

**Title 09**  
**DEPARTMENT OF**  
**LABOR, LICENSING, AND REGULATION**

**Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION**

**09.03.06 Mortgage Lenders**

Authority: Business Regulation Article, §2-105; Financial Institutions Article, §§2-105.1, 11-503, 11-505(e)(3), 11-506(a) and (c)(1), and 11-513(a); *Real Property Article, §3-104.1*;  
Annotated Code of Maryland

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) *“Annual percentage rate (APR)”*, under §B(13) of this regulation, has the meaning stated in 12 CFR Part 226.

[(2)] (3) (text unchanged)

(4) *“Average prime offer rate”* means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Board of Governors of the Federal Reserve publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Board uses to derive these rates.

[(3)] (5)—[(9)] (11) (text unchanged)

(12) *“Fully indexed rate”* means the index rate, as defined in the mortgage loan documents, prevailing at the time the mortgage loan is approved by the lender, plus the margin that will apply after the expiration of an introductory interest rate.

(13) *Higher-Priced Mortgage Loan.*

(a) *“Higher-priced mortgage loan”* means a mortgage loan for which the annual percentage rate exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by:

(i) 1.5 or more percentage points for loans secured by a first lien on residential real property; or

(ii) 3.5 or more percentage points for loans secured by a subordinate lien on residential real property.

(b) Notwithstanding §B(13)(a) of this regulation, the calculation set forth therein for determining whether a loan is a higher-priced mortgage loan shall adjust as may be necessary to be consistent with the final rule codified at 12 CFR §226.35, as it may be amended from time to time.

(c) *“Higher-priced mortgage loan”* does not include a:

(i) *Transaction to finance the initial construction of a dwelling on residential real property;*

(ii) *Temporary loan with a term of 12 months or less, such as a loan to purchase residential real property where the borrower plans to sell a current residential real property within 12 months;*

(iii) *Reverse mortgage transaction subject to 12 CFR §226.33; or*

(iv) *Home equity line of credit subject to 12 CFR §226.5b.*

[(10)] (14)—[(12)] (16) (text unchanged)

[(13)] (17) “Licensee” has the meaning stated in Financial Institutions Article, [§11-501(h)] §11-501(f), Annotated Code of Maryland.

[(14)] (18) (text unchanged)

[(15)] (19) “Loan application” has the meaning stated in Financial Institutions Article, [§11-501(i)] §11-501(g), Annotated Code of Maryland.

[(16)] (20) “Mortgage lender” has the meaning stated in Financial Institutions Article, [§11-501(j)] §11-501(i), Annotated Code of Maryland.

[(17)] (21) (text unchanged)

(22) *“Mortgage originator” has the meaning stated in Financial Institutions Article, §11-601(k), Annotated Code of Maryland.*

[(18)] (23)—[(19)] (24) (text unchanged)

(25) *“Residential real property” has the meaning stated in Financial Institutions Article, §11-501(m), Annotated Code of Maryland.*

[(20)] (26) (text unchanged)

### **.03 Licensing Requirements.**

#### **A. Scope.**

(1)—(2) (text unchanged)

(3) *For purposes of Financial Institutions Article, §11-506(b)(1), Annotated Code of Maryland, an individual is considered to have at least 3 years of experience in the mortgage lending business if:*

(a) *The individual has received compensation in connection with a minimum of 12 closed mortgage loans per year for each of the 3 years; or*

(b) *The individual has worked in the mortgage lending business at least an average of 20 hours per week for each of the 3 years.*

(4) *The Commissioner may consider the totality of an individual's particular duties and activities while engaged in the mortgage lending business to determine whether the individual has at least 3 years of experience.*

B.—H. (text unchanged)

*I. Designation of Mortgage-Related Activity.*

*(1) A licensee shall designate on its original license application and on any license renewal application whether it will act, under its license, as one or more of the following:*

*(a) A lender;*

*(b) A mortgage broker; or*

*(c) A mortgage servicer.*

*(2) Notification.*

*(a) A licensee shall notify the Commissioner in writing if, after the issuance or the renewal of its license, it begins conducting a new activity that the licensee did not designate under §I(1) of this regulation.*

*(b) The licensee shall deliver the notification to the Commissioner within 10 business days after beginning the new activity.*

**.04 Records.**

A. (text unchanged)

B. Content of Records.

(1) For each mortgage loan made or serviced by a licensee, a file shall be maintained which contains, at a minimum, the following:

(a)—(o) (text unchanged)

(p) Any other document on which the licensee relied in underwriting the loan; [and]

(q) Optional insurance:

(i) (text unchanged)

(ii) This paragraph does not apply to hazard insurance on the property securing the loan[.]; *and*

*(r) Records of any foreclosure action begun by the licensee by filing an order to docket or a complaint to foreclose including, if applicable:*

*(i) The name and mortgage originator license number of the mortgage originator that originated the loan if that information is contained in the security instrument underlying the foreclosure or is otherwise known to the licensee; and*

*(ii) The name and mortgage lender license number of the mortgage lender that originated the loan.*

(2)—(5) (text unchanged)

**.07 Agreements with the Borrower.**

A.—C. (text unchanged)

*D. Security Instruments. Licensees shall comply with the requirements relating to security instruments to be recorded in connection with the inclusion of the name and licensee number of the mortgage lender and mortgage originator, or an affidavit in lieu thereof, as set forth in Real Property Article, §3-104.1, Annotated Code of Maryland.*

**.20 Duty of Care.**

*A. Good Faith and Fair Dealing. A licensee has a duty of good faith and fair dealing in communications, transactions, and course of dealings with a borrower in connection with the advertisement, solicitation, making, servicing, purchase, or sale of any mortgage loan, including, but not limited to:*

*(1) The duty to recommend to a borrower or induce a borrower to enter into only a mortgage loan refinancing that has a net tangible benefit to a borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances;*

*(2) The duty to provide to a borrower who is offered a higher-priced mortgage loan information about the non-higher-priced mortgage loans that the licensee can make available and for which the borrower may qualify; and*

*(3) The duty when servicing mortgage loans to:*

*(a) Promptly provide borrowers with an accurate accounting of the debt owed when borrowers request an accounting;*

*(b) Make borrowers in default aware of loss mitigation options and services offered by the licensee;*

*(c) Provide trained personnel and telephone facilities sufficient to promptly answer and respond to borrower inquiries regarding their mortgage loans; and*

*(d) Pursue loss mitigation when possible.*

*B. Method to Determine Net Tangible Benefit.*

*(1) When determining whether a refinance of a mortgage loan will provide a net tangible benefit to the borrower, a licensee shall make a reasonable inquiry of the borrower to determine what net tangible benefit, if any, the borrower will receive from a mortgage loan. Net tangible benefits may include, but are not limited to:*

*(a) Obtaining a lower interest rate;*

*(b) Obtaining a lower monthly payment, including principal, interest, taxes, and insurance;*

*(c) Obtaining a shorter amortization schedule;*

*(d) Changing from an adjustable rate to a fixed rate;*

*(e) Eliminating a negative amortization feature;*

*(f) Eliminating a balloon payment feature;*

*(g) Receiving cash-out from the new loan in an amount greater than all closing costs incurred in connection with the loan;*

*(h) Avoiding foreclosure;*

*(i) Eliminating private mortgage insurance; and*

*(j) Consolidating other existing loans into a new mortgage loan.*

*(2) A licensee is considered to have conducted a reasonable inquiry of whether a refinance of a mortgage loan provides a net tangible benefit to a borrower if the mortgage lender has the borrower complete and sign a net tangible benefit worksheet on the form prescribed by the Commissioner.*

### ***.21 Nontraditional and Higher-Priced Mortgage Loans.***

*A. In this regulation, the following terms have the meanings indicated:*

*(1) "Interest-only mortgage loan" means a mortgage loan on which, for a specified period of time, the borrower is required to:*

*(a) Pay only the interest due on the mortgage loan; and*

*(b) After the interest-only period ends, make payments that include both principal and interest.*

*(2) "Nontraditional mortgage loan" means any mortgage loan that allows the borrower to defer repayment of principal, interest, or both, including, but not limited to, all interest-only mortgage loans and payment-option ARMs.*

*(3) "Payment-option ARM" means an adjustable rate mortgage loan:*

*(a) That allows the borrower to choose from a number of different payment options, which may include, but are not limited to:*

*(i) A minimum payment option based on an introductory interest rate; or*

*(ii) A fully amortizing principal and interest payment based on a 15-year or 30-year loan term, plus any required escrow payments; and*

*(b) For which, at a certain point in the mortgage loan term, the monthly payment amount is required to be set at an amount that will fully amortize the outstanding balance of the loan over the remaining loan term.*

*(4) "Reduced documentation mortgage loan" means a mortgage loan for which the lender sets reduced or minimum documentation standards to substantiate the borrower's income and assets.*

*B. Marketing and Promotion.*

*(1) Licensee marketing and promotional communications and materials for nontraditional and higher-priced mortgage loans shall include information about the costs, terms, features, and risks of nontraditional and higher-priced loans that can assist consumers in their product selection, including, as applicable, information on the following:*

*(a) Payment shock resulting from potential interest rate increases, including how the new payment will be calculated when the introductory fixed-rate period expires;*

*(b) Negative amortization, including:*

*(i) That the effect of negative amortization is the increase in the principal mortgage loan amount and the decrease of home equity; and*

*(ii) Any other negative consequences, such as the possibility that a negatively amortizing mortgage loan could make it more difficult to refinance or to obtain cash upon a sale;*

*(c) Prepayment penalties that may be imposed if the mortgage, or any part of it, is paid off before maturity, including how any prepayment penalty may be calculated and when it may be imposed;*

*(d) Balloon payments, including:*

*(i) That a balloon payment is a scheduled lump sum usually due at the end of the mortgage loan term that is significantly larger than the other regularly scheduled periodic payments; and*

*(ii) That the inability to make a balloon payment could result in a foreclosure;*

*(e) Responsibility for taxes and insurance when:*

*(i) The borrower is required to make payments for real estate taxes and property insurance, in addition to the loan payment; and*

*(ii) The lender does not establish an escrow account for the collection and disbursement of these payments, including the fact that the cost of taxes and insurance may be substantial; and*

*(f) Cost of reduced documentation loans when there is a pricing premium attached to a reduced documentation or stated income mortgage loan.*

*(2) Illustrations.*

*(a) In complying with this regulation, a licensee may utilize the sample illustrations included in:*

*(i) The Illustrations of Consumer Information for Nontraditional Mortgage Borrowers issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration as final guidance on June 8, 2007; and*

*(ii) Any consumer information for higher-priced or subprime mortgage lending that may be issued by the foregoing federal regulators or a similar interagency group as final guidance.*

*(b) A licensee may revise and adapt the illustrations described in §B(2)(a) of this regulation to make them applicable to the specific mortgage loan products offered by the licensee.*

*C. Risk Management Policies, Procedures, and Control Systems.*

*(1) A licensee acting as a lender offering nontraditional or higher-priced mortgage loans shall adopt risk management policies, procedures, and controls for these products.*

*(2) Policies and Procedures.*

*(a) A licensee acting as a lender that offers or originates nontraditional or higher-priced mortgage loan products shall train its lending personnel to convey information to consumers about the product terms and risks in a timely, accurate, and complete manner. If the lender offers new or additional nontraditional or higher-priced mortgage loan products, the lender shall provide lending personnel with additional training as necessary to enable the lending personnel to convey information to consumers in a timely, accurate, and complete manner. The lender shall monitor lending personnel to determine whether the personnel are conveying information in the manner required.*

*(b) A licensee acting as a lender shall review consumer complaints to identify potential noncompliance and other risks. The review shall include:*

*(i) A legal review as appropriate; and*

*(ii) A review to ensure that compensation programs do not improperly encourage lending personnel to direct consumers to particular products.*

*(c) A licensee acting as a lender that originates, invests in, or services nontraditional or higher-priced mortgage loan products using a mortgage broker, correspondent, or other third party shall take appropriate steps to ensure third-party practices are consistent with the policies of the lender, including, but not limited to:*

*(i) Conducting due diligence and establishing other criteria for entering into and maintaining relationships with a third party;*

*(ii) Designing third-party compensation incentives to avoid nontraditional or higher-priced mortgage loan product originations that are not consistent with the policies of the lender;*

*(iii) Setting requirements for agreements with a third party;*

*(iv) Establishing procedures and systems to monitor third-party compliance with applicable agreements, policies, and laws; and*

*(v) Implementing appropriate corrective actions if a third party fails to comply with applicable agreements, policies, or laws.*

*(d) A licensee acting as a lender shall establish written policies and procedures to implement the requirements set forth in this subsection.*

*(3) Control Systems.*

*(a) A licensee acting as a lender shall design and implement control systems, including quality control, compliance, and audit procedures to focus on mortgage lending activities that pose high risk.*

*(b) The procedures shall include controls to monitor compliance with underwriting standards and monitor exceptions to those standards.*

*(c) A licensee acting as a lender shall have systems and controls in place for establishing and maintaining relationships with third-party originators, including procedures for performing due diligence.*

*(d) Lender oversight of third parties shall involve monitoring the quality of originated nontraditional and higher-priced mortgage loans to ensure that the products:*

*(i) Reflect the lending standards of the lender; and*

*(ii) Comply with applicable laws and regulations.*

*(e) A licensee acting as a lender shall develop and use control systems to monitor whether the lender's actual practices are consistent with the policies and procedures of the lender relating to nontraditional and higher-priced mortgage loans.*

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