# State of Florida
# Office of Financial Regulation
# Deferred Presentment Program


**Annual Report to Legislature**

January 1, 2004

**Office of Financial Regulation**
Deferred Presentment Program
2003 Annual Program Report to the Legislature

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## Executive Summary

The Legislature passed the Deferred Presentment Act ("Act") during the 2001 session with an effective date of October 1, 2001. The Act required the Office of Financial Regulation (“Office" or “OFR”) to implement the Deferred Presentment Program ("Program"), including a real-time statewide database for use by all licensed providers to capture and track deferred presentment transactions ("DPTs"). The Office implemented the database provided for in the Act on February 26, 2002. Implementation of the Program and the Deferred Presentment Database (“Database”) enabled the Office to capture and effectively monitor factual information about the industry, characteristics of DPTs, and consumer’s use of this financial product. Over 5 million DPTs have been conducted since the inception of the Program.

This is the second Annual Report for the program. This report covers activity during the period from November 1, 2002 through October 31, 2003. During this time period over 3 million DPTs were conducted. This report provides factual information about the Program and its effectiveness in meeting the Legislative requirements for preventing fraud and abuse of DPTs by regulating allowable fees charged, preventing rollovers, preventing multiple DPTs, and providing for regulatory authority and resources to monitor Deferred Presentment Providers.

## Purpose of this Report

Section 560.408(2), Florida Statutes, specifies that the Office shall submit a report to the President of the Senate and the Speaker of the House of Representatives on January 1, 2003, and January 1, 2004, containing findings and conclusions concerning the effectiveness of this act in preventing fraud, abuse, and other unlawful activity associated with deferred presentment transactions. The report may contain legislative recommendations addressing the prevention of fraud, abuse, and other unlawful activity associated with deferred presentment transactions.

## Overview of Legislation

Senate Bill 1526 ("SB 1526") enacted by the 2001 Legislature became effective October 1, 2001. SB 1526 required that the Office of Financial Regulation implement a common database with real-time access via the Internet for Deferred Presentment Providers ("DPPs") on or before March 1, 2002. Key features of SB 1526 include:

- The DPP must utilize a common database to verify that certain conditions are met prior to entering into a new DPT with a person;
- A DPP may not enter into a DPT with any person having an outstanding DPT with that, or any other, DPP;
- A DPP may not enter into a DPT with a person having a previous DPT, with that or any other DPP, that has terminated within the last 24 hours;
- The face amount of the check may not exceed $500 exclusive of fees;
- The transaction fee cannot exceed 10% plus a $5 verification fee;
- No deferred presentment agreement shall be for a term in excess of 31 days or less than 7 days;
- The customer may extend the term of the agreement for an additional 60 days after the original termination date without any additional charge provided the customer makes an appointment with a consumer credit counseling agency within 7 days after the end of the deferment period. The customer must complete the counseling within the 60 day grace period; and,
- Provides additional customer protections and disclosures.

## Program Funding

The Legislation provided for collection of a transaction fee by the Office not to exceed one-dollar per transaction. The transaction fee is assessed at the time a DPT is opened on the Database. The Office deposits transaction fees into the Regulatory Trust Fund for use by the Office in its regulatory efforts.

## Program Implementation

Key events and dates that occurred in order to implement the Program include:

- The Office issued an Invitation to Negotiate ("ITN") in June 2001 and held a pre-response conference in July 2001;
- Over 20 firms indicated an interest in responding and ten firms submitted formal responses to the ITN;
- Final submissions from top 3 finalists were reviewed in September 2001 and the final award was completed soon thereafter;
- The Office awarded the Contract to Veritec Solutions LLC, a Florida Limited Liability Company ("Vendor");
- The Office, the Vendor, and Industry Representatives participated in a joint system design effort;
- A test environment was provided for all DPPs beginning January 2002;
- The Vendor and Office Representatives conducted training in 5 regional locations throughout the State of Florida during January and February 2002 including certification testing for DPP Administrators and Train-the-Trainers:
    - 40 training sessions were conducted in 5 regional locations throughout Florida; and,
    - Over 300 DPP personnel completed training;
- The Office conducted a pilot testing program including 4 DPPs and over 30 branch locations in February 2002;
- DPPs were required to upload to the Database all open transactions conducted from October 2001 through February 2002;
- The Office completed and implemented the final system and business process on February 26, 2002, prior to the March 1, 2002 deadline;
- A Call Center operated by the Vendor handles over 1,000 consumer calls and DPP inquiries on a peak day; and,
- The on-line transaction fee billing and collection system developed and managed by the Vendor is "paperless" and provides electronic billing via ACH or EFT

# Industry Overview

## Industry Size and Growth

As of November 2003, the Deferred Presentment Industry in the State of Florida was comprised of 1,035 branch locations owned by 208 provider entities. These locations transacted over $1.1 Billion of advances with over 448,000 consumers earning an estimated $129 million of fees on advances during the preceding 12 month period[1]. There are roughly 232,000 advances outstanding on an average day totaling over $82 million in advances and $8.9 million in fees[2]. The industry employs approximately 3,500 – 4,000 employees in Florida[3].

The estimated 2003 annual growth rate is 15.3 percent for deferred presentment branch locations and 47.1 percent for number of customers as shown in the table - Provider and Customer Growth below.

**Table 1 - Provider and Customer Growth[4]**

| | Active Provider Locations | | | Total Registered Customers | | |
|---|---|---|---|---|---|---|
| Month | Number | Monthly Increase | Overall % Increase | Number | Monthly Increase | Overall % Increase |
| Nov-02 | 909 | 1.2% | - | 338,524 | 4.6% | - |
| Dec-02 | 1013 | 11.4% | 11.4% | 357,770 | 5.7% | 5.7% |
| Jan-03 | 991 | -2.2% | 9.0% | 375,577 | 5.0% | 10.9% |
| Feb-03 | 996 | 0.5% | 9.6% | 385,776 | 2.7% | 14.0% |
| Mar-03 | 1000 | 0.4% | 10.0% | 398,249 | 3.2% | 17.6% |
| Apr-03 | 1068 | 6.8% | 17.5% | 413,032 | 3.7% | 22.0% |
| May-03 | 1013 | -5.1% | 11.4% | 429,587 | 4.0% | 26.9% |
| Jun-03 | 1008 | -0.5% | 10.9% | 445,398 | 3.7% | 31.6% |
| Jul-03 | 995 | -1.3% | 9.5% | 463,385 | 4.0% | 36.9% |
| Aug-03 | 1004 | 0.9% | 10.5% | 481,478 | 3.9% | 42.2% |
| Sep-03 | 1013 | 0.9% | 11.4% | 498,830 | 3.6% | 47.4% |
| Oct-03 | 1035 | 2.2% | 13.9% | 517,038 | 3.7% | 52.7% |
| Average Monthly Increase | | | **1.3%** | | | **3.9%** |
| Estimated Annual Increase | | | **15.3%** | | | **47.1%** |

The average monthly growth rate for 2003 is approximately 1.9 percent for number of advances, 2.3 percent for dollars advanced, and 2.3 percent for total fees as shown in the table below - Transaction and Fee Growth.

**Table 2 - Transaction and Fee Growth[4]**

| Month | Opened Advances | Monthly Increase | Dollars Advanced | Monthly Increase | Total Fees | Monthly Increase |
|---|---|---|---|---|---|---|
| November 2002 | 261,596 | 3.6% | $94,182,992 | 4.9% | $10,347,804 | 4.7% |
| December 2002 | 273,267 | 4.5% | $99,014,911 | 5.1% | $10,872,810 | 5.1% |
| January 2003 | 269,797 | -1.3% | $96,892,954 | -2.1% | $10,660,973 | -1.9% |
| February 2003 | 211,522 | -21.6% | $76,084,384 | -21.5% | $8,369,065 | -21.5% |
| March 2003 | 240,905 | 13.9% | $86,132,853 | 13.2% | $9,478,230 | 13.3% |
| April 2003 | 245,491 | 1.9% | $87,407,364 | 1.5% | $9,618,697 | 1.5% |
| May 2003 | 282,508 | 15.1% | $102,040,815 | 16.7% | $11,217,071 | 16.6% |
| June 2003 | 270,662 | -4.2% | $98,082,808 | -3.9% | $10,760,434 | -4.1% |
| July 2003 | 285,450 | 5.5% | $104,152,159 | 6.2% | $11,396,618 | 5.9% |
| August 2003 | 307,676 | 7.8% | $113,882,574 | 9.3% | $12,435,753 | 9.1% |
| September 2003 | 297,483 | -3.3% | $110,298,933 | -3.1% | $12,030,679 | -3.3% |
| October 2003 | 301,904 | 1.5% | $112,188,001 | 1.7% | $12,227,658 | 1.6% |
| **Average Monthly** | **270,688** | **1.9%** | **$98,363,396** | **2.3%** | **$10,784,649** | **2.3%** |
| **Annual Total** | | | **$1,180,360,748** | | **$129,415,792** | |

## Distribution of Companies by Size

There are 208 registered companies providing deferred presentment transactions in the State of Florida representing 1,035 branch locations. The ten largest companies account for 71.4 percent of the branch locations and 81.1 percent of the total transaction volume. There are 123 companies with single branch locations representing 13.8 percent of total branch locations and 4.1 percent of the total transaction volume. Companies with five branches or less account for 184 branch locations representing 32.1 percent of total branch locations and 10.4 percent of the total transaction volume. Refer to the table - Size Distribution of Companies below for additional detail.

**Table 3 - Size Distribution of Companies[5]**

| Category | Total Number of Providers | Total Number of Store Locations | % of Total Store Locations | % of Total Transactions |
|---|---|---|---|---|
| Top ten providers | 10 | 635 | 71.43% | 81.08% |
| Providers with 6 - 17 locations | 14 | 115 | 12.94% | 14.03% |
| Providers with 2 - 5 locations | 61 | 162 | 18.22% | 6.28% |
| Providers with a single location | 123 | 123 | 13.84% | 4.12% |
| Totals | 208 | 1035 | 100.00% | 100.00% |

## Distribution of Deferred Presentment Transactions by Region

Volume of deferred presentment transactions by Office of Financial Regulation Region is highest in Tampa with 27.5 percent of volume occurring in this region. Orlando region has 17.5 percent of transaction volume. Fort Lauderdale and Miami regions (combined) have 19.6 percent of transaction volume. Refer to the table - DPT Volume by OFR Region below for additional detail.

**Table 4 - DPT Volume by OFR Region[4]**

| OFR Region | % of DPTs during Period |
|---|---|
| TAMPA REGION | 27.54% |
| ORLANDO REGION | 17.47% |
| JACKSONVILLE REGION | 13.33% |
| FT LAUDERDALE REGION | 10.04% |
| MIAMI REGION | 9.57% |
| PENSACOLA REGION | 8.63% |
| WEST PALM BEACH REGION | 7.47% |
| FT MYERS REGION | 5.96% |

## Transaction Activity by Day of Week

Daily volume of transactions varies greatly by the day of the week (i.e. Monday through Sunday). Volume is highest on Saturday followed by Monday and Friday. Over 25 percent of the weekly DPT volume occurs on Saturday, 19.5 percent occurs on Monday, and 16.3 percent occurs on Friday. Refer to the table - Transaction Volume by Day of Week below for additional detail.

**Table 5 - Transaction Volume by Day of Week[4]**

| Day of the Week | Average Transaction Volume | % of Total Transactions |
|---|---|---|
| Monday | 12,195 | 19.5% |
| Tuesday | 8,257 | 13.2% |
| Wednesday | 6,613 | 10.6% |
| Thursday | 6,626 | 10.6% |
| Friday | 9,986 | 16.3% |
| Saturday | 15,991 | 25.6% |
| Sunday | 2,604 | 4.2% |

# Prevention of Fraud and Abuse

## Regulation of Fees Charged

The Act defines clear limits on the terms and conditions permissible for a DPT as noted in the section Overview of Legislation. The information below illustrates that actual DPTs conducted, following implementation of the Program, are in compliance with the Act with respect to the limitations on fees charged to consumers.

The average advance amount was $363.38 with total fees (transaction fee plus verification fee) averaging $39.85 or 11.0 percent of the total advance amount. Verification fees, limited to $5 per transaction by Chapter 560, Florida Statutes, averaged $3.72 per transaction down from an average of $4.08 per transaction from last year's figure. Refer to the table - Average Amounts and Terms below for additional detail.

**Table 6 - Average Amounts and Terms[4]**

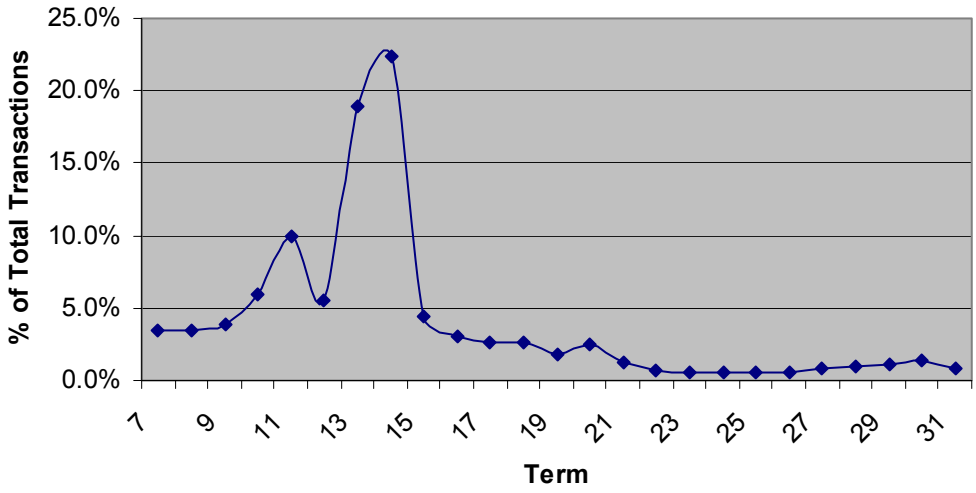
| Advance Amount | | | % of Total Transactions | Average Term (days) | Average Advance Amount | Average Transaction Fee | Average Verification Fee | Average Total Rate |
|---|---|---|---|---|---|---|---|---|
| $ - | - | $100.00 | 6.06% | 13.8 | $80.65 | $8.00 | $2.71 | 13.3% |
| $100.01 | - | $200.00 | 14.85% | 14.1 | $182.12 | $18.12 | $3.31 | 11.8% |
| $200.01 | - | $300.00 | 19.53% | 14.3 | $282.93 | $28.13 | $3.60 | 11.2% |
| $300.01 | - | $400.00 | 16.33% | 14.1 | $380.96 | $37.84 | $3.84 | 10.9% |
| $400.01 | - | $500.00 | 43.23% | 14.3 | $494.98 | $49.22 | $4.00 | 10.8% |
| **Summary** | | | **100.00%** | **14.2** | **$363.38** | **$36.13** | **$3.72** | **11.0%** |

## Transaction Fees and APR

The average annual percentage rate of interest (APR) on DPTs is 283 percent based on an average term of 14.2 days and totals fees of 11.0 percent[6]. These numbers are down compared to last year's reported figures of 294 percent with an average term of 13.8 days and total fees of 11.1%. Based on a recent industry survey, the APR of 283 percent in Florida is well below the national industry average of 408 percent[7]. Refer to Table 7 - Term Distribution Table and Graph on the following page for additional detail.

**Table 7 - Term Distribution Table and Graph[4]**

| Term | % of Total Transactions |
|---|---|
| 7 - 10 days | 16.7% |
| 11 - 15 days | 61.3% |
| 16 - 20 days | 12.7% |
| 21 - 25 days | 3.5% |
| 26 - 31 days | 5.7% |



## Transaction Averages

The average amount financed increased at an average monthly rate of approximately 0.3 percent during the period from November 2002 through October 2003. Average Total Fees declined from 11.0 percent in November 2002 to 10.9 percent in October 2003. Refer to the tables 8 and 9 below for additional detail – Average Advance Amount and Average Total Fee Percentage:

**Table 8 - Average Advance Amount[4]**

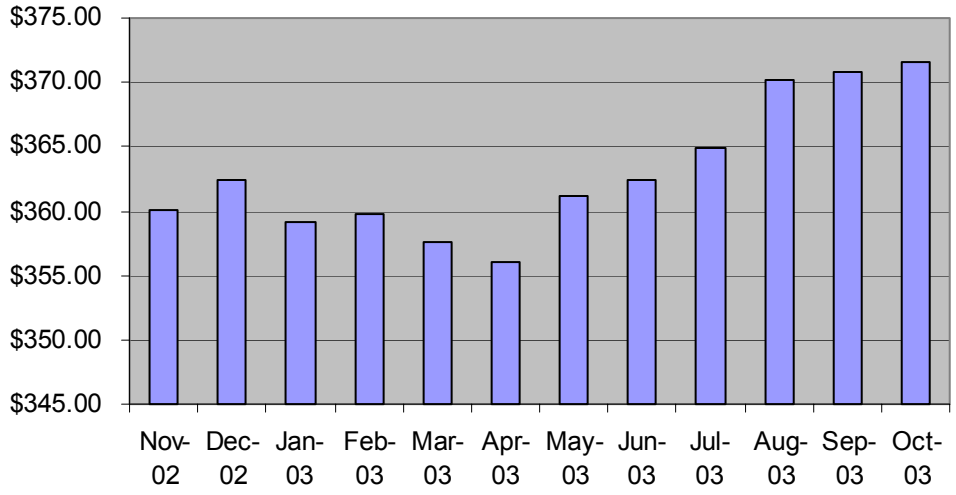
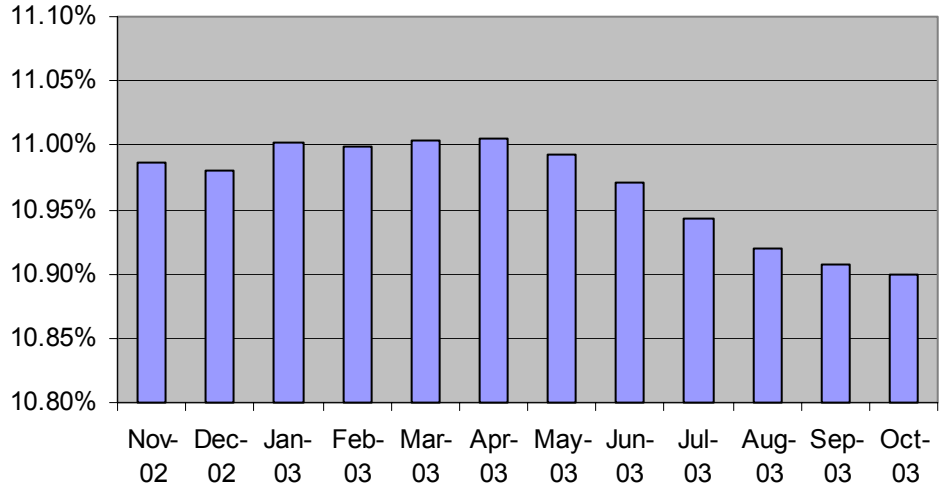



**Table 9 - Average Total Fee Percentage[4]**



## Prevention of Rollovers

The Act allows a consumer to have one outstanding DPT at a time as noted in the section Overview of Legislation. The consumer must pay off this DPT and wait 24 hours prior to entering into another DPT with this, or any other, provider. The information below demonstrates the effectiveness of the Act in preventing rollovers.

### Prior to Program Implementation

On October 1, 2001, prior to implementation of the Database, DPPs were required to have an internal database to prevent multiple transactions with the same customers. Customers were on the "honor system" and were required to sign an affidavit that they did not have an outstanding transaction with another DPP.

Prior to final implementation, licensed providers were required to load all open DPTs conducted after October 1, 2002 into the Database. A volume of 143,337 DPTs was loaded into the database as part of this effort. These DPTs were taken out by 118,855 consumers; an average of 1.2 DPTs per customer.

The number of consumers with multiple outstanding DPTs from this initial load was 19,111, or 16.1 percent of the 118,855 consumers holding these DPTs as shown in the table - Customers with Multiple Outstanding DPTs (initial load) below.

**Table 10 - Customers with Multiple Outstanding DPTs (initial load)**

| | | |
|---|---|---|
| Total DPTs included in initial data load | 143,337 | |
| Total consumers included in initial data load | 118,855 | 100% |
| **Total customers with multiple outstanding DPTs in initial data load** | **19,111** | **16.1%** |

Over 94% of the 19,111 customers with multiple outstanding DPTs in the initial Database load had 3 or less DPTs open at the same time. A breakdown of the number of multiple outstanding DPTs held by these customers is shown in the table - Distribution of Customers with Multiple Outstanding DPTs (initial load) below:

**Table 11 - Distribution of Customers with Multiple Outstanding DPTs (initial load)**

| # Open DPTs | # Consumers | % Consumers |
|---|---|---|
| 2 | 14,891 | 77.9% |
| 3 | 3,204 | 16.8% |
| 4 | 743 | 3.9% |
| 5 | 199 | 1.0% |
| 6 | 53 | 0.3% |
| 7 | 14 | 0.1% |
| 8 | 4 | 0.0% |
| 9 | 3 | 0.0% |
| Total consumers with multiple outstanding DPTs in initial data load | 19,111 | |

## After Program Implementation

Implementation of the Program no longer allows consumers to take out a DPT if they already have an outstanding DPT. Any consumers that were holding multiple outstanding DPTs at the time of implementation are now required to pay off ALL of these DPTs and wait 24 hours before taking out another DPT.

The Program has proven to be effective in reducing the number of multiple outstanding transactions initially held by consumers prior to the Program implementation. As of November 2003, the number of consumers with multiple outstanding DPTs was reduced from 19,111 to 2,882. This represents an 84.9% reduction in the number of consumers holding multiple outstanding DPTs since program implementation. Refer to Table 12 on the next page - Reduction in Customers with Multiple Outstanding DPTs for additional details.

**Table 12 - Reduction in Customers with Multiple Outstanding DPTs**

| # Open DPTs | # Consumers | % Consumers |
|---|---|---|
| 2 | 2,197 | 76.2% |
| 3 | 511 | 17.7% |
| 4 | 127 | 4.4% |
| 5 | 38 | 1.3% |
| 6 | 8 | 0.3% |
| 7 | 1 | 0.0% |
| Total consumers with multiple outstanding DPTs as of October 2002 | 2,882 | |
| Total consumers with multiple outstanding DPTs in initial data load | 19,111 | |
| **Reduction in total consumers with multiple outstanding DPTs** | **84.9%** | |

## Frequency of Consecutive Deferred Presentment Transactions

The statute requires that consumers pay off any outstanding deferred presentment transaction and wait 24 hours before opening a new transaction. Consumers on average took out 7.6 DPTs during the twelve-month period between November 2002 and October 2003. Last year this number was 6.8 DPT's per customer, but the report from year one covered only a 34-week period. During this period, 29 percent of consumers took out 2 or less DPTs. Also during this period, 20.5 percent of total consumers took out more than 12 DPTs (i.e. an average of more than one DPT per month) accounting for over 50 percent of total transactions conducted during the period. Refer to the table – Consumer Usage of DPTs below for additional detail.

**Table 13 - Consumer Usage of DPTs[4]**

| Total Number of DPTs during Period | Number of Consumers | % of Total Consumers | | % of Total DPTs | |
|---|---|---|---|---|---|
| 1 | 80,772 | 18.0% | 79.4 percent of consumers | 2.4% | 49.8 percent of transactions |
| 2 | 48,644 | 10.8% | | 2.8% | |
| 3 | 37,273 | 8.3% | | 3.3% | |
| 4 | 30,955 | 6.9% | | 3.6% | |
| 5 | 26,527 | 5.9% | | 3.9% | |
| 6 | 24,471 | 5.5% | | 4.3% | |
| 7 | 20,769 | 4.6% | | 4.2% | |
| 8 | 18,784 | 4.2% | | 4.4% | |
| 9 | 16,633 | 3.7% | | 4.4% | |
| 10 | 15,936 | 3.6% | | 4.6% | |
| 11 | 15,819 | 3.5% | | 5.1% | |
| 12 | 19,697 | 4.4% | | 6.9% | |
| 13 | 11,790 | 2.6% | 20.5 percent of consumers | 4.5% | 50.1 percent of transactions |
| 14 | 8,710 | 1.9% | | 3.6% | |
| 15 | 7,950 | 1.8% | | 3.5% | |
| 16 | 7,186 | 1.6% | | 3.4% | |
| 17 | 6,890 | 1.5% | | 3.4% | |
| 18 | 6,302 | 1.4% | | 3.3% | |
| 19 | 5,932 | 1.3% | | 3.3% | |
| 20 | 5,588 | 1.2% | | 3.3% | |
| 21 | 5,284 | 1.2% | | 3.2% | |
| 22 | 5,215 | 1.2% | | 3.3% | |
| 23 | 4,844 | 1.1% | | 3.3% | |
| 24 | 5,065 | 1.1% | | 3.5% | |
| 25 | 4,582 | 1.0% | | 3.3% | |
| 26 | 5,640 | 1.3% | | 4.3% | |
| 27 | 1,124 | 0.3% | | 0.9% | |
| 28 | 133 | 0.0% | | 0.1% | |
| 29 | 23 | 0.0% | | 0.0% | |
| 30 or greater | 24 | 0.0% | | 0.0% | |

## Dispute Resolution and Suspicious Activity

The Program call center at 1-877-FLA-DPP1 is the “first response” for consumers and DPPs to report suspicious activity and get timely resolution of questions, issues and disputes related to the Program. Approximately 60 percent of the call volume originates from DPPs and 40 percent originates from consumers. The following table - Call Breakdown by Type of Call is a breakdown of the types of calls handled by the program call center:

**Table 14 - Call Breakdown by Type of Call**

| Call Category | % of calls |
|---|---|
| Consumer inquiry about eligibility / declined eligibility | 35% |
| DPP created TEMP transaction during time that DPP system unable to communicate with Database[8] | 35% |
| Consumer inquiry about an open or closed DPT | 2% |
| Technical assistance required by DPP | 17% |
| Operational assistance required by DPP | 9% |
| Consumer complaint | 2% |
| TOTAL | 100% |

The Office and the Vendor jointly developed procedures for dispute resolution. These procedures are followed by the call center to resolve consumer and provider disputes related to the Program.

The Program call center is staffed from Monday through Saturday. On average, calls are answered in 13 seconds or less based on actual performance between November 2002 and October 2003. Volume of calls has ranged from over 1,500 calls on a peak day to less than 200 calls on a non-peak day since inception of the program.

## Regulatory Authority and Resources to Monitor DPTs

The Legislative intent of SB 1526 was to prevent fraud, abuse, and other unlawful activity associated with deferred presentment transactions by providing for sufficient regulatory authority and resources to monitor DPTs. The database has given the Office the ability to gather information about the industry, its consumers, industry trends, as well as the ability to target possible problems.

The Bureau of Finance Regulation ("Bureau") is tasked with the regulation and enforcement responsibilities of Chapter 560, Florida Statutes. During the past year, the Bureau staff has completed the incorporation of the Deferred Presentment Act into the existing examination manuals. All of the Bureau's examination staff members have attended training sessions on the requirements of the Deferred Presentment Act. The Bureau has implemented an examination program to conduct routine examinations of all deferred presentment providers. The program's goal is to exam each deferred presentment provider at least every two years.

During the past 12 months, Office staff has conducted 44 examinations of Deferred Presentment Providers/Check Cashers. The findings to date are consistent with an industry adapting to operating within a regulatory structure. The major findings consist of inadequate record keeping, failure to make appropriate entries in the statewide database, failure to provide the grace period, excessive fees, rollover transactions, multiple transactions and

failure to file Currency Transaction Reports. The table below - Examinations Conducted by Status Type shows the status of each of these examinations.

**Table 15 - Examinations Conducted by Status Type**

| | |
|---|---|
| Open | 7 |
| Referred for Management Review | 5 |
| Referred to Legal | 9 |
| Closed – Out of Business | 4 |
| Closed – No Violation | 7 |
| Closed – Final Order | 2 |
| Closed – Admonishment or Guidance Letter | 10 |

In 2001 when Part IV of Chapter 560, Florida Statutes was enacted, the Office did not request or receive any additional staffing to implement the provisions of the statute. At the time, the Office wanted to assess the fee structure changes to determine if the changes would result in sufficient revenues to support any additional staffing.

The Office was able to accomplish the development and implementation of the statewide database with existing administrative staff, but has had to significantly reallocate examination resources to accomplish the limited enforcement activity to date. The resources have been borrowed from other equally important regulatory programs causing a commensurate reduction in those existing regulatory programs. Management felt that it was necessary in the short-term to demonstrate that an effective enforcement program was needed, and to assess what amount of regulatory effort would be needed in order to be effective.

The Office has now completed this assessment and is in the process of requesting 12 FTE positions (10 examiners and 2 investigators) in order to implement an effective regulatory program. This addition would be within existing revenues and require no fee increases. We believe that approval of this request is crucial to the continued success of the Deferred Presentment regulatory program, and to fulfilling the legislative intent of SB 1526.

Regulatory Concerns

- Several payday lenders utilize the so called "national bank model" wherein a non-bank lender becomes affiliated with a national bank for purposes of making payday loans. The affiliation is typically made to assist non-bank companies in evading consumer protection laws, including usury laws and payday loan laws. The typical model for such transactions involves loans made over the counter at the non-bank affiliate's location, such as check cashers, pawnshops, and convenience stores. The national bank's involvement in the transaction is typically nominal, and the loan is usually bought back by the non-bank affiliate immediately or shortly after the consummation of the payday loan transaction. The payday lender advances the money, takes the risk, and collects the debt. Some payday lenders may argue that state consumer protection laws are preempted by Federal law and that the national bank can export deregulated interest rates from the state where the bank is located. The Office disagrees with this interpretation and will pursue necessary remedies against national bank model companies when deemed appropriate.
- Under the current Act, consumers must provide evidence that the check has cleared the bank prior to entering into a new DPT with the existing DPP or another DPP. Some have suggested this places an undue burden on the customer to produce "evidence" that the check has cleared. Consumers may incur additional fees in obtaining evidence from the financial institution that the check has cleared.
- The Act does not address the situation where DPPs cease to be defined as a Deferred Presentment Provider; i.e., DPP goes out of business, without resolving open transactions in the database. The Office does not believe it has the authority under the Act to resolve those outstanding transactions. This creates a hardship for the consumers.
- The Office has determined that there are companies offering small loans over the Internet to consumers in the State of Florida. These small loans, while in many respects may resemble a deferred presentment transaction as defined in the Act, are more likely to be consumer finance transactions which would be regulated under Chapter 516, F.S.
- The Office has determined that there have been a number of instances where consumers have provided false identification information and been able to obtain more than one DPT. The Act has a very tight confidentiality provision, which limits the role the Office can play in assisting DPP's in this area as these transactions are often conducted at more than one DPP. There is no clear guidance within the Act that makes this a criminal offense on the part of a customer when such activity is detected.
- Under the current Act, there is no clear guidance regarding the status of a DPT when a customer has filed and been discharged in Bankruptcy. The Office does not believe that statutory authority exists for the Office to intervene in this scenario. Currently, these situations are left to the discretion of the DPP to decide to close the transaction or leave it open.
- The Act does not address a statue of limitations with respect to DPT's. The Office believes they should fall under the 5-year limitation on General Contracts, but the Act is silent on this issue. This issue will surface as open/unpaid transactions begin to age over the next couple of years. The Office is not clear with respect to its ability to enforce

the Statute of Limitations for General Contracts, and as a result open transactions would remain on the database indefinitely.

- Since October 1, 2001 when the legislation became effective, it has become clear that the Office lacks the necessary staffing resources to implement and maintain an effective regulatory enforcement program. The original legislation did not provide any resources to the Office for the enforcement of the statute. The Office is in the process of requesting the resources necessary to accomplish the goals set for the examinations program. The Office has projected a need for 12 FTE positions statewide to effectively implement and maintain an examinations program for Chapter 560, F.S. With the fee structure changes approved as part of this legislation, the program is now capable of supporting an enforcement program of this limited size without any fee increases.

Footnotes

[1] Refer to Regulation of Fees Charged for additional details of advance and fee amounts

[2] Based on actual data captured on the Deferred Presentment Database from a random sampling of days

[3] Estimate of number of industry employees provided by Financial Service Centers of Florida

[4] Actual data provided from the Deferred Presentment Database for transactions conducted between November 2002 and October 2003. Estimates are based on historical performance using this actual data

[5] Total number of providers and store locations represent licensees with "Active" status as of EOM October 2003. Transaction information based on actual number of transactions processed during the 12 month period from November 2002 through October 2003

[6] Federal Reserve Board, Regulation Z. For 13.8 days, the percentage rate of interest is 11.1 percent. For 365 days (1 year), the percentage rate of interest is 283 = 11.1*365/13.8

[7] PriceWaterhouseCoopers, October 2001, The Payday Advance Industry: 1999 Company Survey Findings

[8] Due to DPP system issue that prevents their access to the Database. Most common cause is that DPP Internet Service Provider is experiencing an outage. Vendor has maintained a system availability of greater than 99.7% since program inception; the program requires 99% system availability