

## Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

### 09.03.09 Mortgage Originators

Authority: *Business Regulation Article, §2-105; Financial Institutions Article, §§2-105.1, 11-602, 11-605, and 11-612[,]; Annotated Code of Maryland*

#### **.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) *“Applicant” means an individual applying for a license.*

(2) *“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.*

[(1)] (3)—[(2)] (4) (text unchanged)

(5) *“Dwelling” has the meaning stated in COMAR 09.03.06.02B.*

(6) *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(6)(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.*

(7) *“License” has the meaning stated in Financial Institutions Article, §11-601(e), Annotated Code of Maryland.*

[3] (8)—[4] (9) (text unchanged)

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

### **.03 Education Requirements.**

A. To apply for a license, a mortgage originator shall either:

(1) (text unchanged)

(2) Have successfully completed in the 24 months immediately preceding application for a license at least 40 hours of classroom education, and achieved a passing grade on a written examination developed and administered [by the person conducting the classroom education course] *as set forth in §G of this regulation.*

B.—E. (text unchanged)

F. Approved Course Providers.

(1) (text unchanged)

(2) Subject to [§F(3) and G] §F(3) of this regulation, courses shall qualify for approval subject to the same criteria as continuing education courses under COMAR 09.03.06.17.

(3) Classroom education courses required under §A(2) of this regulation[:

(a) Shall include a written examination developed and administered by the course provider; and

(b) May] *may* not be conducted by correspondence or other unsupervised individual study methods.

G. Written Examination.

(1) (text unchanged)

(2) *The written examination shall be developed and administered:*

(a) *Except as provided in §G(2)(b) of this regulation, by the person conducting the classroom education course; and*

(b) *Effective July 1, 2009, by the Commissioner or the Commissioner's designee.*

[2] (3) A copy of the written examination *under §G(2)(a) of this regulation* shall be submitted to the Commissioner *by the person conducting the classroom education course* with other materials required for course approval under COMAR 09.03.06.17.

H. (text unchanged)

### **.04 Duty of Care.**

*A. Good Faith and Fair Dealing. A mortgage originator has a duty of good faith and fair dealing in communications and transactions with a borrower, 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; and*

*(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.*

*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 mortgage originator shall make a reasonable inquiry of a 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 mortgage originator 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 originator has the borrower complete and sign a net tangible benefit worksheet on the form prescribed by the Commissioner for that purpose.*

***.05 Experience Requirements for Licensing.***

*A. For purposes of Financial Institutions Article, §11-605(a)(1)(i), Annotated Code of Maryland, an individual is considered to have at least 3 years of experience in the mortgage lending business if:*

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

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

*B. 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.*

SARAH BLOOM RASKIN  
Commissioner of Financial Regulation