Audit Highlights

Highlights of Legislative Auditor report on the Division of Mortgage Lending, issued on December 11, 2008. Report # LA08-26.

Background

The Division of Mortgage Lending was established in 2003. The mission of the Division is to safeguard public interest by coordinating with industry groups to promote professionalism and ethics in the mortgage lending and escrow industries, and to ultimately provide consumers with a meaningful resolution process.

The division's regulatory activities include (1) licensing mortgage brokers, mortgage bankers, escrow agencies, mortgage agents, and escrow agents; (2) conducting examinations of licensees; (3) handling consumer complaints; (4) investigating unlicensed activity; and (5) initiating action as a result of examinations, investigations, and complaints.

The Division has two offices, with the office of the Commissioner in Las Vegas and the licensing office in Carson City. The Division has one operating budget account and is self funded. In fiscal year 2008, the Division had a total of 40 authorized positions and revenues of about $3.3 million. Funding was primarily from licensing fees and assessments.

Purpose of Audit

The purpose of this audit was to determine whether the Division provided adequate regulation of mortgage companies and if activities related to collections, accounts receivable, management information and personnel administration were carried out in accordance with applicable state laws, regulations, and policies. This audit focused on the division's activities for calendar year 2007, and subsequent periods when necessary to complete the audit's objectives.

Audit Recommendations

This audit report contains 13 recommendations to improve the Division of Mortgage Lending's regulatory and financial and administrative activities. These recommendations include policies, procedures, and other controls to help ensure examinations are performed and improve consumer protection. We also made recommendations to improve controls over revenues, accounts receivable, and other administrative functions.

The Division accepted the 13 recommendations.

Status of Recommendations

The Division's 60-day plan for corrective action is due on March 11, 2009. In addition, the six-month report on the status of audit recommendations is due on September 11, 2009.

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Division of Mortgage Lending

Department of Business and Industry

Results in Brief

The Division did not always provide adequate regulation of mortgage companies. During calendar year 2007, the Division did not meet its statutory duty to perform annual examinations of licensees. In addition, policies and procedures were not in place for scheduling examinations using a risk-based approach. As a result, companies that are a high risk to consumers did not have timely examinations. Further, the Division did not have a functional hearings process during 2007. Also, licensee financial information was not adequately monitored. Because of these deficiencies, there is an increased risk to consumers that violations of mortgage lending laws and regulatory requirements will not be detected and corrected in a timely manner.

The Division needs stronger controls over its revenue collection process and certain administrative functions. We identified weak collection efforts for about $1.5 million in unpaid assessments, fees, and fines.

Principal Findings

The Division did not perform required annual examinations for most of its licensed companies:

- Our review of division records identified 23 of 30 (77%) companies tested did not have an examination during 2007. This included mortgage brokers and bankers that were randomly selected from a list of all companies licensed on December 31, 2007.
- The Division did not perform a timely follow-up examination for 13 of 15 (87%) companies that received a poor rating on an examination. These licensees were rated "4" or "5" on their last examination, which indicates substantial or unsatisfactory compliance with laws and regulations.
- High-risk licensees that maintain certain types of trust accounts or arrange loans funded by private investors were not always examined timely. For 8 of 25 (32%) companies with trust accounts, there was no examination in 2007.
- The Division did not perform timely initial examinations for 38 of 52 (73%) licensees we tested. The untimely examinations ranged from 15 months to 4½ years after the original license date.

The division's process to implement biennial examinations is not adequate to ensure licensees meet all statutory requirements to qualify for a biennial examination. In 2007, the Legislature authorized the Division to conduct biennial examinations; however, the Division has not developed policies and procedures to ensure licensees meet all requirements. Although the Division indicated that about 75% of mortgage brokers and bankers qualify for a biennial examination, we believe that many of these licensees do not currently qualify for a biennial examination.

The Division has not maintained appropriate staffing levels to meet its statutory mandate for conducting examinations of licensees. Although the Legislature has expressed concerns over the division's staffing level and authorized 11 new examiner positions during the 2007 Legislative Session, only 1 new examiner was hired. Because of the downturn in the mortgage industry, management is taking a cautious approach to hiring staff. However, the Division still needs to develop a proper staffing plan. The cost of additional examiners can be recovered from the mortgage industry through examination fees.

The Division did not ensure licensees submitted all required financial statements, including audited financial statements from high-risk licensees. Mortgage brokers and bankers are required by state law to submit annual financial statements to the Division. If the licensee maintains certain trust accounts, audited statements for the company and the trust accounts must be submitted. Overall, 16 of 55 (29%) licensees did not submit all required statements.

The Division did not collect about $490,000 in assessments from its licensees during fiscal years 2007 and 2008. This amount includes $323,000 in costs for legal services that were not assessed for fiscal year 2007. The Division does not have policies and procedures for assessments and has not established guidelines for collection efforts and monitoring.

Better monitoring is needed for the collection of administrative fines and settlement agreements. Our review of 37 fines and settlement agreements found untimely collection efforts and incomplete accounts receivable records. This included 18 unpaid fines and agreements with a total due of about $975,000.