ROD R. BLAGOJEVICH
Governor

OFFICE OF BANKS AND REAL ESTATE

D. LORENZO PADRON
Commissioner

Bureau of Residential Finance
Mortgage Banking Division

February 11, 1998

TO: Illinois Residential Mortgage Licensees

RE: **Reissuance** of Regulatory Bulletin JS 93/1 of December 1993 concerning Rate Lock-Ins and Good Faith Estimates

The reissuance of Regulatory Bulletin JS 93/1 will reiterate to you my continued commitment to take supervisory exception to, and require immediate correction of, two unsafe and unsound practices which examiners have uncovered. They are:

1. mortgage originators who assure the customer that their loan has been locked-in, when in fact, the loan is floating; and

2. mortgage originators who issue good faith estimates at the time of application knowing that there is a high likelihood that the end investor or funder will issue a second good faith estimate at or near closing with substantially higher closing costs than stated to the customer at application.

I. FALSE PROMISES OF RATE LOCKS

Increasingly in the last few months, examiners are reporting to me that mortgage originators (whether brokers or bankers) have provided their customer with a signed lock-in form promising that the customer's rate and points have been locked in with the end investor or funder, when, in fact, these loans are floating -- **thus causing substantial pipeline exposure.**

In two cases, the threat to consumers precipitated by this practice was so grave that this Office has interceded. It will not do so again absent the threat of substantial disruption to the public. **You are not protected if you do not immediately match all locks offered to consumers with corresponding locks from end investors.**

(continued on reverse)

Therefore you are specifically advised to provide your customer with a written lock-in-form, which indicates whether the loan will float or be locked in. If it is to be locked, you, the originator, must lock it with no delay. The loan file must contain evidence of locking-in with the investor.

In the rare case where a company wishes to itself cover the risk of all loans for which customers have requested a lock-in but which are, in fact, floating, it may write to me in advance, specifying the dollar amount of such loans, provide a sworn notarized affidavit from its chief operating officer (or chief executive officer) that such practice is its standard procedure and further must specify the capital available to fund those loans. As part of investigation of a violation of this provision with respect to locking of mortgage loan terms, it may be necessary to provide this Office with a list of applications taken during a specific period with similar locks promised on the day of application, along with the disposition of those applications.

Companies continuing to falsely promise to lock rates do so at their own peril. The practice may trigger serious supervisory consequences. Not only does it cause substantial pipeline exposure -- at a time when many financial markets and experts anticipate a rise in interest rates -- but also violates the Residential Mortgage License Act of 1987's (the Act) averments (205 ILCS 105/2-4(k) and (l)). Such violations are grounds for suspending, revoking, placing on probation or fining a licensee under 4-5(h) (2), (7) and (16) of the Act. If a license application is pending when a false promise to lock occurs, the Commissioner may deny the application.

Furthermore, if you also take a fee for a false rate lock-in, you have violated Section 1050.1335 of the rules Commissioner's Rules. Also, if you falsely report to this Office that you have properly locked rate and points, you will have violated Section 4-4 of the Act -- the violation of which constitutes a Class 4 Felony. I shall refer all such violations to the Attorney General for prosecution. **I would note also, that the practices discussed herein may also violate the Illinois Consumer Fraud Act or Illinois contract law.** In the extreme case, where it is necessary to do so to protect consumers, I may ask the Attorney General to seek appointment of a receiver or a conservator under Section 6-3 of the Act ("Appointment of a Receiver or Conservator").

II. CONFLICTING GOOD FAITH ESTIMATES

Loan applications originated by brokers and closed in either the broker or funder's name must have good faith estimates issued by the originator at application time and within three (3) days of receiving the loan package by a funder or end investor. The broker is required to **know** the correct amount of investor costs for the good faith estimate. In recent months the examiners have seen an increased number of good faith estimates issued by the funder which disclose estimated settlement charges materially in excess of the good faith estimate issued by the broker. The following examples illustrate this point.

Borrower	Broker	Funder
ABC	LMN $1,174.16	RST $2,590.02
DEF	OPQ $2,249.79	XYZ $3,397.40

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These examples are not isolated and any such practices must be corrected immediately. The violate both Section 2-4 of the Act and Section 450.1250 of the Commissioner's Rules. As such they may lead to fines, suspension or revocation of a license or any other sanctions authorized by Section 4-5 of the Act.

III. CONCLUSION

You are hereby notified that violation of the guidelines, rules and statutory provisions cited herein may be grounds for immediate enforcement actions by this Office, including issuance of cease and desist orders, 30-day emergency license suspensions, removal and/or prohibition of an individual from a licensee's company, the levying of fines and penalties and assessment of fees. And, where failure to follow this directive results in unsafe and unsound practices, danger to consumers or net worth failure, this Office may move to have a receiver or conservator appointed for the violator licensee.

Should you have any questions regarding this regulatory bulletin, please contact Stanley Stewart, Assistant General Counsel, at 312-793-1419.

Very truly yours,

D. LORENZO PADRON
Commissioner