

Department of Financial Services

Oversight of the Title Insurance Industry

Report 2017-S-10 | March 2019

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine if the Department of Financial Services (DFS) adequately monitors the State's title insurance industry (Industry). The audit scope covers the period October 3, 2011 through October 9, 2018.

About the Program

DFS is responsible for regulating all insurance in New York State, including title insurance. Title insurance protects the property owner and mortgage lender against future claims for any unknown defects in the title to the property at the time of sale. The cost of title insurance is higher in New York State than in comparable states, as noted by DFS officials in a January 2018 written statement to the Assembly Standing Committee on Insurance. For 2016, DFS reported \$11.9 billion in net title insurance premiums.

New York State Insurance Law (Insurance Law) requires DFS to conduct an examination at least once every five years of every authorized domestic insurer that makes or files rates. Additionally, DFS reviews specific functions the Title Insurance Rate Service Association (TIRSA) performs for its members and DFS. TIRSA, a not-for-profit corporation established by the Legislature in 1993, is the statistical agent of DFS and a rate service organization. In its role as a statistical agent, TIRSA is responsible for compiling statistics that track aggregate and individual insurer losses, as well as expenses and revenues for all title insurance companies in the State. As a rate service organization, TIRSA is responsible for submitting rate applications for DFS approval on behalf of insurers who authorize TIRSA to do so. The Insurance Law provides that rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers. Currently, four of the seven domestic title insurance companies authorize TIRSA to submit rates on their behalf.

Section 2139 of the Insurance Law was enacted in 2014, requiring every title insurance agent to be licensed by DFS. DFS is authorized to monitor abuses by agents and to suspend or revoke licenses when necessary. Additionally, compensating someone for a referral for title insurance is a violation of Section 6409 of the Insurance Law.

Furthermore, the DFS Superintendent has authority pursuant to Section 301 of the Financial Services Law to conduct investigations, research, studies, and analyses of matters affecting the interests of consumers of financial products and services, including tracking and monitoring complaints. Additionally, DFS has been working to address activities and expenses that officials say are inappropriate and that have unnecessarily increased the cost of title insurance for New Yorkers. DFS' efforts included proposed Regulation 208, which was subsequently annulled by the Courts. The State appealed the decision, which was then overturned by the Appellate Division, First Department. In its decision, the First Department upheld the validity of Regulation 208's prohibition on improper inducements.

Key Findings

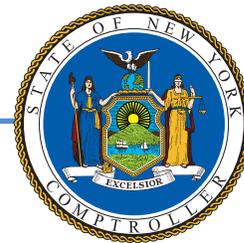
- While DFS – due to perceived weaknesses in the Industry – has worked to strengthen its oversight through the regulatory process, enforcement of the existing regulations has lagged. Fines and other penalties for inappropriate expenses and improper business conduct have not been commensurate with the concerns DFS has expressed in these areas. In 2014, legislation was enacted to license title insurance agents. As of August 2018, 2,727 title agents had been licensed by DFS. Between September 2014 (when the requirement to license title insurance agents went into effect) and March 2018, DFS issued 27 fines for licensing, totaling just over \$57,000. Of those fines, only four – for just under \$23,000 – were for business conduct, including: transacting insurance business in New York without a license (\$6,800); and engaging in the business of insurance with a felony conviction involving dishonesty or a breach of trust, without the written consent of a regulatory official (\$13,000). The small number of fines does not seem to reconcile with DFS’ well-documented concerns in this area. Additionally, during our audit period, no title insurance companies were fined.
- DFS is required to conduct an examination of TIRSA every five years. The most recent examination included a review of market conduct, actuarial, and information technology areas. The examination’s report contained 21 recommendations, including some to address weaknesses related to data reasonableness, compliance with recommendations from previous examinations, and lack of policies and procedures in specific areas. When asked about compliance with those recommendations, DFS officials – while insisting corrective action had been taken – could not provide written evidence to support what steps had been performed. DFS also conceded that it has been aware of reliability issues with data generated or used by TIRSA since March 2009, when an earlier report identified these issues. DFS officials stated they have been working with TIRSA on these issues. Nevertheless, the most recent examination noted that TIRSA had limited internal mechanisms in place to ensure that the resulting data was reasonable and rates were set using accurate data. Further, DFS has not demonstrated that this situation has been resolved. This is particularly concerning because TIRSA is responsible for calculating and submitting title insurance rate changes to DFS for a majority of the domestic title insurance companies.
- DFS officials placed impediments on our audit, including delays in access to records needed to evaluate the effectiveness of their oversight. As a result, there is a risk that material information concerning DFS’ oversight of the Industry was withheld from us.

Key Recommendations

- Formally assess enforcement actions and monitoring activities to determine if DFS’ Industry oversight is effective.
- Develop and implement procedures for the utilization and quality assurance of information

that DFS uses to make decisions related to the Industry.

- Follow up to ensure recommendations resulting from examinations are monitored and implemented.
- Allow unfettered access to people and documents relevant to audits and create a plan of action to fully comply with all future audit requests.



Office of the New State Comptroller Division of State Government Accountability

March 21, 2019

Ms. Linda A. Lacewell
Acting Superintendent of Financial Services
Department of Financial Services
1 State Street
New York, NY 10004-1511

Dear Superintendent Lacewell:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By doing so, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight of the Title Insurance Industry*. The audit was performed 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Abbreviation	Description	Identifier
DFS	Department of Financial Services	<i>Auditee</i>
Industry	New York State's title insurance industry	<i>Key Term</i>
Insurance Law	New York State Insurance Law	<i>Key Term</i>
TIRSA	Title Insurance Rate Service Association	<i>Key Term</i>

Background

The Department of Financial Services (DFS) is responsible for regulating all insurance in New York State, including the title insurance industry (Industry). Title insurance protects the property owner and mortgage lender against future claims for any unknown defects in the title to the property at the time of sale. For 2016, DFS reported \$11.9 billion in net premiums for title insurance. The cost of title insurance in New York State is higher than in comparable states, as noted by DFS officials in a January 2018 written statement to the Assembly Standing Committee on Insurance.

According to Section 309(b)(3) of the New York State Insurance Law (Insurance Law), DFS is charged with conducting an examination at least once every five years of every authorized domestic insurer that makes or files rates, as well as any insurance rate service organization. There are generally two types of examinations: financial and market conduct. The purpose of a financial examination is to verify that, as of the examination date, an examined insurer's financial statements, as well as its corporate conduct during the examination period, are in compliance with DFS laws, rules, and regulations. A market conduct examination focuses on the fair treatment of policyholders and areas such as company operations, complaint handling, marketing, claims, rate and form filing, and policyholder service. DFS conducts financial and market conduct reviews of the seven domestic companies dealing in title insurance, in accordance with its own internal procedures manual and the National Association of Insurance Commissioners procedures manual. Occasionally, the financial and market conduct examinations are combined and conducted at the same time at the discretion of DFS. Additionally, Section 301 of the Financial Services Law stipulates that "the superintendent shall have the power to conduct investigations, research, studies and analyses of matters affecting the interests of consumers of financial products and services, including tracking and monitoring complaints."

Furthermore, Section 2139 of the Insurance Law, effective September 27, 2014, requires every title insurance agent to be licensed by DFS. Under the Insurance Law, DFS is authorized to monitor abuses by agents and to suspend or revoke licenses accordingly. The Insurance Law also provides that insurance rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers. Additionally, compensating someone for a referral is a violation of Section 6409 of the Insurance Law. Section 2127 of the Insurance Law permits the Superintendent of Financial Services to fine a licensee, in lieu of revoking their license, a penalty not exceeding \$500 for each violation, and an additional penalty of \$2,500 in the aggregate for all violations. Section 2102(g) allows for a fine not to exceed \$500 for each transaction in which an agent acts without a license. Also, Section 109 permits the Superintendent to fine

an insurer or agent a penalty not exceeding \$1,000 for each willful violation of the Insurance Law or regulations.

The Title Insurance Rate Service Association (TIRSA) is the rate service organization for a majority of the title insurance companies under DFS' oversight. TIRSA is responsible for submitting rate applications to DFS on behalf of the insurers who have authorized TIRSA to do so. Title insurance companies may also submit rates separately if they feel a deviation from the rate TIRSA submitted is appropriate or necessary. Currently, three of the seven domestic title insurance companies file rates independently of TIRSA. In its other role as a statistical agent, TIRSA is responsible for compiling statistics that track aggregate and individual insurer losses, as well as expenses and revenues for all domestic title insurance companies. As part of its oversight, every five years DFS conducts a review of TIRSA as it relates to DFS-monitored functions, including the association's operations, its role as a statistical agent, and its function as a rate service organization.

Audit Findings and Recommendations

DFS has worked over the past decade to establish stricter requirements to ensure title insurance rates for New Yorkers are reasonable and appropriate. However, while DFS has focused on strengthening its oversight responsibilities of title insurance costs, monitoring and enforcement efforts have been limited. For example, when we asked about the lack of enforcement activities, DFS officials insisted they have made extensive efforts in that area, despite being unable to provide data to support their claims. The data we obtained from DFS' webpage corroborated our initial conclusion that officials may not be fully exercising their authority to penalize title insurance companies and agents for non-compliance – penalties that may also serve as a deterrent against future non-compliance.

We also found that DFS identified reliability concerns in their last two examinations with the data used by TIRSA to calculate the title insurance rates, yet TIRSA continues to use this data to calculate the rates submitted to DFS for approval. One data reliability issue noted in the most recent TIRSA examination stated that, while the addition of a qualified third party has significantly enhanced the data gathering process and increased data accuracy, TIRSA has limited internal mechanisms to ensure that the resulting data is reasonable. Although DFS officials stated that steps were taken to improve data reliability, when asked to provide documentation to support these statements, officials provided limited information that did not alter our original conclusion. Therefore, DFS risks using unverified data as part of its rate decision-making process. Additionally, continuing to strengthen the criteria for title insurers' allowable expenses for rate setting helps enforcement efforts. During the course of our audit, officials added controls to follow up on recommendations from its examinations. These added controls are intended to increase the effectiveness of DFS' monitoring of the Industry and could potentially reduce insurance costs.

Throughout our audit, DFS did not provide information that should have been readily available in a timely manner. In one instance, DFS took more than six months to meet our request. Officials eventually supplied the information, but failed to provide necessary details to fully explain certain circumstances and significantly diminished our ability to ask follow-up questions to clarify topics. Considering the importance of this information to our audit objective, our ability to draw conclusions regarding DFS' overall monitoring of the Industry was diminished.

Enforcement and Monitoring Activities

Over the last decade, DFS has worked to strengthen Industry oversight through new regulations (see the Exhibit at the end of this report for a

summary of these efforts). DFS (then the New York State Insurance Department) initially proposed a bill requiring the licensing of title insurance agents in 2008, then again in both 2009 and 2010. Finally, enacted as part of Chapter 57 of the Laws of 2014, Section 2139 of the Insurance Law now requires title insurance agents to be licensed in New York State, under the monitoring authority of DFS.

Fines and Related Mechanisms

Between September 2014 (when the requirement to license title insurance agents went into effect) and March 2018, DFS issued 27 fines for licensing, totaling just over \$57,000. Of those fines, four (totaling just under \$23,000) were for business conduct; the majority were for application omissions. However, with approximately 2,700 licensed agents, it does not seem reasonable that only four were fined for business conduct during this period, particularly when DFS cited significant levels of questionable practices/expenses and attempted for eight years to add these oversight responsibilities. While DFS has developed regulations outlining appropriate business conduct to strengthen controls over these questionable expenses, DFS needs to enforce existing regulations to discourage illegal and undesirable actions.

During a public hearing on January 12, 2018, DFS officials stated that DFS had evidence to bring enforcement actions against certain title companies and agents. However, a DFS official also stated that levying fines against title companies and agents would not directly benefit consumers or necessarily change the insurance policy rates, which include prohibited expenses. DFS did not impose any fines on title insurance companies as a result of its oversight efforts during our audit period. We asked DFS officials if there were any other enforcement mechanisms, aside from the title agent fines, to resolve violations or address improper conduct. Officials noted various other means of addressing these issues, including:

- Stipulations with agreed fines;
- Hearings and/or prosecutions;
- Restitution; and
- Warning letters.

When we requested documentation to support that these actions had been taken, officials stated that many of these items are filed separately and the information is not tracked in a way that can be easily summarized. They did not provide us any evidence of these enforcement efforts; therefore, we

cannot determine what other enforcement actions DFS has actually taken.

DFS officials also noted they negotiated up to a 30 percent reduction in title costs for certain mortgage refinance transactions with title insurance companies. However, when we attempted to determine what the reduction (which DFS officials indicated went into effect August 1, 2015) was based on, DFS officials could not provide support for their actions. Further, these refinance transactions comprise only a fraction of overall title premium transactions (6.4 percent) and total premium revenue (16.3 percent) for 2017. Additionally, when we attempted to verify that the reduction actually had taken place, DFS officials noted that they do not track rates in this manner.

These undocumented activities do not support that DFS officials have taken the necessary enforcement actions to effectively manage title insurers and deter them from including inappropriate expenses in the data used in rate calculations.

TIRSA Monitoring and Follow-Up Actions

In 2013, as required by Section 309 of the Insurance Law, DFS oversaw an examination of TIRSA. As a result of the examination, 21 recommendations were made, encompassing subjects such as compliance with previous report recommendations and the reliability of data used by TIRSA. We found DFS officials could not provide evidence that any of the 21 issues had been remedied, despite their insistence that they had been. TIRSA officials also stated that the recommendations had been implemented, but had no documentation to corroborate this statement. In response to our findings, DFS has added controls to follow up on recommendations from its examinations, which potentially could increase the effectiveness of DFS' monitoring of the Industry.

We determined DFS has been aware of reliability issues with data generated or used by TIRSA since March 2009, when a prior report identified these issues. DFS officials stated they have been working with TIRSA to ensure the data is more usable, and a vendor now conducts data reliability testing. However, the most recent examination of TIRSA showed it had limited internal mechanisms in place to ensure that the resulting data was reasonable and that the rates submitted for approval were calculated using accurate data. Further, when asked to provide documentation to support their statements, officials provided information that did not demonstrate the data was sufficiently verified. If data reliability issues persist, there are limited assurances that the data used to make decisions is accurate or complete. Therefore, we cannot be assured that the currently approved rates are appropriate. The benefits of performing this analysis (i.e., monitoring for and

identifying weaknesses or anomalies in operating activities that would not otherwise be apparent) are also diminished. These issues stem from a lack of established controls to ensure the accuracy and completeness of data.

Inadequate Cooperation by DFS Officials

According to professional audit standards, we are required to report on the constraints imposed on us by DFS (including delays in access to records) and their effect on our audit conclusions.

In order to meet government auditing standards, auditors require unfettered access to people and documents relevant to the audit. DFS officials hampered auditors' progress in obtaining independent, reliable information and, throughout the audit, refused to allow DFS staff to meet with members of the audit team without the presence of a member of DFS' upper management. When we asked to meet with staff directly, without a member of upper management in attendance, DFS officials refused. We met with officials on May 9, 2017 to discuss the matter, and DFS management stated they did not understand how their presence in a meeting was an impairment or independence issue. They continued to insist that upper management be present in meetings between the audit team and DFS staff. In addition, DFS officials required that all audit team requests be funneled through upper management and that all information provided to the auditors be funneled back through upper management.

We encountered various delays throughout the audit – some for information that should have been readily available. The instances documented in this report are just a few of many we encountered.

DFS officials were unwilling to allow their staff to provide information directly to us without prior management approval and clearance; therefore, we have limited assurance that the data presented is complete and unmodified. As a result, consistent with professional audit standards, we considered that information to be less reliable in forming our audit conclusions. Those professional standards also require us to report management's impairment of our audit scope. Readers of this report should consider the effect of these scope limitations on the findings and conclusions presented in our report.

Recommendations

1. Formally assess enforcement actions and monitoring activities to determine if the DFS' Industry oversight is effective.
2. Develop and implement procedures for the utilization and quality

assurance of information that DFS uses to make decisions related to the Industry.

3. Follow up to ensure recommendations resulting from examinations are monitored and implemented.
4. Allow unfettered access to people and documents relevant to audits and create a plan of action to fully comply with all future audit requests.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if DFS adequately monitors the State's title insurance industry. The audit scope covers the period October 3, 2011 through October 9, 2018.

To accomplish our objective, we reviewed relevant laws and regulations and DFS policies related to title insurance. We also became familiar with and assessed DFS' internal controls as they relate to our audit objective. We held meetings with DFS officials to gain an understanding of their oversight of the Industry. We also met with Industry officials to gain an understanding of the oversight provided by DFS. Additionally, we reviewed various forms of data, including examinations and complaints. We judgmentally selected financial examinations by selecting the most recent examination for each of the five companies DFS oversees. Two other companies were new to the Industry and had not yet had a financial examination completed. We had additional questions on data reliability. To support DFS' answers regarding our questions on data reliability, we reviewed work papers for the domestic company with the highest dollar amount of premiums written for our scope period. This documentation was sufficient, and we determined we did not need to review additional examinations to reach conclusions in this area. We reviewed all 32 complaints in our scope period, testing them against system data before concluding that the data was complete and accurate. The results of our sampling work support the findings, conclusions, and recommendations in this report.

Statutory Requirements

Authority

We conducted our performance audit 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

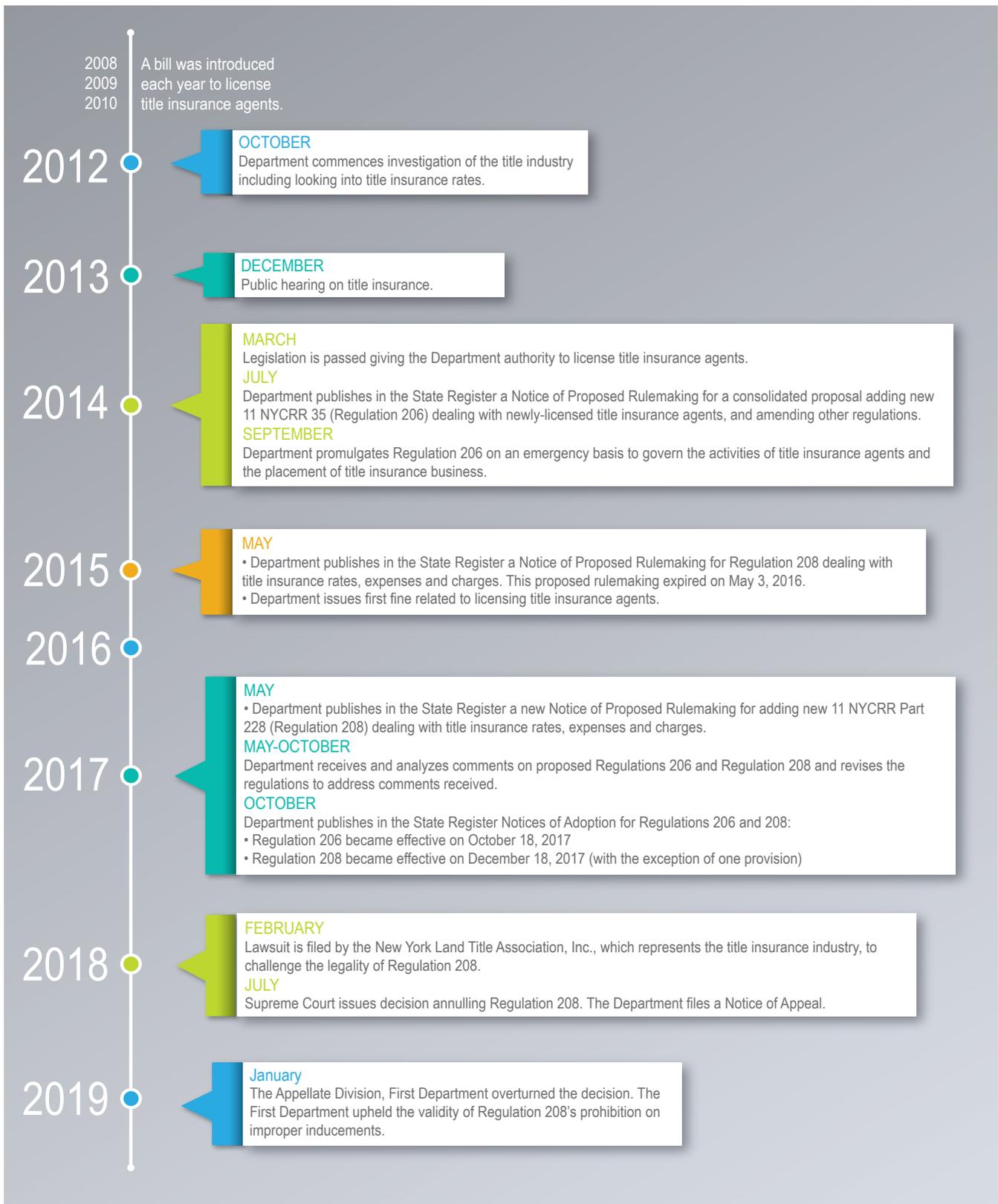
The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to DFS officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it. DFS officials generally agreed with our recommendations and noted they are making necessary changes. Our responses to certain DFS comments are included in the report's State Comptroller's Comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Superintendent of the Department of Financial Services shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

Exhibit



Agency Comments



Andrew M. Cuomo
Governor

February 11, 2019

Mr. Brian Reilly
Audit Director
Office of the State Comptroller
110 State Street, 11th Floor
Albany, New York 12236

Re: Oversight of the Title Insurance Industry Draft Report 2017-S-10

Dear Mr. Brian Reilly:

Thank you for the opportunity to respond to the Office of the State Comptroller (“OSC”) draft audit report, “Oversight of the Title Insurance Industry Effectiveness, 2017-S10” (the “Draft Report”). The Draft Report makes four findings that relate to the Department of Financial Services’s (“Department”) ongoing efforts to reform and improve current practices in the title insurance industry. These findings include a recommendation that the Department assess the effectiveness of its enforcement efforts relating to title insurance, improve the reliability of data received from the Title Insurance Rate Service Association, Inc. (TIRSA) and address deficiencies identified by the Department’s examination of TIRSA relating to such processes, and improve audit responsiveness.

The Department is charged with the important task of regulating the title insurance industry, as it regulates all insurance companies and agents in New York. Pursuant to its regulatory mission and the requirements of the Insurance Law, the Department regularly examines the companies for fiscal soundness, reviews and approves rate submissions, reviews and approves policy forms, and oversees the market conduct of the industry. The Department does so with consumer protections at the forefront of its mission.

This letter addresses each of the three topics identified in the Draft Report in the order of the Draft Report.

1. Enforcement

In its first finding in the Draft Report, OSC recommends that the Department:

Formally assess enforcement actions and monitoring activities to determine if the Department's industry oversight is effective.

The Department agrees with OSC that enforcement is an important and necessary tool to ensure compliant behavior by the industries regulated by the Department. The Department takes seriously its role in regulating title agents and insurers and has devoted significant resources over several years to identify and correct improper activities in this industry.

In 2012, the Department commenced an investigation to review the expenses the industry was including in the financial data utilized in setting title insurance premiums paid by New Yorkers – 95% of the premium – and whether rates that were based on these expenses were fair and appropriate. The Department also sought to determine whether title insurance corporations and title insurance agents were making expenditures that were prohibited under Insurance Law section 6409(d) as inducements for title insurance business. During this investigation, the Department found numerous objectionable expenses throughout the industry. These expenses were replete with excessive entertainment that was being used as inducements for title insurance referrals.

The Department has undertaken numerous actions to address these investigative findings. After a public hearing held in December 2013, the Department considered the regulatory and enforcement options available to address the practices identified. The first reform was the licensing of title agents. As a result, licensing of title agents was included in the Governor's Budget Bill for 2014 and the legislature passed legislation authorizing the Department to license and regulate title agents in New York. Next, the Department determined that, because certain inappropriate practices were widespread, establishing rules for the prudent conduct of industry by regulation was an appropriate course of action. Accordingly, in 2015, the Department proposed Regulations 206 and 208 to implement the licensing requirements and address these important findings from the Department's investigation. These regulations were designed to give the industry clear regulatory parameters for its activities, as well as some other important activities including the fiduciary obligations entrusted to title agents with respect to the collection and holding of large amounts of money collected at real estate closings for disbursal. The regulations also addressed conduct of title agents, the relationships between affiliated organizations and important disclosures that must be made to consumers.

These regulations were proposed under the State Administrative Procedure Act for multiple comment periods. These proposed regulations were met with numerous delays, including threats of litigation. After extensive stakeholder engagement, they were finalized in October 2017.

Specifically, Regulation 208 establishes regulatory requirements under Insurance Law 6409(d), to prohibit improper inducements. Regulation 208 also requires the industry to eliminate these improper inducement expenses from being included in future rates. Soon after its finalization, a lawsuit was filed challenging Regulation 208 and a trial court judge stayed the regulation. By decision dated January 15, 2019, the Appellate Division, First Department unanimously upheld Regulation 208's prohibition on such improper inducements and the rate filing requirements.

*** Comment 1**

The Department agrees with OSC that given the conclusion of the regulatory process and appellate court decision, it is an appropriate time to reassess enforcement actions and monitoring activities and priorities. The Department has restructured its staffing, improved its data collection and made other important changes to insure ongoing enforcement against all improper behavior by title insurers and agents. We also commit to consider other changes and improvements to the Department's efforts to ensure that the Department is taking all appropriate actions to protect New York consumers.

2. Title Insurance Rate Service Association ("TIRSA")

The second and third findings in the Draft Report relate to the Department's reliance on and examination of TIRSA. Specifically, OSC recommends that the Department:

Develop and implement procedures for the utilization and quality assurance of information that the Department uses to make decisions related to the Industry.

Follow up to ensure recommendations resulting from examinations are monitored and implemented.

TIRSA is the rate service association and statistical agent for the New York title insurance industry. As described in regulatory and judicial processes undertaken by the Department, the Department had concerns with the quality and content of data on the industry supplied to it from TIRSA. The Department also has had multiple negative findings against TIRSA during the course of its last two examinations. The Department agrees that the data quality and examination deficiencies it has identified are significant and that the response and corrective actions by TIRSA have been inadequate – indeed those are the conclusions in the Department's own exam reports. We can assure OSC and the public that the Department is working on solutions to the problems that the Department has identified during its examinations of TIRSA and ensuring appropriate follow-up to its examination findings.

3. Audit Responses and Shifting Audit Scope

As its final recommendation, the Draft Report recommends that the Department:

Allow unfettered access to people and documents relevant to audits and create a plan of action to fully comply with all future audit requests.

As the Report notes, during this audit, OSC requested and was provided with every examination of a title insurer conducted by the Department since the Department was created in 2011, including all workpapers for such examinations. OSC reviewed these materials and found them "sufficient." OSC also requested and reviewed the entire complaint file (complaint, correspondence and result) for every complaint filed with DFS during the audit period and concluded that the "data was complete and accurate." The Department has and will continue to

be a strong supervisor of title insurers in New York, and will continue its robust examination and complaint activities to protect New York consumers.

With respect to any delays noted in the Draft Report, the Department believes that they resulted from confusion regarding the shifts in the audit scope, requirements and process. The audit started as an audit of solely title insurers (explicitly excluding title agents) for the time period of 2015-2016, but was later modified to be an audit back to the creation of the Department on October 3, 2011 and later expanded after all the field work was concluded to include title agents. These shifts led to some delays, but ultimately all of the information that was requested by the Department, was provided to OSC.

*** Comment 2**

* * *

In conclusion, the Draft Report recognizes the important work that the Department is undertaking to oversee and reform the title insurance industry in order to protect consumers from paying inflated rates. Given the First Department's recent decision, the Department is further prepared to move forward to implement these important standards and safeguards, and take other appropriate actions to protect New York consumers. We agree that there is further work to be done, and the Department fully intends to continue these efforts in a comprehensive manner to maintain consistent and clear rules that protect consumers and enforce the law fully. We will actively consider OSC's recommendations as we move forward.

Sincerely,



Cassandra Lentchner
Deputy Superintendent for Compliance

State Comptroller's Comments

1. We have revised the report to reflect information provided in DFS' response.
2. We disagree. The various delays outlined in the report are only a few examples of the many encountered. Further, as noted on page 1 of the report and explained to DFS officials throughout the audit, our audit objective was to determine if DFS adequately monitors the State's title insurance industry. This would include oversight of title insurance agents. Furthermore, auditors met with officials many times to explain the reason for the expanded scope period: DFS officials' evolving description of their activities regarding the title insurance industry involved actions that went back many years, such as the investigation, and our scope period needed to cover the time frame of these actions to ensure we understood DFS' title insurance oversight activities in their entirety.

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