The services identified in the contract were:</p> <ol style="list-style-type: none"><li>1. Rewriting/updating job description</li><li>2. Updating the strategic plan</li><li>3. Analyzing the '05 budget request including long range positioning</li><li>4. Agency ways and means</li><li>5. Possible realignment of Agency organizational chart</li><li>6. Implementing logical lines for cross training</li><li>7. Establishment of any necessary budget/financial management reports</li><li>8. Authoring of cross training manuals</li><li>9. Reviewing of Agency personnel manual</li><li>10. Other Management/Organization issues as yet to be identified</li></ol>
<b>CONCERN # 3B</b>	<b>The Department did not use a vendor from the required listing of vendors for preparation of the strategic plan.</b>
<b>FINDING</b>	It appears the state does not have a specific list of vendors with whom agencies were required to contract with for their strategic plan.
<b>OBSERVATIONS</b>	As previously noted, the Office of State Finance (OSF) and the Office of Personnel Management have developed uniform criteria and outlined a strategic planning process. On the OSF website, they have included a link to a "List of strategic planning facilitators with whom agencies can contract for services." The link does provide a listing of vendors. We spoke with the former Deputy Director of OSF who stated this is not an official list of vendors that agencies had to use. The list is simply to serve as a resource to assist agencies locate vendors in the area that they could use if they chose to. He stated that some agencies wrote their own plan, some hired from the list while others did not.



**CONCERN # 3C**

**Payments were made to Hayes Consulting for services not performed.**

**FINDING**

We did not note evidence supporting the concern that Hayes Consulting was paid for services not performed. However, there is question as to whether the verbal termination of the Hayes contract by the former Deputy Administrator was valid. *We recommend the Department ensure all contracts have a clause that requires the termination of a contract to be in writing.*

**OBSERVATIONS**

As noted previously, Hayes Consulting was hired to perform 10 services. We reviewed the report prepared by Hayes Consulting and noted the following areas were addressed in addition to the strategic plan:

- Inadequate support staff for the Administrator;
- Inadequate cross training of staff;
- Examiners have not received equitable salary modifications over time;
- Deputy Director position functions as a licensing clerk and the Chief Examiner;
- Agency organization does not adequately provide the level of fiscal control necessary to achieve fiscal security and meet audit requirement.

The former Chairman of the Commission stated the Administrator and his staff prepared the plan with review by the Commission. Mr. Hayes served as a consultant on the plan.

We interviewed the Administrator and Skip Hayes of Hayes Consulting to discuss the history of the Hayes contract. Hayes Consulting was awarded a contract in October 2003 for the 10 services previously outlined. Mr. Hayes and the Administrator stated Mr. Hayes worked out of the Department's offices in order to observe the employees and the processes they use. However, in December of 2003, the former Deputy Administrator became aware of the services outlined in the contract as well as the associated fee and verbally fired Mr. Hayes. Both the Administrator and Mr. Hayes confirmed the Administrator told Mr. Hayes he was not fired but not to work in the office any longer. He was instructed to complete the services he had begun by working from outside the office. The Administrator acknowledged this was done in an effort to keep the former Deputy Administrator from becoming aware that he had intentions of having Mr. Hayes complete the services under the contract and paying Mr. Hayes for the services. Mr. Hayes agreed to hold all invoices until the services he was to provide were complete and a report was issued. Mr. Hayes stated if the former Deputy Administrator had given him written notification of the termination, he felt it would have been valid. However, since it was done verbally, he felt the Administrator could overrule her. It should be noted the termination clause in the Hayes contract does not specifically state the manner that the contract could be terminated. We spoke with personnel in the Department of Central Service's Central Purchasing Division and confirmed all contract termination clauses should state that the termination must be in writing.

Based on review of an expenditure report, Hayes Consulting was paid \$7,840 in December 2003 and \$8,435 in August 2004 for a total of \$16,275. We noted the long period of time between the two payments and asked the Department's Business Manager whether the claims paid to Mr. Hayes were paid against the same purchase order (PO). She stated that after the payment was made in December, the PO was cancelled because the former Deputy Administrator told her that Mr. Hayes had been fired. Therefore, when she received an invoice in

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August 2004 from Mr. Hayes, she did not have a PO to make the payment against so the claim was paid as “unencumbered” with fiscal year 2004 funds.

**CONCERN #4**

**Two commission members, Tim Clark and Lynn Jones, commuted to commission meetings together and both commission members were reimbursed for travel costs.**

**FINDINGS**

We were unable to substantiate claims that Mr. Clark and Ms. Jones rode to Commission meetings together and both claimed mileage reimbursement. However, we did note that:

- According to a travel claim, Tim Clark was paid mileage reimbursement for the November 2004 Commission meeting which was cancelled. The cancellation was confirmed through the Department’s website and their Business Manager. Management states Mr. Clark met with the Administrator even though the meeting was cancelled and therefore was reimbursed.
- On three claims reviewed, it appears Tim Clark and Lynn Jones requested reimbursement for 230 miles from Tulsa to Oklahoma City while the Department of Transportation statewide mileage chart indicates this is a 208 mile roundtrip.
- Claims are completed prior to Commission meetings by Department personnel and the Commission members only sign their name to the claim. This practice appears to create an environment for abuse to occur. *In the interest of protecting the Department and its Commission members, we recommend the Department discontinue the practice of completing travel claims on behalf of its Commission members.*

**OBSERVATIONS**

Using travel expenditure detail from OSF records and commission meeting minutes for the period of January 2004 through May 2005 ( May 2005 was the last month in which Mr. Clark served on the Commission), we prepared the following:

<b>Table 2 – Schedule of Clark and Jones attendance at Commission meetings</b>				
<b>Meeting Date</b>	<b>Clark present</b>	<b>Clark paid travel</b>	<b>Jones present</b>	<b>Jones paid travel</b>
5-11-05	Yes	Yes	No	No
4-13-05	Yes	Yes	Yes	Yes
3-09-05	Yes	Yes	Yes	No
2-09-05	Yes	Yes	Yes	Yes
1-12-05	Yes	Yes	Yes	Yes
12-8-04	Yes	Yes	No	No
November – cancelled	No	Yes	No	No
10-13-04	Yes	Yes	Yes	No
9-8-04	Yes	Yes	No	No
August – cancelled	No	No	No	No
July – cancelled	No	No	No	No
June- cancelled	No	No	No	No
5-12-04	Unknown	Yes	Unknown	Yes
4-14-04	Yes	Yes	No	No
3-12-04	Unknown	Yes	Unknown	Yes
2-11-04	Yes	Yes	Yes	Yes
1-14-04	Yes	Yes	Yes	Yes

We inquired of both Mr. Clark and Ms. Jones as to whether they recall if they drove separately or rode together to the Commission meeting dates identified in Table 2. Mr. Clark stated that he could not recall if they had rode together on these dates while Ms. Jones stated they used to ride together often, but over the last 2 years they had stopped.

Ms. Jones did state that filling out travel claims is done without much thought or attention because the claims are already complete and sitting in their chair when they arrive at the commission meetings. The claims are then signed and returned to the Business Manager. Although this certainly does not give a Commissioner who didn't drive at their own expense the right to be reimbursed, it would appear to provide an opportunity for abuse if a claim form is already completed and the Commissioner only signs their name.

As noted on Table 2, one travel payment was made in November 2004 to Mr. Clark in which the board meeting was canceled (per the Department's website and Business Manager). The travel claim indicates the nature of the business as "attend commission on consumer credit meeting as chairman". The warrant issued in relation to this claim cleared the bank on December 1, 2004. Management states Mr. Clark met with the Administrator even though the meeting was cancelled and therefore was reimbursed.

In addition, as we reviewed the travel claims, the "map" miles listed on the paid claims was recorded as 230 miles for a round trip from Tulsa to Oklahoma City. According to the Department of Transportation's official map mileage for 2003-2004, the actual mileage is 104 miles each way, or 208 miles roundtrip. The Office of State Finance requires travel reimbursement to be based on the official mileage distance between points of travel as referenced in the latest Oklahoma Department of Transportation Statewide Mileage Chart with any excess odometer mileage over the map miles claimed as vicinity mileage. No vicinity miles were claimed.

**CONCERN #5**

**A payment was made to a Commission member from an entity regulated by the Department.**

**FINDING**

It appears the payment received by Tim Clark from Advance America was in error and the check appears to have been returned to the sender. However, since we were unable to inspect personal bank records, we will refer this allegation to the Attorney General for further review.

**OBSERVATIONS**

Tim Clark, former Chairman of the Commission, received a payment from a deferred deposit lender, Advance America. Deferred deposit lenders are regulated by the Department. We were provided a copy of a check made out to Mr. Clark for \$855.49. A letter from Geraldine Mahaffey, Executive Assistant for Advance America, was attached and indicated the check was for "meeting expenses" incurred on December 15, 2004. We inquired of Mr. Clark and asked him to explain the nature of this payment. He stated that his assistant inadvertently sent an invoice for travel reimbursement to William Webster of Advance America when it should have went to AdvanSys. Mr. Clark stated when he learned of the mistake, he wrote a letter of apology to Mr. Webster and sent the check back. We spoke with Ms. Mahaffey by phone and she confirmed the check was returned to her and was subsequently voided.

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**CONCERN #6**                    **The findings noted in the internal control report from the State Auditor and Inspector for the fiscal year ended June 30, 2003 have gone uncorrected.**

**FINDING**                      It appears management has corrected certain findings noted in the prior internal control reviews; however, the following findings remain outstanding:

- Checks are not being restrictively endorsed upon receipt as required by 62 O.S. § 7.1c (2c);
- The location of a missing computer and server have been identified; however, the server does not have an asset tag properly attached to it and it's serial number does not agree with the inventory report;
- Five missing assets have been located; however, one of the asset tag numbers was not recorded on the inventory report;
- The nine items which were not tagged now have tags; however, three of the tag numbers do not agree to the inventory listing. One other asset's tag number is not included on the inventory listing;
- The same person is performing the physical inventory count of assets, receiving the assets, and maintaining the fixed asset records.

*We recommend the Department implement adequate controls in these areas and ensure the findings noted are corrected.*

**OBSERVATIONS**              A summary of findings identified in an internal control report issued by the State Auditor covering fiscal year 2003 are noted below:

**1. Checks are not restrictedly endorsed upon receipt**

Based on conversation with management and observation of the process, mail is received, opened and distributed by employee ABC. If a check is received for an exam fee, license renewal, etc., the check and correspondence are forwarded to employee XYZ where the check is endorsed. 62 O.S. § 7.1c (2c) states "All checks received must be restrictively endorsed immediately upon receipt."

**2. The Department was unable to locate one server and one computer.**

The Department located the server in question and we visually inspected the server and its serial number. However, while the server has been located we noted the asset tag was placed on a removable dust cover over the server and the server's serial number was incorrectly recorded on the inventory report. Regarding the computer that could not be located, we observed the surplus transfer record indicating the asset was surplus to the Department of Central Services on January 28, 2003.

**3. The Department was unable to locate four pocket PCs and a laptop computer. In addition, a desktop computer was not included on the Department's inventory listing and nine assets were not properly tagged.**

- We visually inspected the five assets (four pocket PCs and one laptop computer) that could not be located during the previous engagement; however, one of the pocket PCs tag number was not recorded on the Department's inventory;
- We determined the desktop computer that was not included on the Department's inventory listing during the previous engagement is now included;

- We visually inspected the nine assets not properly tagged (three desktop computers, two computer monitors, one laptop computer, two pocket PCs, and one digital camera) and determined all currently have tags affixed to them. However, we did note errors when comparing the tag number on the asset to the inventory listing. For three of the assets (two desktop computers and one monitor), the tag number did not agree with the number on the inventory listing while another asset (camera) was tagged, but was not included on the inventory report.

#### **4. Inadequate segregation of duties**

It was identified during the previous engagement that:

- The Business Manager posts expenditures to the accounting system as well as reconciled with OSF;
- The Administrative Technician performed the physical inventory count of fixed assets, received fixed assets, documented fixed assets and maintained fixed asset records.

Based upon discussion with the Business Manager and the Administrative Assistant as well as review of the Department's April 2005 reconciliation with OSF, it appears the Business Manager posts expenditures to the accounting system and the Administrative Assistant reconciles with OSF. The reconciliation is reviewed by the Business Manager and the Administrator. Although, a different employee assumed the responsibilities of the Department's inventory in November 2005, there is still only one person involved in the fixed assets process.

#### **5. The Commission has credit cards in its name**

During the fiscal year 2001 internal control review, it was noted that the Department had credit cards. During the fiscal year 2003 review, management indicated they had cancelled all credit cards they had in the Department's name; however, they could not provide supporting documentation the cards had been cancelled. We reviewed copies of letters sent to the credit card companies requesting the accounts be closed as well as expenditure reports for fiscal years 2004, 2005, and 2006 to ensure there were no payments to these vendors. One payment was noted; however, it occurred before the letters were written. Based upon review of these letters and expenditure data, it appears the Department cancelled the credit cards.

#### **CONCERN #7**

**Notification filing fee revenue decreased in 2005 when compared to other years and decals were not provided upon payment of such fee.**

#### **FINDING**

The variances identified in notification filing fee receipts from fiscal year 2003-2004 and fiscal year 2004-2005 appear reasonable. In addition, notification filing fee decals are not required by law and are no longer provided.

#### **OBSERVATIONS**

Notification filing is required by entities which do any of the following:

1. Allow payments on purchases or services to be made in four or more installments;
2. Assess a finance charge on accounts;

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3. Take assignment of and undertake direct collection of payments from or enforcement of rights against debtors arising from consumer sales, services, and leases;
4. Lease personal property to a consumer for a term exceeding four months;
5. Arrange financing by assignment of a sales contract to a financial institution.

For each entity meeting the above criteria, the notification fee is a \$20 annual fee plus a \$10 fee for every \$100,000 of business conducted in Oklahoma.

It is alleged that receipts related to notification filings decreased in 2005. The concern does not address if the time period is state fiscal year 2005 or calendar year 2005; however, we determined testing would be performed for state fiscal year 2005 to correlate with the Department's budget period.

We created a schedule of notification fees and noted that from fiscal year 2003 to 2004, the fees decreased \$39,662, or 12.01%. However, the fees increased \$31,566, or 10.86% from fiscal year 2004 to 2005. Because the amount of fees remitted is based upon the dollar amount of business conducted by certain entities, it would not seem unreasonable that the fees would fluctuate from year to year. We inquired of management as to any specific reasons for the fluctuation and they responded that the changes are due to companies paying more or less in one year compared to the other. They provided examples related to the increase and the decrease. We reviewed supporting documentation related to eight of these examples. Based on this support, the change in fees remitted from one year to the other appears reasonable.

It is alleged the Department is violating state law because they no longer provide a window decal to entities that have paid their notification fee. Based on review of 14A O.S., § 6-201, 202, and 203 as well as OAC 160:5-1-2, there does not appear to be a requirement for the issuance of window decals after the fee has been paid. Management stated this practice was stopped as a cost savings measure. A summary page of the Department's website currently states "Upon our receipt of your completed Notification application and appropriate fee, you will be provided a decal, to be displayed in your place of business as proof of filing"; however, the notification filing application currently states "license decals will no longer be mailed out- your cancelled check for your yearly license fee will be your proof of payment and license". It appears the Department's website should be updated to reflect the current practice related to the notification decals.

**CONCERN #8**

**Department cell phone purchases and usage are excessive.**

**FINDINGS**

The Department has no policies and procedures related to cell phones. In addition, we noted approximately 37% of the Department's plan minutes used were for personal calls. *We recommend policy be developed and implemented. At a minimum, the policy should include:*

- *Personal use (allowable, limitations on frequency);*
- *Need of a phone based on job duties;*
- *If need is determined to exist, the plan size should be based on previous, actual business related use;*
- *Type of equipment needed.*

Four phones costing in excess of \$200 were purchased with one of those phones costing \$550. We question the necessity of the phone purchases when more cost efficient phones are available. *We recommend the Department be more prudent in its purchases.*

The cell phone sales representative is establishing the plan size rather than management. This is done without an analysis on business needs and has resulted in, on average, less than 35% of the plan minutes being used with three of the five using less than 25% of their plan minutes. *We recommend the Department ensure plans are selected based on actual business need.*

Taxes were paid on one cell phone account totaling \$60.41 and on two equipment items totaling \$8.15. *We recommend the Department ensure taxes are not paid on its purchases.*

**OBSERVATIONS**

We interviewed management and determined they do not have formal, written cell phone policies and procedures. The Department currently has five cell phones all purchased through Cingular. The monthly service charge for these plans combined is \$370. They are assigned to the following employees:

- Administrator
- Deputy Administrator
- Chief Consumer Credit Examiner
- Senior Consumer Credit Examiner
- Consumer Credit Examiner

The Administrator and Deputy Administrator were provided cell phones to enable them to conduct agency business while away from the office. The Senior Consumer Credit Examiner and the Consumer Credit Examiner were provided cell phones because they do not have a formal office site; rather they leave from their residences to conduct field examinations. Therefore, their cell phones serve as their office phone. The Chief Consumer Credit Examiner was provided a cell phone so that he may communicate with the examiners by using free mobile-to-mobile minutes rather than having to pay long distance charges by using a land line.

We prepared two OSF expenditure reports: July 1, 2004 to June 30, 2005 and July 1, 2005 to October 31, 2005 and extracted all claims with a vendor of Cingular. While reviewing these claims, we noted that four of the five cell phones were paid on one claim, and the fifth phone for the Senior Consumer Credit Examiner was paid on a separate claim. In addition, we noted the phone number assigned to the Consumer Credit Examiner does not have detail provided on the claim.

For the period July 1, 2004 to October 31, 2005, we selected a random sample of six claims. We reviewed the claim detail (excluding the number assigned to the Consumer Credit Examiner) for night and weekend charges since those would appear to be at the most risk to be for personal usage. We determined "night" charges to be calls that occur after 6:00 p.m. We did not identify any such charges for the Senior Consumer Credit Examiner. For the remaining three employees we identified the charges and submitted a schedule to the appropriate employee of all the phone numbers identified and asked for documentation of who the call was to and whether the call was business or personal. Based on our evaluation of the responses provided, 37% of the total minutes used by

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employees on these claims were for personal use. In addition, it appears the Department paid \$60.41 in taxes related to the Senior Consumer Credit Examiner phone during the period.

We asked the Business Manager to explain how she determined the plans to be purchased for each employee. She stated the plans were recommended by the sales representative. This appears valid as during our review of cell phone charges for personal calls, we noted the phone numbers have large rollover balances; therefore, it appears the plans purchased are not based upon actual potential usage. We created a table with each phone number's plan minutes and number of plan minutes used. See below:

<b>Table 3 – Schedule of Plan Minutes Used* – July 1, 2004 through October 31, 2005</b>				
Phone Number	Position	Average Plan Minutes Available Per Month	Average Plan Minutes Used Per Month	% Used
xxx-9101	Administrator	1957	307	16%
xxx-9378	Deputy Administrator	483	132	27%
xxx-1084	Chief Credit Examiner	1100	15	1%
xxx-0323	Senior Examiner	1250	271	23%
xxx-8401	Examiner	1250	426	34%

SOURCE: Cell phone claims from the period July 2004 through October 2005. The Chief Credit Examiner's phone became active in April 2005.

\*includes personal calls

Based on this analysis, it appears, on average, none of the employees are using more than 34% of their plan minutes with three of the five using less than 25% of their plan minutes.

This allegation also included the purchasing of cell phone equipment. We reviewed cell phone claims for the period of July 1, 2004 to October 31, 2005 and determined seven phones were purchased for \$1,344.93. We noted four of the phones cost \$200 or more with one of those costing \$550. Additionally, sales tax totaling \$60.41 was paid on two of the phone purchases while \$277 in phone accessories was also acquired

**CONCERN #9**

**Expenditures related to technology equipment are excessive.**

**FINDINGS**

The Department, which has 15 employees, has purchased 19 computers and seven servers over a four year period. Management states this is in line with their plan of replacing 1/3 of the computer inventory annually. Regarding the servers, management states that based on the advice of their former IT staff, they purchased several servers that were of poor quality and have had to replace them.

Four employees have been assigned both a desktop computer and a laptop computer because they may work outside of the office. *Since management states they replace 1/3 of their computers annually, we recommend they consider purchasing laptops with docking stations for employees who may work outside of the office. This would eliminate the need for purchasing both a desktop and a laptop for these employees.*



The Administrator identified 38 pieces of technology related equipment assigned to him. While all appear to have the possibility of being used for business related purposes, some are not currently utilized or are obsolete. He stated many of the items currently not utilized could possibly be utilized in the future. However, as a state agency whose funding is largely appropriated, we question the necessity of some of these purchases, for example, the amount of travel that would require a Global Positioning System (GPS) on a cell phone, a PDA, and a laptop. *While these expenditures may be customary in the corporate environment, we recommend the Department be more prudent in its purchases.*

**OBSERVATIONS**

We examined 22 claims for equipment purchases which represented 93% of total equipment expenditures between July 1, 2002 and November 30, 2005. We noted that during this time, the Department purchased 19 computers and 7 servers. We questioned why an agency with 15 employees would be purchasing this much equipment. The Department stated an informal plan was developed to replace 1/3 of their computer inventory annually which would equal 20 machines being purchased over a four year period. Unfortunately, many of the computers and/or servers were found to be of poor quality and/or inadequate for the Department's needs.

We inquired of the SA&I Information Services (SAIS) staff regarding this response. SAIS stated that if the agency is not operating on a stringent budget, a plan of replacing 1/3 of the computer inventory annually as well as replacing equipment found to be inadequate is reasonable.

Note that while reviewing equipment purchases, we selected three claims, #57, #914 and #968 for review. These claims were purchase card claims; however, none of the claims had supporting documentation indicating the items purchased. For two of the claims, #914 and #968, we were able to determine the items purchased through alternative methods; however, we were unable to determine the item purchased on claim #57.

We mailed a survey to all Department employees asking them to list all technology equipment they were assigned by the Department as well as if they thought the equipment was necessary to perform their job duties, how often they used it, and the location of the equipment (home or office). We identified the following as worthy of follow-up:

- Four employees had both a desktop computer and a laptop computer. They are the Deputy Administrator, the Program Administrative Officer, and two Administrative Assistants. All four stated they use the laptop when working out of the office (i.e. home, exam site) and all confirmed the laptop does not permanently stay at their home. They stated having both computers was critical to their job duties.
- The Administrator identified 38 pieces of technology equipment assigned to him. The Administrator stated that although these items are assigned to him, he is the assignee of last resort and some of the items are for the Department's use even though they are listed under his name.

Some of these items included a Bluetooth GPS copilot, pocket PC navigator, and IPAG jacket. While all appear to have the possibility of being used for business related purposes, some are not currently utilized or are obsolete. He stated many of the items currently not utilized could possibly be utilized in the future. However, as a state agency whose funding

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is largely appropriated, we question the necessity of some of these purchases, for example, the amount of travel that would require a Global Positioning System (GPS) on a cell phone, a PDA, and a laptop.

**CONCERN #10**

**Capital assets are not adequately tracked and safeguarded.**

**FINDINGS**

One asset, a laser jet printer, was not located on the Department's inventory listing.

The inventory listing contained a duplicate serial number for a server and a monitor.

The inventory listing contained a duplicate tag number for two monitors.

The Administrator's cell phone was not included on the Department's inventory listing although it was tagged.

*We recommend the Department maintain an accurate and complete inventory listing.*

**OBSERVATIONS**

We obtained an inventory listing from the Business Manager as of December 2005. There were 53 items listed with a value of \$16,908. From this listing, we excluded all assets previously addressed under concern #6. Once those items were excluded, we selected five items from the list and physically inspected them as well as compared the information to the inventory listing. We then selected five items from the office floor to ensure they were included in the listing and the information agreed. We noted a laser jet printer was not on the Department's inventory listing and the listing contained the same serial number for both a server and a monitor. In addition, we noted the inventory listing has two computer monitors with the same asset tag number.

As previously noted, the Administrator's cell phone cost more than \$500 when purchased. In accordance with 74 O.S. § 110.1, management states their tangible asset reporting threshold is \$500; consequently, it appears the phone should be located on the inventory report. The phone did not appear to be included in the inventory report we were provided; however, it was tagged and contained a Department ID Number.

**CONCERN #11**

**Improper use of the Department's revolving funds, specifically the Mortgage Broker Recovery Fund. The concern stated this fund was to be used only to compensate those who suffered monetary damage by a person required to hold a license under the Mortgage Broker License Act; however, it was being used for other purposes.**

**FINDINGS**

The Department does not appear to be transferring funds out of the clearing account to the appropriate funds within the time period established by 62 O.S. § 7.1 E. *We recommend the Department ensure funds are transferred, at a minimum, on a monthly basis.*

An additional \$1,000 was transferred to the Mortgage Brokers Recovery Fund in March 2004. It appears the money should have been transferred to the State General Revenue Fund. *We recommend the Department transfer \$1,000 from the Mortgage Brokers Recovery Fund to the State's General Revenue Fund.*

Four claims totaling \$1,023.56 paid from the Consumer Credit Investigation Fund did not appear to meet the use criteria established by 14 O.S. § 6-104.A. *We recommend the Department ensure claims paid from this fund meet the use criteria establish by law.*

Effective May 26, 1999, it appears the Mortgage Broker Recovery Fund could be used to pay administrative costs of the Department in addition to compensate those who suffered monetary damage by a person required to hold a license under the Mortgage Broker License Act.

**OBSERVATIONS**

The following summarizes the four revolving funds of the Department:

○ **Consumer Credit Investigation/Fund 200 ---14 O.S. § 6-104.A**

This fund consists of all monies received for recovery of reasonable and necessary expenses for the Administrator or his representatives to examine records located outside this state, under the provisions of Section 6-106 of Title 14A of the Oklahoma Statutes. This fund is a continuing fund not subject to fiscal year limitations and expenditures from the fund are to be exclusively for the purpose of carrying out the provisions of subsection (1) of Section 3-506 of Title 14A of the Oklahoma Statutes when the records of a licensee are located outside this state. Warrants for expenditures from the fund are to be based on claims signed by an authorized employee or employees of the Commission on Consumer Credit and approved for payment by the Director of State Finance.

○ **Health Spa Revolving Fund/ Fund 210---59. O.S. § 2011.**

This fund is a continuing fund, not subject to fiscal year limitations, and consists of registration and annual renewal fees provided for in Section 2001 of Title 59 of the Oklahoma Statutes. All monies accruing to the credit of the fund are appropriated and may be budgeted and expended by the Department for the operating expenses of the Department and for the administration of the Oklahoma Health Spa Act. Expenditures from the fund are to be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

○ **Oklahoma Mortgage Brokers Recovery Fund / Fund 220 ---59 O.S. § 2091**

This fund consists of monies received by the Administrator of Consumer Credit as license fees, application fees and any administrative fines imposed pursuant to the Mortgage Broker Licensure Act.

The fund is a continuing fund not subject to fiscal year limitations and is under the administrative direction of the Administrator. Monies accruing to the credit of this fund is appropriated and may be budgeted and expended by the Department for the purposes specified in the following paragraph and for reimbursement or payment of any direct and indirect administrative expenses incurred by the Commission. 59 O.S., § 2091 was amended and the underlined portion added by law effective May 26, 1999. Based on discussion with the Business Manager and the Department's Attorney General liaison, the intent of this language was to allow the Department to

spend money from this fund even though the statute reads expenses incurred by the "Commission."

The monies in the fund shall be used to reimburse any person in an amount not to exceed Five Thousand Dollars (\$5,000.00) who has been adjudged by a court of competent jurisdiction to have suffered monetary damages by a person required to have a license under the Mortgage Broker License Act in any transaction or series of transactions for which a license is required under the Mortgage Broker Licensure Act because of the acquisitions of money or property by fraud, misrepresentation, deceit, false pretenses, artifice, trickery, or by any other act which would constitute a violation of the Mortgage Broker Licensure Act.

o **Oklahoma Deferred Deposit Lending Regulatory Revolving Fund / Fund 230 ---59 O.S. § 3118**

This fund consists of all monies received by the Administrator of Consumer Credit as license fees, examination fees, investigation fees, application fees, fees imposed for consumer credit counseling education and any administrative fines imposed pursuant to the Deferred Deposit Lending Act. The fund is a continuing fund not subject to fiscal year limitations and is under the administrative direction of the Administrator. Monies accruing to the fund are appropriated and may be budgeted and expended by the Administrator upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

RECEIPTS

All receipts received by the Department are deposited into its clearing account and subsequently transferred to the revolving funds detailed earlier. The remaining balance is transferred to the state general fund as required by 14A O.S. §, 6-512.

We tested 25 receipts selected from the months of January 2004, March 2004, April 2004, September 2004, February 2005, and May 2005 to determine each receipt was supported with adequate documentation. Management was unable to provide supporting documentation related to the payment of eight receipts totaling \$1,600. The total receipts for the six months tested were approximately \$488,000.

We also tested six months of transfers to ensure amounts received were transferred correctly from the clearing account to the appropriate fund. Our tests showed that the receipts were transferred to the correct fund; however, we did note three instances where receipts were not transferred in accordance with 62 O.S. § 7.1 E which requires an agency to transfer funds collected in their clearing account to the appropriate funds at least once per month.

Additionally, we noted the amount transferred to the Mortgage Brokers Recovery Fund in March 2004 was \$1,000 more than the supporting documentation indicates was received. This would appear to indicate the amount transferred to the state general fund was \$1,000 less than it should have been.

EXPENDITURES

Using an OSF expenditure report, we identified 187 claims paid from the four revolving funds during the period November 1, 2003 to October 31, 2005. We selected 50 claims from the period; four from the Consumer Credit Investigation fund, eight from the Health Spa fund, 24 from the Mortgage Brokers fund and 14 from the Deferred Deposit Lending Regulatory fund. The expenditures were tested to ensure they were for the following:

- Consumer Credit Investigation fund – Costs associated with examination of licensee records located outside of Oklahoma;
- Health Spa fund - Operating expenses of the Department and/or administration of the Health Spa Act;
- Mortgage Brokers fund – Reimbursement to a person who suffered monetary damages by a person required to have a license under the Mortgage Brokers License Act and/or administrative expenses incurred by the Commission;
- Deferred Deposit Lending Regulatory fund – Operating expenses of the Department.

We noted four claims totaling \$1,023.56 paid from the Consumer Credit Investigation fund. None of the four claims appeared to relate to the examination of licensee records located outside of Oklahoma as all were for in-state travel.

No other exceptions were noted for the other funds tested.

**CONCERN #12**

**The Department does not process applications and resolve complaints in a timely manner.**

**FINDINGS**

Three out of 50 applications reviewed were not processed in the time period required by law. *We recommend the Department process all applications in accordance with the time frames established by law.*

The Department resolved complaints received in an average of 17 days. There are no specific requirements set forth by law requiring the Department to have complaints resolved within a certain time period; however, 17 days would appear reasonable.

**OBSERVATIONS**

Management stated they received 2,654 applications during fiscal year 2004 and 2005; however, there is no mechanism for determining the completeness of this population. As a result, we will have to rely on management's representation. State law and/or Oklahoma Administrative Code (OAC) require applications to be processed within a specified time period. The following table summarizes the time period associated with each application type:

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**Table 4 -Days to Process Applications**

Credit Service Org	60 days - 24 O.S. § 143 C
Deferred Deposit Lender	90 days - OAC 160:70-3-1 a 3
Mortgage Broker	30 days - 59 O.S. § 2085 C
Mortgage Loan Originator	30 days - 59 O.S. § 2085 C
Pawn Broker	60 days- 59 O.S. § 1505 C
Precious Metals	60 days - 59 O.S. § 1525 G
Rent to Own	60 days*
Supervised Lender	90 days - 14A O.S. § 3-504 (3)
Spa	60 days**

\*According to the Deputy Administrator, there is not a statute and/or OAC stating the number of days the Department has to process an application. He stated they attempt to process the application within 30 days (which is also stated on the Department's website); however, the application states it may take up to 60 days.

\*\*According to the Deputy Administrator, there is not a statute and/or OAC stating the number of days the Department has to process an application. However, the application states it may take up to 60 days.

We selected a sample of 50 applications from the period. Our selection of 50 was based on each application type in relation to the total applications. We selected our sample from notebooks identifying the applicants by their type of application. Once selected, the applicant's file was pulled and the applications were tested to ensure the number of days between the date the application was filed and the date it was completed was in accordance with the grid above. Based on testwork, we noted three exceptions. The first exception (mortgage loan originator) was 3 days over the 30 day limit, the second (mortgage loan originator) was 13 days over, and the third (mortgage broker) was 11 days over. Management was unable to provide documentation as to why the applications were not approved in the required time period.

Regarding the processing of complaints by the Department, there are four statutes and/or OAC directly instructing the Department to investigate complaints received: They are:

- **Health Spa – OAC 160:50-15-1.1** - Investigations and inquiries are originated upon request or complaint of the public or by the Administrator upon the Administrator's motion. Any person may apply to the Administrator to institute a proceeding in respect to any violation of law over which the Administrator has jurisdiction. The request or complaint shall be in writing, signed by the initiator and shall contain a statement setting forth the alleged violations of law and the name and address of the party or parties at issue in the complaint. No forms or formal procedures are required in making requests or complaints. The initiator is not regarded as a party since the Administrator acts only in the public interest. The Administrator shall not take action when the alleged violation of law is merely a matter of private controversy and does not tend to adversely affect the public.
- **Pawnshops – OAC 160:15-9-1** – Same as health spa above
- **Rental Purchase – OAC 160:35-7-1** – Same as health spa above
- **Mortgage Broker – 59 O.S., § 2088 A and B** - “A. The Administrator of Consumer Credit may upon his or her own motion, and shall upon written complaint filed by any person, investigate the business transactions of any mortgage broker or mortgage loan originator and, after notice and hearing, may, for any cause as set forth in subsection B of this section, impose the following sanctions: ...

- B. Cause shall be established upon clear and convincing evidence that any mortgage broker, mortgage loan originator or employee of a mortgage broker or mortgage loan originator has performed or has attempted to perform, or is performing or is attempting to perform any of the following acts:
1. Making a materially false or fraudulent statement in an application for license;
  2. Making substantial misrepresentations or false promises in the conduct of business as a mortgage broker or through advertising;
  3. Failing to escrow, account for, or remit monies or documents as required by this act;
  4. Commingling monies as prohibited by this act;
  5. Having been convicted in a court of competent jurisdiction of having violated any provision of the federal fair housing laws, 42 U.S.C., Section 3601 et seq.;
  6. Having been convicted in a court of competent jurisdiction in this or any other state of the crime of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, fraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;
  7. Failing to pay the fees or obtain a license as required under the Mortgage Broker Licensure Act or to comply with an order lawfully issued pursuant to the Mortgage Broker Licensure Act; or
  8. Having violated any provision of the Mortgage Broker Licensure Act.”

The Uniform Consumer Credit Code, the Credit Services Organization Act, the Deferred Deposits Lending Act and the Precious Metal/Gem Dealer Act grant the Department authority to investigate books and records on their own motion according to management. When a complaint is received, it is assigned a tracking number, the date the complaint received is recorded, and the complaint is assigned to an examiner to work. A complaint investigation is performed in between examiners normal job functions. The chief examiner monitors the progress of the complaints to ensure they keep moving as time allows.

Management stated there were 808 complaints received in fiscal year 2004 and 2005. As noted earlier, there are no specific requirements set fourth by law or OAC requiring the Department to have the complaints resolved within a certain time period. We randomly selected 25 complaints from each fiscal year to determine the average number of days it takes to resolve a complaint received by the Department. Based on our testing, we noted the Department resolved complaints received in an average of 17 days.

**CONCERN #13**

**The Department is assessing fines to license holders without notice and hearing as required by law and is inconsistently assessing fines to license holders.**

**FINDINGS**

According to 59 O.S. §, 2088 A., a hearing is required prior to sanctions being imposed on a mortgage broker or mortgage loan originator. Oklahoma Administrative Code 160:55-9-1 (f) and 160:55-9-2 (c) allow a licensee to waive their right to a hearing and accept the ruling of the Administrator, such as a fine. However, Attorney General opinion 2003 OK AG 32, VIII 5. states the Administrator may not impose sanctions without first providing notice and an opportunity for a hearing. Based on the fines reviewed, there is no documentation to support the licensee was given the option of a hearing and

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waived that right. *If the licensee waives their right to a hearing, we recommend the Department maintain adequate supporting documentation indicating the license holder waived their right to a hearing and they agreed to the imposed sanctions.*

Fine amounts assessed in fiscal year 2005 for loan officers without licenses appear consistent; however, the Department has no official, written policy on the correlation between the amount of the fine and the violation.

The fine assessed in fiscal year 2004 does not appear to be in compliance with 59 O.S. §, 2088 A. *We recommend the Department assess fines in accordance with the criteria established in 59 O.S. §, 2088 A.*

**OBSERVATIONS**

Management stated there were four fines assessed during the period of fiscal years 2004 and 2005. There was no mechanism for determining if this population is complete; therefore, we relied on management's representation. The fines were as follows:

- Fiscal Year 2004 - Innovative Financial Services - \$ 4,305.02 – A loan originator working for this company had a valid license at a previous company; however, they failed to transfer the license to Innovative. The fine represents all commissions received by this employee;
- Fiscal Year 2005 – EZ Mortgage Solutions – The Department fined this mortgage broker company \$500 (\$250 for the mortgage broker and \$250 for the mortgage loan originator) because the loan officer did not have a license;
- Fiscal Year 2005 – Amstar Mortgage Corporation - The Department fined this mortgage broker company \$500 (\$250 for the mortgage broker and \$250 for the mortgage loan originator) because the loan officer did not have a license;
- Fiscal Year 2005 – Gateway Mortgage - The Department fined this mortgage broker company \$500 (\$250 for the mortgage broker and \$250 for the mortgage loan originator) because the loan officer did not have a license.

Since all of the fines assessed involve mortgage brokers or mortgage loan originators, we reviewed 59 O.S., § 2088 A which states:

The Administrator of Consumer Credit may upon his or her own motion, and shall upon written complaint filed by any person, investigate the business transactions of any mortgage broker or mortgage loan originator and, after notice and hearing, may, for any cause as set forth in subsection B of this section, impose the following sanctions:

1. Reprimand;
2. Probation for a specified period of time;
3. Suspension of license for specified periods of time;
4. Revocation of license;
5. Imposition of an administrative fine which shall be not less than One Hundred Dollars (\$100.00) nor more than



- Two Thousand Dollars (\$2,000.00) for each violation nor exceed Five Thousand Dollars (\$5,000.00) for all violations resulting from a single incident or transaction;
6. Restitution of actual damages suffered by the complaining person; or
  7. Any combination of sanctions as provided for by paragraphs 1 through 6 of this subsection. “

Based on review of the documentation maintained by the Department regarding the four fines assessed, it appears there is no documentation to support a hearing was granted as required 59 O.S. §, 2088 A. The Deputy Administrator stated since he has been in his current position (September 2004), the Department has given the licensee the option of paying a fine rather than having a hearing based on OAC 160: 55-9-1 (f) and 160: 55-9-2 (c). Both OACs state:

In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford persons/parties who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

Attorney General opinion 2003 OK AG, VIII 5. states in part: “The Administrator may not impose sanctions upon a mortgage broker without first providing notice and an opportunity for a hearing...”. We did not note any documentation indicating the license holder had waived their right to a hearing and had agreed to the imposed fines.

Further, there is no documentation related to the methodology used by the Department in assessing the fine in fiscal year 2004; however, if assessed under the guidelines of #5 or #6 as identified in 59 O.S. §, 2088 A, it appears the fine exceeds the established threshold in #5 while there is no documentation to support that the customers who used this loan officer had filed a complaint as required by #6.