

OFFICE OF FINANCIAL REGULATION

COLLECTION AGENCY REGISTRATIONS

MORTGAGE-RELATED AND

CONSUMER COLLECTION AGENCY COMPLAINTS

PRIOR AUDIT FOLLOW-UP

Operational Audit



COMMISSIONER OF THE OFFICE OF FINANCIAL REGULATION

The Office of Financial Regulation is administratively housed within the Department of Financial Services, but operates under the direction of the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The Commission is responsible for appointing the Director of the Office of Financial Regulation, who may also be known as the Commissioner of Financial Regulation. The following individuals served during the period of our audit:

Linda Charity, Interim Commissioner	From March 2012
Tom Grady, Commissioner	From August 2011 to March 2012
J. Thomas Cardwell, Commissioner	From August 2009 to August 2011

The audit team leader was Sabrina Ballew, CPA, and the audit was supervised by Matthew Tracy, CPA. Please address inquiries regarding this report to David R. Vick, CPA, Audit Manager, by e-mail at davidvick@aud.state.fl.us or by telephone at (850) 487-4494.

This report and other reports prepared by the Auditor General can be obtained on our Web site at www.myflorida.com/audgen; by telephone at (850) 487-9175; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

OFFICE OF FINANCIAL REGULATION

Collection Agency Registrations

Mortgage-Related and Consumer Collection Agency Complaints

Prior Audit Follow-Up

SUMMARY

This operational audit of the Office of Financial Regulation (OFR) focused on collection agency registrations and OFR's handling of mortgage-related (loan originator, mortgage broker, mortgage lender) and consumer collection agency complaints. The audit also included a follow-up on the audit findings included in audit report No. 2011-083. Our audit disclosed the following matters requiring corrective actions.

COLLECTION AGENCY REGISTRATIONS

Finding No. 1: OFR records for commercial collection agency initial registrations and renewals did not always include all of the information required by law.

MORTGAGE-RELATED AND CONSUMER COLLECTION AGENCY COMPLAINTS

Finding No. 2: OFR did not always timely and effectively handle mortgage-related and consumer collection agency complaints and did not always document related correspondence with complainants.

Finding No. 3: OFR did not always timely close consumer collection agency complaint investigations. Additionally, OFR did not always adequately perform and document each phase of the complaint resolution process.

Finding No. 4: OFR did not always timely close mortgage-related complaint investigations.

PRIOR AUDIT FOLLOW-UP

Except as noted below, OFR had taken corrective actions to address the findings included in audit report No. 2011-083.

Finding No. 5: OFR did not finalize a service level agreement with the Department of Financial Services (DFS) for the Regulatory Enforcement and Licensing (REAL) System services provided by DFS.

BACKGROUND

The Office of Financial Regulation (OFR) is responsible for overseeing and regulating a wide range of financial enterprises and individuals, including banks, mortgage loan originators, securities industry participants, money transmitters, payday lenders, and commercial and consumer collection agencies. In order to carry out its responsibilities, OFR is organized into five program areas including Financial Institutions, Finance, Securities, Investigations, and Executive Direction.

OFR's stated mission is to protect the citizens of Florida by carrying out the banking, securities, and financial laws of the State efficiently and effectively and providing regulation of business that promotes the sound growth and development of Florida's economy.

In the conduct of many of its day-to-day operations, OFR utilizes the Regulatory Enforcement and Licensing (REAL) System. The REAL System is an integrated financial regulatory management system that is used by OFR to manage fiscal, licensing, investigation, examination, legal, and complaint functions.

As described below, our audit of collection agency registrations and OFR's handling of mortgage-related and consumer collection agency complaints found areas in which OFR could more effectively execute the oversight and regulatory duties established by Florida law.

FINDINGS AND RECOMMENDATIONS

Collection Agency Registrations

The State of Florida regulates commercial¹ and consumer² collection agencies, under Parts V and VI, Chapter 559, Florida Statutes, respectively. Florida law³ provides that with respect to commercial collection agencies, the Legislature intends to specifically regulate commercial collection activities, separate and apart from consumer collection activities, to prevent unlawful and fraudulent activities that otherwise may go unpenalized. Florida law⁴ further provides that this is to be accomplished by requiring the registration of persons and businesses engaged in soliciting the collection of commercial claims or in collecting commercial claims and by prohibiting collection activities in the State by unregistered persons. With respect to consumer collection agencies, Florida law⁵ also requires that with certain statutory exemptions, no person shall engage in business in the State as a consumer collection agency without first registering with OFR and thereafter maintaining a valid registration.

For the 2010-11 fiscal year, OFR reported that there were 151 registered commercial collection agencies and 1,298 registered consumer collection agencies.

Finding No. 1: Commercial Collection Agency Registrations

Florida law⁶ requires that when registering or renewing a commercial collection agency registration, each commercial agency must furnish to OFR a \$500 registration fee, certain information regarding the business and its owners, and evidence that the agency possesses a current surety bond in the amount of \$50,000. The required information about the business and its owners included information such as disclosures about any instances in which a professional or occupational license had been suspended, revoked, or otherwise subject to disciplinary action and disclosures regarding any occasion of a finding of guilt of any crime involving moral turpitude or dishonest conduct on the part of any principal or the registrant. The required information also included branch office locations and current addresses and telephone numbers for all owners, directors, and Florida resident agents. OFR was to review the information for completeness and accuracy and ensure that statutory requirements for registration were met.

As part of our audit of OFR's regulation of collection agencies, we reviewed 11 initial and 30 renewal commercial collection agency registrations that occurred during the period October 2010 through February 2012. With respect to initial registration applications, we found that OFR did not always document the receipt and review of the information required for commercial collection agency initial registrations. Specifically, we noted:

¹ A commercial collection agency is defined as any person engaged, as a primary or secondary business activity, in the business of soliciting commercial claims for collection or in the business of collecting commercial claims, asserted to be owed or due to another person, regardless of whether the collection efforts are directed at the primary debtor or some other source of payment.

² A consumer collection agency is defined as any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, which debt collector or business is not expressly exempted.

³ Section 559.542, Florida Statutes.

⁴ Ibid.

⁵ Sections 559.553(1) and (4), Florida Statutes.

⁶ Section 559.545, Florida Statutes.

- For 4 of the 11 initial registrations, OFR did not obtain, prior to registration, a listing of current business locations of each branch office of the registering agency.
- For 9 of the 11 initial registrations, OFR did not obtain, prior to registration, all current address and telephone number information for all owners, directors, and Florida resident agents of the registering agency.
- For 2 of the 11 initial registrations, OFR did not obtain, prior to registration, documentation of incorporation for the registering agency.
- For 4 of the 11 initial registrations, contrary to Florida law,⁷ OFR did not obtain, prior to registration:
 - A listing of each county in which the registrant was doing business or planned to do business within the next calendar year.
 - A listing of each county in which the registrant operated under a fictitious name or trade name or, alternatively, an indication that the registrant did not operate in any county under a fictitious or trade name.
 - A listing of the names of any other corporations, entities, or trade names through which any owner or director of the registrant was known or did business as a commercial or consumer collection agency within the five calendar years immediately preceding the year in which the agency was registering, or an indication that no other corporations, entities, or trade names have been used.

With respect to commercial collection agency registration renewals, our audit found that OFR did not obtain from the registrant the information required or always obtain evidence of a current and valid surety bond. Specifically, Florida law⁸ states that in “registering or *renewing* a registration,” every commercial collection agency must furnish to OFR the information required by Section 559.545(2), Florida Statutes. However, our review of 30 registration renewals disclosed that in all 30 instances, OFR did not obtain, as a condition of renewal, the mandated information or an assertion that the information already supplied was complete and current. Also, we noted contrary to Florida law,⁹ for 25 out of 30 renewal registrations, OFR did not receive prior to renewal, evidence of a current and valid surety bond. In response to audit inquiry, OFR management stated that OFR requires all collection agencies to disclose any changes to their registration information when the changes occur. While registrant disclosure of changes when they occur is a necessary requirement, an assertion upon renewal would provide additional assurance that current information has been provided.

Absent the information required by Florida law, OFR cannot appropriately assess whether a registrant has met the requirements to engage in business as a commercial collection agency. In some cases, the lack of information may expose the public to an increased risk that potential unlawful or fraudulent activities may occur.

Recommendation: We recommend that OFR take steps to ensure that all requirements of Florida law are satisfied by commercial collection agencies prior to the issuance of initial and renewal registrations. We also recommend as part of the renewal process, that OFR consider providing commercial collection agencies registration information on file at OFR and request that the commercial collection agency update the information and certify the information as accurate and complete.

⁷ Sections 559.545(2)(d) through (f), Florida Statutes.

⁸ Section 559.545, Florida Statutes.

⁹ Section 559.545(3), Florida Statutes.

Mortgage-Related and Consumer Collection Agency Complaints

Florida law¹⁰ grants OFR the authority and responsibility to investigate complaints against consumer collection agencies and record their resolution. OFR also regulates loan originators, mortgage brokers, and mortgage lenders under Chapter 494, Florida Statutes. Florida law¹¹ provides that any person having reason to believe that a provision of Chapter 494, Florida Statutes, has been violated may file a written complaint with OFR. Florida law¹² further provides that OFR has the authority to conduct an investigation of any person whenever there is reason to believe, either upon complaint or otherwise, that a violation of Chapter 494, Florida Statutes, has been or is about to be committed.

Finding No. 2: Handling of Complaints

The ability for citizens to submit complaints to OFR provides an important venue through which potential violations of Florida law and fraud can be addressed. Complaints may also allow OFR to detect a pattern of wrong-doing which may indicate the need for a formal investigation or action to protect a broader public interest.

During the period October 2010 through February 2012, the Division of Finance¹³ was responsible for handling complaints related to consumer collection agencies and mortgage-related (loan originators, mortgage brokers, and mortgage lenders) complaints. Complaints were submitted to OFR through various means, including an Internet portal, mail, and e-mail. Upon receipt, complaints were to be evaluated as to whether OFR had jurisdiction and also to determine which complaints had case priority under OFR's *Case Priorities Guidelines (Guidelines)*.¹⁴ Complaints that fell under OFR's jurisdiction were to be routed to the appropriate staff while complaints that did not fall within OFR's jurisdiction were to be referred to the applicable regulatory agency.

According to the Division of Finance *Complaint Handling and Processing Manual (Manual)*, once OFR received a complaint, an acknowledgment letter was to be sent to the complainant. Also, a letter was to be sent to the company requesting, within a specified time period, a response to the allegations described in the complaint. Upon receipt of the company's response, OFR was to determine whether the information provided was adequate to process the complaint. Any further investigative work or report preparation was to be completed within 90 days of receipt of the complaint. OFR policies and procedures also required that at the conclusion of a complaint investigation, a close-out letter was to be provided to the complainant. The OFR *Manual* required that the REAL System complaint records were to contain all appropriate letters and supporting documents. OFR management indicated that after considering the number and nature of complaints against a consumer collection agency, individual complaints associated with an agency could be investigated as part of an examination.

During the period October 2010 through February 2012, OFR recorded 1,283 complaints received and closed related to consumer collection agencies. According to data provided by OFR, during this period, 41 consumer collection agency-related enforcement actions were taken, with associated fines totaling \$81,200. OFR also recorded 2,908 mortgage-related complaints received and closed during October 2010 through February 2012. As part of our audit, we reviewed 39 consumer collection agency complaint files closed during the period October 2010 through February

¹⁰ Section 559.725, Florida Statutes.

¹¹ Section 494.0012(2), Florida Statutes.

¹² Section 494.0012(1), Florida Statutes.

¹³ Effective May 29, 2012, OFR's Division of Finance became the Division of Consumer Finance.

¹⁴ The *Guidelines* are to be used by OFR staff to route complaints to the correct OFR unit. The *Guidelines* are subject to change from time to time as a result of the types of complaints OFR receives and by OFR's observation of patterns and trends in the industries.

2012. In addition, we reviewed 22 consumer collection agency examinations and related complaint files. We also reviewed 52 mortgage-related complaint files received and closed during the period October 2010 through February 2012. We performed our reviews to determine, in part, the effectiveness of OFR's controls for complaint handling as well as the timeliness of complaint resolutions. Our review disclosed that OFR did not always adequately document that it effectively handled and timely resolved complaints and complied with established policies and procedures. Specifically:

- For 6 of the 39 consumer collection agency complaint files reviewed, we found that OFR had not complied with the provisions of the *Manual*. The files reviewed included complaints alleging, among other things, consumer harassment and possible unregistered collection activity. Instances of *Manual* noncompliance included:
 - For one complaint, OFR did not adequately document the basis for concluding that the respondent (i.e., the collection agency subject to the complaint) was exempt from regulation under Florida law. Specifically, the complaint file indicated that the respondent was a law firm. The file also indicated that the complaint was referred to the Florida Bar because "attorneys are exempt" from OFR regulation under Chapter 559, Florida Statutes. However, while Florida law¹⁵ states that any member of the Florida Bar is exempt from OFR regulation, the complaint file did not include documentation demonstrating a determination that the respondent was a member of the Florida Bar. In response to audit inquiry, OFR management indicated that the "documentation used to determine the exemption" was not attached to the complaint file or explained in the complaint file notes and, as a result, OFR was reopening the complaint.
 - For another complaint, OFR did not timely provide to the complainant a close-out letter. Documentation in the REAL System indicated that OFR received the remaining documentation to resolve the complaint on May 20, 2011. However, the close-out letter to the complainant was not sent until four months later on September 30, 2011. In response to audit inquiry, OFR management reported that the delay was due to the complaint not being properly handled by staff responsible for closing the case.
 - For the third complaint, the complaint file did not contain documentation demonstrating that a close-out letter was sent to the complainant. While work notes indicated that a complaint response letter was mailed to the complainant on July 18, 2011, a copy of the letter was not present in the complaint file until May 31, 2012, subsequent to our inquiry.
 - For the fourth complaint, received in March 2011, OFR did not adequately document the work performed and the conclusion of the case. OFR reported in the complaint file that it could not locate the registrant identified in the complaint and, as a result, referred the case to the Federal Trade Commission (FTC). However, no documentation was available to show efforts had been made to locate the registrant. In response to audit inquiry, OFR management acknowledged that efforts to locate the respondent were not described in the complaint file. Subsequent to our audit inquiry, OFR attached documentation dated May 2012 describing efforts to locate the respondent.

Additionally, in response to audit inquiry, OFR management acknowledged that they had not referred the complaint to the FTC. Subsequent to our inquiry, the referral to the FTC was made, a year after the case was initially closed.

- For the fifth complaint, OFR records indicated that the company appeared to be operating without proper registration and, in correspondence with the company, OFR requested the company address this matter as well as the complaint. After sending a second letter to the company requesting a response and receiving no reply, OFR made a referral on September 28, 2011, to the Office of the Attorney General requesting investigation of possible unregistered collection agency activity by an out-of-state company. In October 2011, a letter dated September 30, 2011, was received by OFR from the company responding

¹⁵ Section 559.553(4)(b), Florida Statutes.

to OFR's inquiries. In response to audit inquiry, OFR management reported that the company's response indicated that it was a billing company and therefore would not be required to be registered as a collection agency. However, this determination had not been recorded in the REAL System complaint file. Additionally, no close-out letter was sent by OFR to the consumer regarding the resolution of the complaint. In response to audit inquiry, OFR management stated that this had been an oversight.

- For the final complaint, the close-out letter included in the complaint file was a template letter that had not been completed to show the investigatory steps taken and what was determined as a result. In response to audit inquiry, a new close-out letter was sent to the consumer to replace the template letter, approximately six months after the case was initially closed.
- Six consumer complaints included in examinations were closed without resolution. Subsequent to our audit inquiry, OFR indicated that the complaint cases had been reopened and resolution would be sought. Additionally, a seventh consumer complaint file related to one examination did not contain adequate documentation demonstrating the resolution of the complaint. Specifically, the file did not include a close-out letter to the complainant.
- As similarly shown by our tests of consumer collection agency complaint files, for 6 of the 52 mortgage-related complaint files reviewed, we found that OFR had not complied with the provisions of the *Manual*. The files reviewed included complaints alleging, among other things, that fees were paid for loan modification services never rendered. Our review of the files disclosed:
 - For two complaints, documentation demonstrating that a close-out letter was sent to the complainant was not available. For one of the two complaints, subsequent to audit inquiry, a close-out letter was sent to the complainant, approximately eight months after the case was closed. For the second complaint, in response to audit inquiry, OFR indicated that a close-out letter had not been sent to the complainant because the case had been referred to the Florida Bar and OFR was awaiting the outcome of the investigation. OFR personnel stated that they had verbally communicated this information to the complainant. However, no documentation of this action was initially available. Following audit inquiry, and six months after the communication, OFR added notes to the complaint file to document the actions taken.
 - For a third complaint, the complaint file did not contain documentation demonstrating that an acknowledgment letter was sent to the complainant indicating that OFR received the complaint. Subsequent to our audit inquiry, the letter was added to the complaint file.
 - For a fourth complaint, the only documentation available was the actual complaint. In response to audit inquiry, OFR management indicated that they could not locate the remainder of the file. Consequently, OFR could not demonstrate whether the complaint had been appropriately investigated and resolved.
 - For the fifth complaint, the close-out letter included in the complaint file was an incomplete template letter that did not describe the investigatory steps taken and what was determined as a result. In response to audit inquiry, OFR personnel stated that they could not locate any additional documentation showing that a formal close-out letter had been provided to the complainant.
 - For the final complaint, the complaint file did not initially contain documentation demonstrating that an acknowledgement letter had been sent to the complainant, that a letter had been sent by OFR to the company requesting a response to the allegations described in the complaint, that the response had been provided by the company to OFR, and that a close-out letter had been sent to the complainant. Additionally, the complaint file did not contain documentation described in the REAL System as having been provided by the complainant to OFR as part of the complaint resolution process. Subsequent to audit inquiry, OFR management attached to the complaint file the acknowledgement letter, OFR's letter to the company requesting a response to the allegations, the response provided by the company, and the close-out letter to the complainant. OFR management indicated that it could not locate the other documentation provided by the consumer in connection with the complaint.

In response to audit inquiry, OFR management acknowledged that appropriate documentation was not always input into the REAL System by personnel. We also noted that while OFR procedures required monitoring of all complaints assigned to staff, including verification that all REAL System entries and comments were accurate and updated with appropriate information, this review process was not always effective. Absent the documented and appropriate resolution of complaints, there is an increased risk that legal noncompliance or fraud may not be appropriately addressed.

Recommendation: We recommend that OFR, in conformity with applicable OFR policies and procedures, effectively and timely perform and document all phases of the complaint investigation and resolution process.

Finding No. 3: Analysis of Consumer Collection Agency Complaint Data

As part of our audit, we analyzed REAL System data for consumer collection agency complaints received during the period October 2010 through February 2012 to assess whether complaints were being resolved in a timely manner. As noted in finding No. 2, OFR's *Complaint Handling and Processing Manual (Manual)* required that all investigative work was to be completed, and the complaint closed, within 90 days of receipt of the complaint. In response to audit inquiry, OFR reported that compliance with the 90-day standard was determined by calculating the difference between the date the complaint was received and the date the complaint was closed, as shown in the REAL System.

During the period October 2010 through February 2012, OFR received and closed 1,283 consumer collection agency complaints. We found that the average number of days to close a complaint from the date of receipt was 76 days. However, contrary to *Manual* requirements, 404 of the 1,283 (31 percent) complaints were not closed within 90 days after receipt. We recognize that the nature and complexity of complaint investigations may sometimes result in the case not being closed within established parameters. However, the median number of days to close the 404 complaints was 144 days. Although OFR procedures required monitoring of all complaints assigned to staff, this review process was not always effective. Improvements in this review process may allow OFR to reduce the number of complaints that are not timely resolved.

During our analysis, we also noted 51 of the 1,283 closed complaints had a disposition of "unresolved." In response to audit inquiry, OFR management stated that the disposition of "unresolved" may be assigned to a complaint received about an unregistered collection agency when numerous attempts are made to contact the agency but the company never responds. In this type of situation, OFR was to notify the complainant of the failed attempts to communicate with the company and then pursuant to Section 559.725(5), Florida Statutes, make a referral to the appropriate State Attorney's office for in-state entities or the Florida Attorney General's Office for out-of-state entities.

Due to the nature of the disposition, we reviewed the files for 20 of the 51 complaints with an "unresolved" disposition to determine if the complaint was handled and referred appropriately before being closed. Of these 20 complaints, we noted 10 complaints that were not handled appropriately before being closed. Specifically, we found:

- For 8 of the 10 complaints, OFR did not appropriately document a communication to the consumer that the complaint had been closed. Specifically, we noted:
 - The complaint file for 4 of the 8 complaints did not contain a close-out letter to the consumer. In response to audit inquiry, OFR management acknowledged that no close-out letters were sent. In one instance, OFR management reported that a phone call was placed to the complainant advising of the

resolution. However, this was not documented in the complaint file. For the other three complaints, OFR management reported that it appeared that the cases had been closed in error.

- The complaint file for 4 of the 8 complaints did not initially contain a close-out letter to the consumer. Subsequent to audit inquiry, OFR management attached the close-out letters to the complaint file. Additionally, these complaints appeared to have also been closed prematurely. In all four instances, OFR made second attempts to contact the respondents to the complaints on September 22, 2011, providing the companies 15 days to respond. However, in all instances, OFR then sent the close-out letters to the consumers on September 28, 2011, before the 15 days allowed for the company to respond had elapsed.
- For 1 of the 10 complaints, we were unable to retrieve the attachments for the complaint from the REAL System. Upon audit inquiry, OFR management confirmed that it was also unable to retrieve the documentation. Consequently, OFR could not demonstrate whether the complaint was appropriately handled and closed.
- For 2 of the 10 complaints, there was no documentation in the complaint file to substantiate OFR's efforts to contact the respondent to the complaint. In response to audit inquiry, OFR management reported that one of the complaints contained limited information and that based on the nature of the complaint, the entity involved "did not appear to be a legitimate collection agency." For the other complaint, OFR management indicated that it appeared the case had been closed in error.
- For 2 of the 10 complaints, the complaint file did not contain documentation demonstrating that a letter was sent to the consumer acknowledging receipt of the complaint. In response to audit inquiry, OFR management was unable to provide copies of the acknowledgement letters.

In response to audit inquiry, OFR management reported that appropriate documentation was not always input into the REAL System by personnel. As noted above, OFR procedures required monitoring of all complaints assigned to staff, including verification that all REAL System entries and comments were accurate and updated with appropriate information, this review process was not always effective. Absent documentation supporting the proper handling of consumer complaints, OFR is unable to demonstrate that complaints were investigated promptly and in accordance with OFR policies and procedures.

Recommendation: We recommend that OFR take steps to reduce the number of consumer collection agency complaints not closed within the 90-day time frame. We also recommend that OFR strengthen its monitoring procedures to better ensure that all phases of the complaint resolution process are adequately performed and documented.

Finding No. 4: Analysis of Mortgage-Related Complaint Data

As part of our audit, we also analyzed REAL System data for mortgage-related complaints received during the period October 2010 through January 2012 to assess whether complaints were being resolved in a timely manner.

During the period October 2010 through January 2012, OFR received and closed 2,800 mortgage-related complaints. We noted that contrary to *Manual* requirements, 953 of the 2,800 (34 percent) complaints were not closed within 90 days after receipt, with the days to close ranging from 91 to 2,719 days and averaging 104 days. The median number of days to close the 953 complaints was 172 days. Although OFR procedures required monitoring of all complaints assigned to staff, this review process was not always effective.

As with the processing of consumer collection agency complaints, improvements in this review process may facilitate reductions in the time required to resolve complaints. Without timely resolution of complaint investigations, there is an increased risk that potential legal noncompliance or fraud may occur and continue without a regulatory response.

Recommendation: We recommend that OFR take steps to reduce the number of mortgage-related complaints not closed within the 90-day time frame.

PRIOR AUDIT FOLLOW-UP

Except as noted below, OFR had taken corrective actions to address the findings included in audit report No 2011-083.

Finding No. 5: Service Level Agreement

Effective information technology (IT) business practices dictate that when one entity depends on another for significant technology resources, a formal service level agreement (agreement) that defines the responsibilities and roles of both parties should be in place. IT service level agreements typically address such matters as the services to be provided, system availability, and security.

In our report No. 2011-083, we noted that OFR and the Department of Financial Services (DFS) did not have a signed service level agreement for the REAL System for services provided by DFS and recommended that OFR pursue the finalization of an agreement. As part of our current audit, we inquired into the status of the REAL System and any agreements entered into by OFR regarding services provided by DFS. Our audit disclosed that as of May 31, 2012, OFR had not entered into an agreement with DFS. OFR management reported that OFR was in the process of transitioning technical application support for the REAL System from its existing vendor to DFS and that it would not pursue an agreement until the transition was complete. OFR management also reported that DFS proposed legislation¹⁶ in 2012 to qualify the data center located in the Fletcher Building (where the REAL System is currently located) as one of the State's primary data centers. However, the legislation did not pass, and Florida law¹⁷ was amended effective July 1, 2012, to require all remaining computing resources within an agency data center or computing facility, including DFS data centers, be transferred during the 2015-16 fiscal year to a primary data center, unless otherwise exempted by the Agency for Enterprise Information Technology.

In response to audit inquiry, OFR management stated that if legislative approval is not attained to qualify the data center located in the Fletcher Building as a primary data center, OFR will comply with existing legislation and transition to a primary data center. We noted that, however, since that transition may not be completed until the 2015-16 fiscal year, OFR's continued reliance upon DFS for certain hosting services indicates that an agreement with DFS should be secured in the interim. The absence of a written agreement defining, among other matters, both OFR's and DFS's roles and responsibilities increases the risk that sufficient IT resource services, availability, and security will not be provided.

Recommendation: We again recommend that OFR pursue the finalization of a service level agreement with DFS.

¹⁶ House Bill 1215 and Senate Bill 1498.

¹⁷ Chapter 2012-142, Laws of Florida.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from January 2012 to June 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit focused on collection agency registrations and OFR's handling of mortgage-related and consumer collection agency complaints. The overall objectives of the audit were:

- To evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and guidelines.
- To examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- To determine whether management has corrected, or was in the process of correcting, all deficiencies disclosed in our audit report No. 2011-83.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management's internal controls, instances of noncompliance with applicable governing laws, rules, or contracts, and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit we:

- Reviewed 41 commercial collection agency registrations (including 11 initial and 30 renewal registrations) that occurred during the period October 2010 through February 2012 to test the effectiveness of selected OFR registration process controls.
- Reviewed 43 consumer collection agency registrations (including 11 initial and 32 renewal registrations) that occurred during the period October 2010 through February 2012 to test the effectiveness of selected OFR registration process controls.
- Reviewed consumer collection agency complaints related to 22 consumer collection agency examinations closed by OFR during the period of October 2010 through February 2012 to test the effectiveness of OFR's controls for complaint handling as well as the timeliness of complaint resolutions.
- Reviewed 20 consumer collection agency enforcement actions taken by OFR during the period October 2010 through February 2012 to test OFR's compliance with significant governing laws, rules, and policies and procedures in its handling of enforcement actions.
- Reviewed 39 consumer collection agency complaint files closed by OFR during the period October 2010 through February 2012 to test the effectiveness of OFR's controls for complaint handling as well as the timeliness of complaint resolutions.
- Reviewed 20 consumer collection agency complaints closed by OFR during the period October 2010 through February 2012 with a disposition of "unresolved" to determine if the complaint was handled and referred appropriately before being closed.
- Analyzed data to determine whether revenues associated with regulating collection agencies were sufficient to cover OFR's costs of regulation.
- Inquired into whether OFR has analyzed the costs associated with regulating collection agencies and compared such costs to related revenues collected.
- Analyzed REAL System data for all closed consumer collection agency complaints received during the period October 2010 through February 2012 to determine whether complaints were being resolved in a timely manner.
- Reviewed 52 loan originator, mortgage broker, and mortgage lender complaints received and closed by OFR during the period October 2010 through February 2012 to test the effectiveness of OFR's controls for complaint handling as well as the timeliness of complaint resolutions.
- Analyzed REAL System data for all loan originator, mortgage broker, and mortgage lender complaints received during the period October 2010 through January 2012 to determine whether complaints were being resolved in a timely manner.
- Evaluated actions taken by OFR to correct the deficiencies disclosed in our audit report No. 2011-083.
- Interviewed OFR personnel and reviewed OFR policies and procedures.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Communicated on an interim basis with applicable OFR officials to ensure the timely resolution of issues involving controls and noncompliance.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe those matters requiring corrective actions.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each State agency on a periodic basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



David W. Martin, CPA
Auditor General

MANAGEMENT'S RESPONSE

In a response letter dated October 30, 2012, the Interim Commissioner of the Office of Financial Regulation concurred with our audit findings and recommendations. The Interim Commissioner's response is included as **EXHIBIT A**.

EXHIBIT A
MANAGEMENT'S RESPONSE



Linda B. Charity
INTERIM COMMISSIONER

October 30, 2012

Mr. David W. Martin
Auditor General
G74 Claude Pepper Building
Tallahassee, FL 32399-1450

Re: Response to Preliminary and Tentative Audit Findings

Dear Mr. Martin:

Enclosed is the Office of Financial Regulation's response to the Auditor General's preliminary and tentative audit findings and recommendations dated October 1, 2012.

Please direct questions about the enclosed response to the Office's Inspector General, Karen Fisher, at Karen.Fisher@flofr.com.

Sincerely,

Linda B. Charity
Interim Commissioner
Office of Financial Regulation
200 East Gaines St,
Tallahassee, FL 32399-0370

LBC/go

Enclosure

FINANCIAL SERVICES COMMISSION

GOVERNOR RICK SCOTT • CHIEF FINANCIAL OFFICER JEFF ATWATER • ATTORNEY GENERAL PAM BOND • AGRICULTURE COMMISSIONER ADAM PUTNAM

EXHIBIT A
MANAGEMENT'S RESPONSE
(CONTINUED)

Response to Preliminary and Tentative Audit Findings
October 30, 2012
Page 1

Finding No. 1: OFR records for commercial collection agency initial registrations and renewals did not always include all of the information required by law.

Auditor General Recommendation: We recommend that OFR take steps to ensure that all requirements of Florida law are satisfied by commercial collection agencies prior to the issuance of initial or renewal registrations. We also recommend as part of the renewal process, that OFR consider providing commercial collection agencies registration information on file at OFR and request that the commercial collection agency update the information and certify the information is accurate and complete.

OFR Response to Finding No. 1: We concur. The Division of Consumer Finance has implemented training to ensure that all statutory requirements are received and reviewed by OFR prior to the issuance of a commercial collection agency registration. Additionally, the Division of Consumer Finance is implementing changes in its renewal procedures. The changes will require commercial collection agencies to update information as needed and to certify that their registration information is accurate and complete. The changes in procedures will also require commercial collection agencies to document that their surety bond remains in force prior to renewing a registration.

Finding No. 2: OFR did not always timely and effectively handle mortgage-related and consumer collection agency complaints and did not always document related correspondence with complainants.

Auditor General Recommendation: We recommend that OFR, in conformity with applicable OFR policies and procedures, effectively and timely perform and document all phases of the complaint investigation and resolution process.

OFR Response to Finding No. 2: We concur. The Division of Consumer Finance will conduct training with staff to review and enforce existing processes and procedures. In addition, the OFR has requested modifications to the REAL System that will enforce proper documentation of complaints upon closure.

Finding No. 3: OFR did not always timely close consumer collection agency complaint investigations. Additionally, OFR did not always adequately perform and document each phase of the complaint resolution process.

Auditor General Recommendation: We recommend that OFR take steps to reduce the number of consumer collection agency complaints not closed within the 90-day time frame. We also recommend that OFR strengthen its monitoring process to better ensure that all phases of the complaint resolution process are adequately performed and documented.

**EXHIBIT A
MANAGEMENT'S RESPONSE
(CONTINUED)**

Response to Preliminary and Tentative Audit Findings
October 30, 2012
Page 2

OFR Response to Finding No. 3: We concur. The Division of Consumer Finance will amend its policies and procedures and rely on performance metrics established for annual employee performance evaluations. In addition, the OFR has requested modifications to the REAL System that will enforce proper documentation of complaint resolution.

Finding No. 4: OFR did not always timely close mortgage-related complaint investigations.

Auditor General Recommendation: We recommend that OFR take steps to reduce the number of mortgage-related complaints not closed within the 90-day time frame.

OFR Response to Finding No. 4: We concur. The Division of Consumer Finance will amend its policies and procedures and rely on performance metrics established for annual employee performance evaluations.

Finding No. 5: OFR did not finalize a service level agreement with the Department of Financial Services (DFS) for the Regulatory Enforcement and Licensing (REAL) System services provided by DFS.

Auditor General Recommendation: We again recommend that OFR pursue the finalization of a service level agreement with DFS.

OFR Response to Finding No. 5: We concur. The Department of Financial Services has agreed to enter into a Service Level Agreement with the OFR specific to their areas of responsibility for maintenance of the REAL System.