

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

Notice of Proposed Action

[08-252-P]

The Commissioner of Financial Regulation proposes to amend Regulations **.02—****.04** and **.07** and adopt new Regulations **.20** and **.21** under **COMAR 09.03.06 Mortgage Lenders**.

Statement of Purpose

The purpose of this action is to:

- (1) Amend Regulation .02 to add certain defined terms and to correct certain cross-referenced citations to Financial Institutions Article, §11-501, Annotated Code of Maryland;
- (2) Amend Regulation .03 to set forth factors to determine whether an applicant for a license has at least 3 years of experience in the mortgage lending business for purposes of Financial Institutions Article, §11-506(b)(1), Annotated Code of Maryland, and to require licensees to designate the type of mortgage-related activities they will engage in;
- (3) Amend Regulation .04 to require licensees to maintain records of foreclosure actions commenced by the licensees;
- (4) Amend Regulation .07 to require licensees to include on an instrument securing a mortgage loan the name and license number of the licensee and the name and license number of the mortgage originator that originated the loan to enable the Commissioner of Financial Regulation to track licensees and mortgage originators involved in foreclosure actions;
- (5) Add Regulation .20 to impose a duty of good faith and fair dealing on licensees; and
- (6) Add Regulation .21 to define certain terms, require licensees to include certain information relating to the risks and features of higher-priced and nontraditional mortgage loans in promotional and marketing materials and communications, and require licensees acting as lenders that offer higher-priced and nontraditional mortgage loans to adopt certain risk management practices and control systems for these products.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. This action requires licensees to record the name and license number of the lender and mortgage originator on the loan documents, mortgage, or deed of trust. Some documents may have to be reprinted with the required information, and loan document programs may have to be changed to reflect this new disclosure of information.

The action also requires lenders that offer nontraditional or higher-priced loans to change their marketing and promotion of these products. Disclosures regarding payment shock, negative amortization, prepayment penalties, balloon payments, escrow payments, and reduced documentation loans are required. Lenders who offer nontraditional and higher-priced mortgage loans would also be required to implement risk management policies and practices, establish levels of risk, and implement control systems to monitor these risks.

Lenders would be required to develop these systems internally or outsource their development. The level of risk management needed would be based on the volume and complexity of lending activities. We cannot determine the costs associated with this change with any degree of accuracy. Larger lenders could reasonably be expected to have resources to accommodate this change while small lenders would probably consider outsourcing this requirement.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
(1) Agreements with borrowers	(-)	Small
(2) Good Faith and fair dealing	(-)	Small
(3) Nontraditional and higher-priced mortgage loans	(-)	Moderate
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Large

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D(1). Businesses will have to reprint certain loan documents to include a space for the name and license number of the originator and mortgage lender.

D(2). Mortgage businesses will have to prepare a Net Tangible Benefit form that will be signed by the borrower.

D(3). Mortgage lenders will be required to substantially alter their marketing and promotional materials for all nontraditional and higher-priced mortgage loans. Under the risk management policies, procedures, and control systems, mortgage lenders offering nontraditional and higher-priced mortgage loans will need to

develop written policies on new measurement tools, establishing risk levels, loan monitoring systems, underwriting compliance standards, oversight of third parties, and other procedures related to risk analysis of higher-priced and nontraditional loans. The costs to create these systems will vary depending on the size of the lender. Large lenders will likely have the resources to establish these new policies and procedures while small lenders will likely have to outsource the creation of the policies and procedures.

F. The average borrower of nontraditional or higher-priced mortgage loans will be given more information that describes all negative aspects of the loan product they are considering. Because of the disclosures, many borrowers may question the suitability of the particular product they are considering and request other, more traditional loan products.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Small lenders with fewer than 50 employees will be affected by this regulation. There are added disclosure costs, which are minimal. New worksheets will be created. The implementation of risk management policies and procedures and control systems will most likely have to be outsourced to attorneys and consultants. The costs will vary depending on the size of the business and the loan products being offered.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Sarah Bloom Raskin, Commissioner of Financial Regulation, Division of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, or call 410-767-0378, or email to bvictorine@dllr.state.md.us, or fax to 410-333-0475. Comments will be accepted through September 29, 2008. A public hearing has not been scheduled.

.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 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 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 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 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 lender shall establish written polices and procedures to implement the requirements set forth in this subsection.

(3) Control Systems.

(a) 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 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 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.

SARAH BLOOM RASKIN
Commissioner of Financial Regulation

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*

Notice of Proposed Action

[08-253-P]

The Commissioner of Financial Regulation proposes to amend Regulations **.02** and **.03** and adopt new Regulations **.04** and **.05** under **COMAR 09.03.09 Mortgage Originators**.

Statement of Purpose

The purpose of this action is to:

(1) Amend Regulation **.02** to add certain definitions;

(2) Amend Regulation .03 to require that the written examination for mortgage originators be developed and administered by the Commissioner of Financial Regulation, or the Commissioner's designee, effective February 1, 2009;

(3) Add Regulation .04 to impose a duty of good faith and fair dealing on licensees; and

(4) Add Regulation .05 to set forth factors to determine whether an applicant for a license has at least 3 years of experience in the mortgage lending business for purposes of Financial Institutions Article, §11-605(a)(1)(i), Annotated Code of Maryland.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Sarah Bloom Raskin, Commissioner of Financial Regulation, Division of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, or call 410-767-0378, or email to bvictorine@dlr.state.md.us, or fax to 410-333-0475. Comments will be accepted through September 29, 2008. A public hearing has not been scheduled.

.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

Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.10 Credit and Other Regulation

Authority: Business Regulation Article, §2-105; Financial Institutions Article, §§2-105.1, 5-909(1), 11-203, 11-503, 11-602, 12-104, 12-403(1), and 12-903(1); Annotated Code of Maryland

Notice of Proposed Action

[08-254-P]

The Commissioner of Financial Regulation proposes to adopt new Regulations **.01— .03** under a new chapter, **COMAR 09.03.10 Credit and Other Regulation**.

Statement of Purpose

The purpose of this action is to add:

(1) Regulation .01 to define certain terms;

(2) Regulation .02 to impose a duty on persons subject to the regulatory authority of the Commissioner of Financial Regulation, with certain exceptions, to report to the Commissioner acts, or suspected acts, of fraud, theft, or forgery committed by the regulated person or certain individuals related to the regulated person and to report to the Commissioner any felony convictions or misdemeanor convictions for fraud or theft of the regulated person or certain persons related to the regulated person; and

(3) Regulation .03 to require lenders and credit grantors subject to the regulatory authority of the Commissioner of Financial Regulation to provide certain disclosures to borrowers in connection with mortgage loans that include the following provisions: a balloon payment, the omission of an escrow account for the payment of taxes and insurance, or mandatory binding arbitration.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Sarah Bloom Raskin, Commissioner of Financial Regulation, Division of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, or call 410-767-0378, or email to bvictorine@dlr.state.md.us, or fax to 410-333-0475. Comments will be accepted through September 29, 2008. A public hearing has not been scheduled.

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Balloon Payment.

(a) "Balloon payment" means any scheduled payment on a mortgage loan that is more than two times the average of all other payments scheduled to repay the mortgage loan.

(b) "Balloon payment" does not include a down payment.

(2) "Commissioner" means the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation.

(3) "Fraud" means any act that:

(a) Constitutes a criminal violation of any article of the Annotated Code of Maryland and is part of an attempt or scheme to defraud any person; or

(b) Whether or not a criminal offense, is an intentional misrepresentation of any material fact or is conduct that is intended to prevent the discovery of a material fact, and is part of an attempt or scheme to defraud any person.

(4) "Initial application" has the meaning stated in COMAR 09.03.06.02B(10).

(5) "Mortgage loan" has the meaning stated in Financial Institutions Article, §11-501, Annotated Code of Maryland.

(6) "Regulated person" means an individual, corporation, business trust, financial institution, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity that is subject to the regulatory authority of the Commissioner pursuant to Financial Institutions Article, or Commercial Law Article, Annotated Code of Maryland.

(7) "Residential real property" has the meaning stated in Financial Institutions Article, §11-501, Annotated Code of Maryland.

(8) "Settlement" means the disbursement of the proceeds of a mortgage loan by the person conducting the settlement to the borrower or to third parties as required by the lender's instructions.

.02 Reporting Fraud, Other Violations of Law, and Convictions.

A. Duty to Report.

(1) Except as provided in §E of this regulation, a regulated person shall submit a report to the Commissioner within 30 business days after the person discovers that an act, or has reason to believe that an act, of fraud, theft, or forgery has been committed by a regulated person, including the person, or any owner, director, officer, member, partner, employee, or agent of a regulated person.

(2) Except as provided in §E of this regulation, a regulated person that is, or that has an owner, director, officer, member, partner, employee, or agent that is, convicted of any felony, or of a misdemeanor involving fraud, theft, or forgery, shall submit a report to the Commissioner informing the Commissioner of the conviction within 5 business days from the date on which the regulated person receives knowledge of the conviction.

B. Contents of Report.

(1) A regulated person submitting a report pursuant to this regulation shall utilize the reporting form prescribed by the Commissioner.

(2) If it is determined after the submission of a report that information contained in the report is false or otherwise inaccurate, the regulated person that submitted the report shall be considered to be in compliance with the reporting requirements of this regulation if the regulated person reasonably believed that the information was true and accurate at the time the report was submitted and the regulated person took reasonable steps to verify its truth and accuracy.

C. Nondisclosure of Report. A regulated person submitting a report to the Commissioner pursuant to this regulation may not disclose to any person that is a subject of the report the existence of the report or that the report has been submitted to the Commissioner.

D. Reports to Law Enforcement Authorities. Except as provided in §E of this regulation, a regulated person that discovers that an act, or suspected act, of fraud, theft, or forgery required to be reported pursuant to this regulation has been committed, the regulated person shall report the details of the incident to the appropriate law enforcement authorities.

E. Exceptions. The provisions of this regulation do not apply to a bank, savings bank, trust company, or credit union having a branch that accepts deposits in this State.

.03 Disclosures for Certain Mortgage Loans.

A. Mortgage Loan Provisions Requiring Disclosure. A regulated person that offers to make or procure a mortgage loan secured by residential real property shall provide to the borrower the disclosures set forth in §B of this regulation if the terms of the mortgage loan:

(1) Include a balloon payment;

(2) Do not provide for the establishment of an escrow account for the payment of taxes and insurance; or

(3) Include mandatory binding arbitration.

B. Content and Form of Disclosures.

(1) If the terms of a mortgage loan of the type described in §A of this regulation contain a balloon payment feature, a disclosure containing the following information, as applicable, and in substantially similar form, shall be provided to the borrower:

BALLOON PAYMENT: This mortgage loan contains a balloon payment provision. 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. If you cannot pay the balloon payment when due, you may have to obtain a new loan to make the balloon payment or you may lose your property through foreclosure. Before deciding to take this loan, consider your ability to pay the balloon payment when it comes due. The balloon payment on the mortgage loan you have applied for is due (insert number of months) from the date your mortgage loan begins.

(2) If the terms of a mortgage loan of the type described in §A of this regulation, which is secured by a first-position lien on residential real property, do not provide for the establishment of an escrow account from which property tax and homeowner's insurance payments are made, a disclosure containing the following information, as applicable, and in substantially similar form shall be provided to the borrower:

***YOU ARE RESPONSIBLE FOR PROPERTY TAX AND HOMEOWNER'S INSURANCE PAYMENTS IN ADDITION TO YOUR REGULARLY SCHEDULED PERIODIC MORTGAGE LOAN PAYMENT:** The terms of your mortgage loan do not provide for the establishment of an escrow account from which your property taxes and homeowner's insurance will be paid. This means that your regularly scheduled periodic mortgage loan payment does not cover these sums and you are responsible for paying property taxes and home insurance premiums when the bills arrive. You will need to consider your ability to pay these tax and insurance amounts in addition to paying your regularly scheduled periodic mortgage loan payment.*

(3) If the terms of a mortgage loan of the type described in §A of this regulation contain a provision requiring the borrower to engage in binding arbitration to resolve disputes, a disclosure containing the following information, as applicable, and in substantially similar form shall be provided to the borrower:

MANDATORY BINDING ARBITRATION: The mortgage loan you have applied for contains a mandatory binding arbitration provision. This means that, as to the matters covered by the arbitration provision, you are giving up your right to a jury or court trial if you have a dispute with the lender. Read your mortgage loan documents carefully to understand how mandatory binding arbitration will impact your rights to resolve disputes.

(4) The disclosures required by this regulation shall be written clearly and conspicuously and shall appear in at least a 10-point type font. The applicable disclosures shall appear together on a sheet or sheets of paper that contain no information other than the disclosures. All of the disclosures may be printed on a sheet or sheets of paper that include check boxes that may be marked to indicate which disclosures apply.

C. Timing.

(1) A regulated person shall deliver to a borrower the disclosures required by this regulation within 10 business days after the application for the mortgage loan is completed, and not less than 72 hours before the time of settlement agreed to by the parties.

(2) An application for a mortgage loan is completed at the time of initial application.

(3) If any change to the terms of a mortgage loan requires additional or modified disclosures pursuant to this regulation, the regulated person shall deliver to the borrower a final set of disclosures at least 72 hours before the time of settlement agreed to by the parties.

SARAH BLOOM RASKIN
Commissioner of Financial Regulation

Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

14.22.02 Criminal Offenses and Seriousness Categories

Authority: Criminal Procedure Article, §6-211,
Annotated Code of Maryland

Notice of Proposed Action

[08-256-P]

The State Commission on Criminal Sentencing Policy proposes to amend Regulation .02 under **COMAR 14.22.02 Criminal Offenses and Seriousness Categories**.

This action was considered by the State Commission on Criminal Sentencing Policy at an open meeting held on July 8, 2008, notice of which was given by publication in the June 20, 2008 edition of the Maryland Register, pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to add new offenses to and indicate modifications to the table of seriousness categories. These modifications reflect updates and corrections to the offense table identified by the Sentencing Commission since the last submission for COMAR revisions.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to David Soule, Executive Director, State Commission on Criminal Sentencing Policy, 4511 Knox Road, Suite 309, College Park, MD 20742, or call 301-403-2707, or email to dsoule@crim.umd.edu, or fax to 301-403-0560. Comments will be accepted through September 29, 2008. A public hearing has not been scheduled.

.02 Seriousness Categories.

	Offense Literal	CJIS Code	Source	Felony or Misd.	Max Term	Min Term	Offense Type	Ser. Category	Fine
1—11 (text unchanged)									
49—84 (text unchanged)									
84-1	Commercial Fraud, Other Sales of property, Custom Home Protection Act—any other conduct that fails to comply with RP, Title 10, Subtitle 5		RP, §10-507 (b)(3)	Misd.	1Y		Property	VII	\$1,000
84-2	Commercial Fraud, Other Commission of mortgage fraud		RP, §7-407(a)	Felony	10Y		Property	V	\$5,000
84-3	Commercial		RP, §7-	Felony	15Y		Property	V	\$15,000

	Fraud, Other <i>Commission of mortgage fraud involving victim who is a vulnerable adult under CR, §3-604</i>		407(b)						
84-4	Commercial Fraud, Other <i>Commission of mortgage fraud, engaging in a pattern of mortgage fraud</i>		RP, §7-407(c)	Felony	20Y		Property	IV	\$100,000
84-5	Commercial Fraud, Other <i>Failure of foreclosure consultant to obtain a real estate broker's license</i>		RP, §7-318.1 (a) RP, §7-321 (penalty)	Misd.	3Y		Property	VI	\$10,000
84-6	Commercial Fraud, Other <i>Violation of any provision of Business Occupations and Professions Article, Title 17, by foreclosure consultant</i>		RP, §7-318.1 (b) RP, §7-321 (penalty)	Misd.	3Y		Property	VI	\$10,000
84-7	Commercial Fraud, Other <i>Violation of certain provisions of the Maryland Real Estate Brokers Act, 1st offense</i>		BO, §17-613 (a)	Misd.	1Y		Property	VII	\$5,000
84-8	Commercial Fraud, Other <i>Violation of certain provisions of the Maryland Real Estate Brokers Act, 2nd offense</i>		BO, §17-613 (d)(1)	Misd.	2Y		Property	VII	\$15,000
84-9	Commercial Fraud, Other		BO, §17-613	Misd.	3Y		Property	VI	\$25,000

	<i>Violation of certain provisions of the Maryland Real Estate Brokers Act, 3rd or subsequent offense</i>		(d)(2)						
85—96 (text unchanged)									
97 <i>Vacant</i>	[Commercial Fraud, Other Other conduct that fails to comply with statute]		[RP, §10-507 (b)(3)]	[Misd.]	[1Y]		[Property]	[VII]	[\$1,000]
112—154 (text unchanged)									
154-1	Fraud, Financial Crimes Against Vulnerable Adults <i>Obtain property of vulnerable adult by deception, intimidation, or undue influence, less than \$500</i>	1-0781	CR, §8-801 (c)(2)	Misd.	18M		Property	VII	\$500
154-2	Fraud, Financial Crimes Against Vulnerable Adults <i>Obtain property of vulnerable adult by deception, intimidation, or undue influence, \$500 or greater</i>	1-0782	CR, §8-801 (c)(1)	Felony	15Y		Property	V	\$10,000
155—206 (text unchanged)									

Footnotes (text unchanged)

General Rules (text unchanged)

DAVID SOULE
Executive Director
Commission on Criminal Sentencing Policy