

H. CARL McCALL  
STATE COMPTROLLER



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STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**

December 10, 1999

Ms. Elizabeth McCaul  
Acting Superintendent  
New York State Banking Department  
Two Rector Street  
New York, NY 10006

Re: Report 99-F-37

Dear Ms. McCaul:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law, we have reviewed the actions taken by officials of the New York State Banking Department (Department), as of November 9, 1999, to implement the recommendations contained in our audit report, *Regulation of the Mortgage Banking Industry* (Report 97-S-66). Our report, which was issued on December 14, 1998, examined the Department's effectiveness in regulating the State's mortgage banking industry.

**Background**

Mortgage bankers (bankers) specialize in making loans to finance the purchase of, or equity in, one- to four-family residential properties. Due to a rapidly-expanding consumer market, they have been placing increasing reliance on mortgage brokers (brokers) to initiate loans to consumers. During calendar year 1998, mortgage bankers provided 205,912 mortgage loans, totaling \$35.4 billion, to State residents. The Department's Mortgage Banking Division (Division) is responsible for the investigation, licensing, and registration of mortgage bankers and brokers; and for the performance of periodic on-site examinations of their continuing business activities. Division staff also handle consumers' mortgage-related complaints. During the 1998-99 fiscal year, the Division collected more than \$2.2 million in licensing and registration fees and \$157,400 in fines, and recovered \$345,857 in refunds for consumers.

**Summary Conclusions**

In our prior audit, we found that, in general, the Department was regulating the mortgage banking industry effectively. However, we identified several opportunities for improvement that would enhance the Department's regulatory effectiveness. For example, we recommended that

the Department consider requiring licensed mortgage bankers and registered mortgage brokers to pass a qualifying examination and fulfill continuing education requirements, as is done in other states. In our follow-up review, we found that Department officials had made some progress in addressing these improvement opportunities.

### **Summary of Status of Prior Audit Recommendations**

Of the seven prior audit recommendations, Department officials have implemented two recommendations, have partially implemented two recommendations, and have not implemented three recommendations.

### **Follow-up Observations**

#### **Recommendation 1**

*Consider having the Division, rather than the applicant, hire the investigative agencies to perform the required background checks.*

Status - Not Implemented

Agency Action - Department officials continue to assert that there is no demonstrated need for them to implement this recommendation. They believe that their existing checks and balances over banker/broker applicant screening (e.g., fingerprint checks), help ensure that an independent investigation report is rendered.

#### **Recommendation 2**

*Enhance lines of communication with the Attorney General's Office regarding the actions taken against unregistered brokers. If no effective action is being taken, consider the benefits of seeking legislative authority that would allow the Department to fine/penalize the offenders.*

Status - Not Implemented

Agency Action - Department officials informed us that they believe the responsibility of dealing with unregistered brokers rests with the New York State Attorney General's (AG) Office, which they described as less than cooperative with Department staff in the past. For that reason, they said they have made no formal attempts to enhance lines of communication with the AG's Office, nor have they sought the recommended legislative authority.

#### **Recommendation 3**

*Study the benefits of instituting a qualifying examination for applicants and/or continuing educational requirements for licensed bankers and registered brokers. If it is deemed beneficial,*

*develop a strategy for implementing such examination and/or training.*

Status - Not Implemented

Agency Action - Department officials indicated that, while they have not done a formal study on this topic, they are aware that the establishment of continuing educational requirements for brokers and bankers would be beneficial, and thus are not averse to it. However, they expressed the opinion that the imposition and/or administration of such requirements should be handled by the private sector and not by the Department.

#### **Recommendation 4**

*Make every effort to comply with Department policy when performing on-site examinations of bankers and brokers.*

Status - Partially Implemented

Agency Action - Our review of the Division's examination schedule for calendar year 1998 found that most of the 723 scheduled examinations had been performed within the established time frames. However, 53 examinations scheduled for the first six months of this period were not initiated until 1999, or more than six months later. We were not provided evidence that Division officials had evaluated the reasons for these delayed examinations. However, at the conclusion of our review, we were provided an overview of the reasons.

#### **Recommendation 5**

*Implement a monitoring system that will enable Department officials to determine why the Division is not complying with the annual examination schedules. If it is determined that utilizing a calendar-year schedule is not in the Division's best interest, redesign the annual schedule as warranted.*

Status - Partially Implemented

Agency Action - Division officials prepare a periodic printout of their scheduled examinations illustrating each examination's planned and actual starting dates. However, as indicated in the agency's actions in response to Recommendation 4, they have not documented an analysis of the reasons why examinations are not performed as scheduled.

#### **Recommendation 6**

*Include consumer-related mortgage-banking issues in the Department's consumer outreach program.*

Status - Implemented

Agency Action - Division officials have coordinated with the Department's Consumer Services Division to include consumer-related mortgage-banking issues in their outreach program. An examiner from the Division attends the Consumer Services Division's outreach programs to present consumer-oriented issues on securing mortgages. The presentation includes information on the role and function of the Division, unscrupulous lending activities to watch out for, and resources for mortgage information.

**Recommendation 7**

*Study the benefits and feasibility of introducing legislation that would "cap" mortgage broker application/processing fees.*

Status - Implemented

Agency Action - Department officials did not formally study the benefits and feasibility of introducing legislation that would "cap" mortgage broker fees. However, they are developing proposed legislation that would impose various restrictions and limitations on lenders to help prevent unscrupulous lending practices. In our opinion, the proposed legislation meets the intent of our recommendation.

Major contributors to this report were Frank Patone and Sheila Jones.

We would appreciate your written response to this report within 30 days, indicating any actions planned or taken to address any unresolved matters discussed in this report. We also thank the management and staff of the New York State Banking Department for the courtesies and cooperation extended to our staff during this review.

Very truly yours,

Frank J. Houston  
Audit Director

cc: Charles Conaway  
Gideon Weingarten