Module 1

Learning Objectives

In Module 1, participants will:

- Understand the role of the Commissioner of Financial Regulation
- Review the types of licenses offered under Maryland law and the exemptions from licensure for each
- Define the licensing requirements for mortgage lenders
- Become familiar with lender qualifications and the application process

Introduction

In the 1980s, changes in tax laws, banking laws, and the secondary market allowed mortgage brokers to emerge as regular players in the mortgage lending business. From the mid-1980s until the first three quarters of 2005, the business of brokering mortgage loans grew steadily. “In 2001, mortgage brokers were originating more than $1 trillion in loans annually. This was equivalent to roughly 55 percent of all mortgages originated in the United States....”

Working independently of regulated financial organizations such as banks and savings and loans, mortgage brokers and nontraditional lenders were negotiating and making loans without direct accountability to any regulatory agency. Unfortunately, the growth and success of the business lured some unscrupulous players, prompting state and federal legislators to propose regulatory controls for this new group of mortgage professionals.

Federal legislation lagged behind state initiatives, and state agencies that regulated financial institutions became the primary regulators of mortgage brokers and related mortgage professionals. In 1989, the Maryland General Assembly created regulatory controls for loan brokers with the enactment of the Maryland Mortgage Lender Law. This law is located in the section of the Maryland Code that addresses Financial Institutions, under Title 11. Subtitle 5, from section 11-501 through 11-524 contains the Residential Mortgage Lender Law. The Office of the Commissioner of Financial Regulation is the state agency that implements and enforces the law.

In 2005, the General Assembly added another subsection to Title 11 by writing specific provisions for mortgage originators. These are located in Subtitle 6 of Title 11, and encompass sections 11-601 through 11-623. The General Assembly made revisions to these provisions in April 2009 to comply with the federal law known as the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” (S.A.F.E. Act).
The S.A.F.E. Act attempts to make licensing requirements for state-regulated mortgage professionals more uniform by requiring every state to establish the following minimum standards for mortgage loan originators:

- 20 hours of pre-licensing education
- Eight hours of annual continuing education
- Criminal background checks
- Surety bond and net worth requirements
- Assignment of a unique identifier to each mortgage loan originator

The S.A.F.E. Act also requires the use of the Nationwide Mortgage Licensing System (NMLS) for the submission of license applications, including the applications of business entities that operate as mortgage lenders and mortgage brokers.

Additional changes to the Maryland law were necessitated by the required use of the NMLS. For example, it was necessary to eliminate provisions in the law for the submission of license applications directly to the Department of Financial Regulations and to create new provisions requiring the submission of applications to the Department through the NMLS.

**Maryland’s Transition to the NMLS System**

Although the Commissioner of Financial Regulation continues to make all licensing decisions, license applicants and renewal applicants must submit all applications through the NMLS. Licensees must also submit updated information through the NMLS when there is a change in the facts and disclosures made on the original or renewal applications.

Under the revised law, licenses are valid for only one year. The annual renewal requirement is a change from the previous requirement for license renewal every two years. Maryland’s participation in the NMLS began on May 11, 2009.

The effective date of a renewed license is January 1st, and its expiration date is December 31st. New licenses are effective on the date issued and will expire on December 31st of the year in which the license is initially issued.

The following course will provide a review of the Maryland Mortgage Lender Law and the licensing provisions that it creates for mortgage professionals who fall within the definitions of mortgage lenders and mortgage loan originators. The course material will include a detailed explanation of the process of submitting license applications through the NMLS and will outline the requirements for obtaining, renewing, and maintaining a mortgage lender license or a mortgage loan originator license under the Maryland law.
Submitting Applications Through the NMLS

One of the goals of the NMLS is to establish an online database and licensing system that “...streamlines the licensing process for both regulatory agencies and the mortgage industry by providing a centralized and standardized system for mortgage licensing.” ¹ One of the steps towards creating this database is the submission of all license applications, including both initial and renewal applications, through the NMLS.

As previously noted, the NMLS does not make licensing decisions. Maryland’s Commissioner of Financial Regulation will continue to review applications to determine whether to issue a license to an applicant. However, applicants are required to use the uniform application forms that are provided by the NMLS and to submit the completed forms online. The NMLS accepts four types of application forms.

Form MU1

This is the form used by business entities and sole proprietors seeking a license as a mortgage lender (banker), mortgage broker, or loan servicer. It requests a description of the applicant’s business, and information on the name, address, organization, and ownership of the business. If the applicant is a partnership, corporation, or other entity, the applicant must include the names, business address, and residence of each member, director, and principal officer. The form also requires applicants to complete criminal action, civil action, regulatory action, and financial disclosures and requires personal identifying information on owners, officers, partners, and control persons.

Form MU2

License applicants must submit this form along with the MU1 form. It requests biographical information for individuals identified as control persons on the MU1 form including owners, officers, and partners. On this form, individual control persons must disclose any criminal, civil, or regulatory action in which they are or ever have been involved, and disclose personal financial information. There is no separate fee for processing this form.

Form MU3

A license applicant must submit this form with the MU1 form if it is opening a branch office. The form is also used for additional branch offices that a licensee opens after obtaining its initial license.

Form MU4

This is the form used by individuals seeking a license as a mortgage loan originator. It requests information on the applicant’s name, address, gender, and date and place of birth. The form also requires applicants to complete criminal action, regulatory action, civil action, and financial

disclosures. Through this form, applicants give authorization for all current and former employers and law enforcement agencies to provide the information pertinent to the applicant’s fitness to serve as a loan originator.

When submitting applications to the NMLS, applicants owe fees to the NMLS and to the state regulatory agency. Both sets of fees are submitted to the NMLS. The license application fees that state regulators charge differ from state to state. The NMLS processing fees are the same for every state, and they are:

- $100 for mortgage company applications
- $30 for mortgage loan originator applications
- $20 for branch office applications

Fees submitted to the NMLS are nonrefundable.

Although license applicants and existing licensees will now submit their application forms, renewal forms, branch office forms, and information regarding any material change in previously submitted information through the NMLS, there are still a number of forms generated by the Commissioner of Financial of Regulation that license applicants and licensees must complete and submit directly to the Commissioner. These forms include, but are not limited to, the forms for:

- Surety bonds
- Sworn Activity Statements
- Secondary Mortgage Commercial Loan Disclosures
- Maryland Mortgage Servicer Reporting Form
- Notice of Intent to Foreclose

Links to these forms are available on the Commissioner’s website: http://dllr.maryland.gov/finance/finregforms.shtml. The purposes of these forms are discussed in subsequent sections of this course.

**Licensed Entities and Individuals**

The licensing requirements of the Maryland Mortgage Lender Law apply to the following mortgage professionals:

- Mortgage lenders
- Mortgage brokers
- Mortgage servicers
- Mortgage loan originators
- Affiliated insurance producers/mortgage loan originators
The Maryland Mortgage Lender Law is divided into two sections that address the two types of licenses available under the law.

**Subtitle 5 and Mortgage Lender Licenses**

Subtitle 5 addresses the licensing requirements for a mortgage lender license. Business entities that function as mortgage lenders, brokers, and servicers must secure a mortgage lender license. There are no separate licenses for these different types of mortgage professionals. Whether a business functions as a lender, mortgage broker, servicer, or any combination of the three, it must obtain a lender license. (MD Code §11-501(i); (j))

Mortgage lender licenses are typically offered to business entities. The Department of Financial Regulation only offers lender licenses to individuals if they conduct business as sole proprietors.

**Subtitle 6 and Mortgage Loan Originator Licenses**

Subtitle 6 addresses the licensing requirements for mortgage loan originators. Loan originators are licensed individually. Title 6 also addresses individual loan originators who are:
- Registered mortgage loan originators
- Insurance producer/mortgage loan originators

**Definitions (MD Code §11-501), (MD Code §11-601)**

In order to be able to identify the types of mortgage professionals that are subject to the requirements of the Maryland Mortgage Lender Law, as well as those entities and individuals that are exempt, it is necessary to understand the definitions that Subtitles 5 and 6 of Title 11 give to the following terms:

**Mortgage Loan**: A loan intended for personal, family, or household purposes that is secured by a mortgage, deed of trust, or other security interest on a dwelling or on residential real estate where a dwelling is to be constructed. (MD Code §11-501(l))

**Mortgage Lender**: A natural person or a business entity that either makes mortgage loans or that is a mortgage broker or a mortgage servicer.

As this definition indicates, a licensed mortgage lender has broad authority under the law. A mortgage lender can serve not only in the capacity as a provider of funds for loans, but also as a broker, helping borrowers to secure mortgage products, or as a loan servicer, accepting borrowers’ mortgage payments. (MD Code §11-501(j))

**Mortgage Broker**: A natural person or a business entity that earns compensation or valuable consideration by, directly or indirectly, helping a borrower to obtain a mortgage loan, and who is not named as a lender in the agreement, note or in the deed of trust.
This definition draws a distinction between lenders, to whom the borrower owes a financial obligation, and brokers, to whom the borrower owes no obligation after the closing has occurred. More specifically, the definition draws a distinction between lenders who actually fund loans and brokers who provide “table-funding.” In a table-funding transaction, brokers close loans in their own names and sell or assign the loans immediately after closing to the lender that provided the funds needed to make the loans.

Although the law offers a definition of “mortgage broker,” there is not a distinct license that applies only to brokers. Businesses and sole proprietorships that broker loans are required to obtain a mortgage lender license. (MD Code §11-501(i))

**Mortgage Servicer:** A natural person or a business entity that services mortgage loans or that collects or receives mortgage payments directly from borrowers and distributes these payments to another person.

Although the law offers a definition of “mortgage servicer,” there is not a distinct license for loan servicers. Businesses and sole proprietorships that service loans are required to obtain a mortgage lender license. (MD Code §11-501(n))

**Individual Loan Servicer:** An individual who works on behalf of a note holder or a loan servicer to either collect mortgage payments from a borrower who is in default or likely to default on his/her loan, or who works with a borrower and the borrower’s note holder or loan servicer to modify the terms of the mortgage or proceed with foreclosure. (MD Code §11-601(j))

**Mortgage Loan Originator:** An individual who earns compensation or expects to earn compensation by taking a loan application, or by offering or negotiating the terms of a mortgage loan. (MD Code §11-601(q))

**Registered Mortgage Loan Originator:** An individual who is registered with the NMLS and maintains a unique identifier with the NMLS while working for a depository institution, a subsidiary of a depository institution that is regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration. (MD Code §11-601(w))

**Depository Institution:** A bank, savings institution, or credit union. (MD Code §11-601(d))

**Federal Banking Agencies:** The Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the Federal Deposit Insurance Corporation (FDIC). (MD Code §11-601(e)) Students should be aware that the OTS no longer exists; it has been merged into the OCC.

**Person:** The Maryland Mortgage Lender Law makes frequent references to the term “person.” Under the law, the term includes not only a natural person, but also business entities such as corporations, limited liability companies, partnerships, business trusts, or associations. The term “individual” also appears in the law, and it has the same meaning as the term “natural person.” (MD Code §11-501(p))
Definitions on the MU Forms

In addition to the definitions provided under the law, license applicants and licensees should review the definitions offered on the MU forms.

Two that are of particular importance are:

**Control Person:** This term is defined on the NMLS MU1 form, which states that a control person is an individual identified on the form as a direct owner, indirect owner, or an executive officer of the license applicant who can exercise control over the applicant by directing the policies or management of the business.

**Qualifying Individual:** This term is also defined on the NMLS MU1 form, which states that a qualifying person is someone who is in charge and responsible for the actions of the business.

In order to fully understand which business entities are required to obtain a mortgage lender license and which individuals are required to obtain a mortgage loan originator license, it is necessary to understand the exceptions that the law creates for certain financial institutions and individuals. Those entities and individuals that fall within an exception are not required to meet the licensing requirements of Maryland’s Mortgage Lender Law. In the next section we will review the individuals and entities that are exempt from the law.

Exemptions

There are numerous exemptions to the Maryland Mortgage Lender Law. In order to remember the exemptions, it is helpful to recall that the original purpose of the law was to regulate mortgage professionals and businesses regularly engaged in the mortgage business that were not otherwise regulated. Therefore, the law does not apply to federally- and state-regulated financial institutions, agencies of the state and federal government, or individuals who are licensed and regulated under other state licensing laws.

**Exemptions Under Subtitle 5 (MD Code §11-502(b))**

The following are not included in the definition of a “mortgage lender” and are exempt from the licensing requirements for mortgage lenders under Subtitle 5 of the Mortgage Lender Law:

**State-Regulated Depository Institutions:** The law exempts financial institutions that accept deposits and that are subject to the state laws that regulate commercial banks, savings banks or credit unions. (MD Code §11-502(b)(1))

**Insurance Companies:** The law exempts insurance companies authorized to do business in Maryland. (MD Code §11-502(b)(2))

**Fannie Mae, Freddie Mac, and Ginnie Mae:** The law exempts government sponsored enterprises. (MD Code §11-502(b)(3))
Individuals Making a Take-Back Purchase Money Mortgage: As an incentive to sell a residence, some homeowners agree to lend funds to the buyer and to secure the debt with a second mortgage on the dwelling. These take-back mortgages help buyers who are unable to get a mortgage over the cost of the home that they wish to purchase. Take-back mortgages allow homeowners to facilitate the sale of their homes. The law exempts any person who takes back a deferred purchase money mortgage in connection with the sale of a dwelling or residential real estate owned by, and titled in the name of, that person, or a new residential dwelling that the person built. (MD Code §11-502(b)(4))

Individuals Lending to Immediate Family Members: The law exempts an individual who makes a loan to a spouse, child, spouse of a child, sibling, parent, grandparent, grandchild or the spouse of a grandchild. (MD Code §11-502(b)(7))

Real Estate Brokers Making Short Term Loans: The law exempts Maryland-licensed real estate brokers who make a loan with a repayment schedule of two years or less in order to help the borrower in the purchase or sale of a dwelling. (MD Code §11-502(b)(8))

Loan Purchasers: The law exempts individuals and business entities that are exclusively engaged in the acquisition of mortgage loans under any federal, state, or local government program to purchase loans. (MD Code §11-502(b)(11))

Nonprofit Organizations: The law exempts a nonprofit charitable organization that is registered with the State of Maryland or a nonprofit religious organization. (MD Code §11-502(b)(5))

Employers Lending to Employees: The law exempts employers who make loans to employees. (MD Code §11-502(b)(6))

Home Improvement Contractor: The law exempts a home improvement contractor if he/she is licensed under Maryland’s Home Improvement Law and assigns a mortgage loan without recourse and within 30 days after completion of the contract to a licensee under the Maryland Mortgage Lender Law or to an exempt individual or entity. Note that “without recourse” means that the licensed or exempt party taking assignment of the loan cannot turn to the home improvement contractor to recover funds if the homeowner fails to make payments on the loan or loses the home to foreclosure. (MD Code §11-502(b)(9))

Exemptions Under Subtitle 6 (MD Code §11-602(d))

The following are not included in the definition of a “mortgage loan originator” and are exempt from the licensing requirements set forth in Subtitle 6:

Registered Mortgage Loan Originator: The law exempts registered mortgage loan originators who meet all the qualifications of a registered mortgage loan originator as set forth in the law (see the definition included in the “Definitions” section of the course.) (MD Code §11-602(d)(1))
**Mortgage Loan Processor or Underwriter:** The law exempts individuals who are only engaged in the performance of clerical and support duties while employed and supervised by a licensee or an exempt individual or entity. When performed after the receipt of a loan application, clerical and support duties include the acceptance, collection, distribution and analysis of information that is customarily used to process or underwrite a mortgage loan, and communication with a loan applicant to obtain this information. (MD Code §11-601(q)(2)(i))

A “mortgage loan processor or underwriter” does not include an individual who:
- Represents to the public, through advertising or other means of communication such as business cards, stationary, brochures, signs, rate lists, or other promotional items, that he/she can or will perform the activities of a mortgage loan originator, or
- Performs mortgage loan processing or underwriting activities as an independent contractor, in which case, the individual would need to obtain a mortgage loan originator license under the SAFE Act.

**Licensed Real Estate Broker:** The law exempts real estate brokers that are licensed under the law as real estate brokers and act in that capacity unless they earn compensation from a mortgage lender, mortgage broker, or mortgage loan originator. (MD Code §11-601(q)(2)(ii))

**Individuals Offering Timeshares:** The law exempts individuals who are solely involved in the extension of credit related to timeshare plans. (MD Code §11-601(q)(2)(iii))

**Individuals Negotiating a Loan on Behalf of Family:** The law exempts individuals who offer or negotiate terms for a mortgage loan with or on behalf of an immediate family member. Immediate family members are defined in the law as a spouse, child, sibling, parent, grandparent, grandchild, step-child, step-parent, and step-sibling. (MD Code §11-602(d)(2))

**Individuals Selling Their Own Homes:** The law exempts individuals who offer or negotiate the terms of a loan that will be secured by a dwelling that was the individual’s residence. (MD Code §11-602(d)(3))

**Licensed Attorneys:** The law exempts a licensed attorney who negotiates the terms of a mortgage loan on behalf of a client, as an ancillary matter to the attorney’s representation of the client unless the attorney earns compensation from a mortgage lender, mortgage broker, or loan originator. (MD Code §11-602(d)(4))

**An Individual Loan Servicer:** This exception was created to address the fact that record defaults and foreclosures have given rise to a new group of mortgage professionals who work with lenders, servicers, and borrowers to resolve issues arising from defaults on payments. As noted in the “Definitions” section of this course, an “individual loan servicer” is an individual who works on behalf of a note holder or a mortgage loan servicer to collect payments from a borrower who is in default and who helps to determine whether to pursue loan modification or to proceed with foreclosure.

Even though an individual may be involved in the renegotiation of lending terms to avoid foreclosure, he/she is not required to meet loan originator licensing requirements. The law notes
that this particular exemption may be subject to modification and that in the future, individual loan servicers may be subject to licensing requirements imposed by Maryland’s Commissioner of Financial Regulation or by HUD. (MD Code §11-602(d)(5)), (MD Code §11-602(e))

**Status of Independent Contractors**

Subtitle 6 defines “independent contractor” as a person that earns compensation without deductions for federal or state income tax. (MD Code §11-601(h)) Although the term is defined in Subtitle 6, this section of the law specifically provides that “The licensing provisions of this subtitle do not apply to independent contractors.” (MD Code §11-602(a)(1)) Subtitle 6 does provide, however, that independent contractors must meet the licensing requirements of Subtitle 5, which means that they cannot engage in mortgage lending activities without obtaining a license as a mortgage lender. (MD Code §11-602(a)(2))

All individuals and entities that are not exempt from the licensing requirements of Subtitles 5 and 6 must obtain a license to conduct the business of mortgage lending, brokering, originating, and servicing in compliance with the law. The first of the following two sections outlines the requirements for obtaining a mortgage lender license. The second section outlines the requirements for a license as a mortgage loan originator.

**Licensing Requirements for Mortgage Lenders**

On May 11, 2009, the NMLS began accepting license applications for those seeking an initial mortgage lender license in Maryland. In order to obtain a license as a mortgage lender, applicants must complete three forms that are available on the NMLS website and electronically submit them with the applicable license application fee.

**Form MU1**

This form is the application for business entities and sole proprietors seeking a license as a mortgage lender. Applicants must submit the form with a total, nonrefundable fee of $1,200, which includes the license fee of $1,000, an investigation fee of $100, and an NMLS processing fee of $100.

**Form MU2**

License applicants must submit this form along with the MU1 form. It requests biographical information for individuals identified as control persons and as the “qualifying individual” on the MU1 form. There is no separate fee for processing this form.

**Form MU3**

This form is also used for branch offices and for additional branch offices that a licensee opens after obtaining its initial license. Applicants must submit the MU3 form with a total, nonrefundable fee of $1,120, which includes the statutory fee of $1,000 plus an investigation fee of $100 and the NMLS processing fee of $20.
In addition to the information requested on the MU forms, license applicants must meet additional requirements established by the Department of Financial Regulation. These requirements include:

- Fingerprint
- Credit reports
- Net worth requirements
- Surety bond requirements
- Certificate of good standing
- Authorization to conduct business in the State of Maryland

License applicants must submit the information listed above directly to the Licensing Unit at the Department of Financial Regulation.

The general goal that the regulators seek to achieve by obtaining this information is to attempt to ensure that the business entities and individuals that are engaged in the mortgage business will conduct the negotiating, making, and servicing of loans in an ethical, financially sound, and professional manner. The following sections will discuss the use of specific licensing requirements to meet this goal.

**Establishing License Applicants’ Ethical, Financial, and Professional Responsibility**

The boom in mortgage lending and brokering activities attracted some unscrupulous individuals who used fraudulent schemes to profit from the mortgage lending business while cheating borrowers and stealing from lenders. The business also attracted individuals who were well-intended, but who lacked adequate experience and knowledge to serve consumers effectively. Current licensing requirements created by Maryland’s Mortgage Lender Law and the S.A.F.E. Act seek to protect consumers by establishing professional standards for those who are engaged in mortgage lending. As the Mortgage Lender Law states, licensees must demonstrate “...sufficient financial responsibility, business experience, and general fitness to...warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently...” (MD Code §11-506(a)(2))

**Establishing Ethical Responsibility**

With submissions of information through the NMLS, the Department of Financial Regulation is able to investigate the background of license applicants to make certain that those entering the business have not committed prior violations of state or federal law that would render them unfit to engage in the business of mortgage lending, brokering, or loan servicing. Background checks, fingerprints, and disclosures regarding past or pending criminal, civil, or regulatory actions are the tools used for determining whether a license applicant is ethically fit to obtain a license as a mortgage lender.
Criminal Background Check (NMLS website- New Application Checklist)

A criminal background check for license applicants begins with the submission of fingerprint cards. The Mortgage Lender Law requires fingerprints from all of the following individuals:

- Sole proprietors
- Each control person that owns 10% or more of the business
- The president and each officer who owns 10% or more of the business
- “Qualifying individuals”
- Any other individual that the Commissioner of Financial Regulation designates

Applicants can make online requests for fingerprint cards by contacting the Commissioner of Financial Regulation at the following address:
https://www.dllr.state.md.us/cuwebforms/FinRegFCR.aspx

Fingerprints must be submitted to the Federal Bureau of Investigation (FBI) and to other state, national, or international agencies with authority to complete criminal background checks. Applicants must authorize these agencies to release their findings to the Department of Financial Regulation and the NMLS.

Criminal, Regulatory Action, and Civil Action Disclosures

The Department of Financial Regulation seeks to establish the ethical fitness of an applicant by requiring the applicant and any “control affiliate” of the applicant to disclose information on any criminal, civil, or regulatory actions taken against them. A “control affiliate” is defined in the definitions section or the MU1 form as “A partnership, corporation, trust, LLC, or other organization that directly or indirectly controls, or is controlled by, the applicant.” The special disclosures required on the MU1 form include:

Criminal Disclosures, which require the applicant to disclose under oath whether it or its control affiliate has:

- At any time, been charged or convicted for a felony or pled guilty or nolo contendere (no contest) to a felony
- Within the past ten years, been charged, convicted, pled guilty, or pled nolo contendere to a misdemeanor, committed in any jurisdiction, that involves financial services, fraud, the making of fraudulent or false statements, omissions, theft, forgery, bribery, perjury, counterfeiting, extortion or conspiracy

Regulatory Action Disclosures, which require the applicant and its control affiliates to disclose under oath whether a regulatory agency has taken any of the following actions against it within the past ten years:

- Found the applicant involved in the making of false statements or omissions
- Found the applicant involved in the violation of financial-services regulations
Denied, revoked, or suspended a license

Applicants and any control affiliates must also make disclosure of any current regulatory action that is pending.

Civil Judicial Disclosures, which require the applicant to disclose under oath whether it has, within the past ten years, been:

- Subject to an injunction in connection with an activity related to providing financial services
- Found to have violated any laws of regulations that relate to financial services
- A party to a settlement agreement, which it entered to resolve an action brought against it for alleged violation of laws and regulations that relate to financial services

Authorizations and Disclosures from Control Persons

In addition to completing these disclosures for business entities, all “control persons” and “qualifying individuals,” such as branch managers, must complete criminal, regulatory action, and civil judicial disclosures on the MU2 form. The questions on the MU2 form are substantially similar to those presented on the disclosure page of the MU1 form with the exception of these differences:

**No Time Limitation**: The individual disclosures are not restricted to the ten-year time period that immediately proceeds the license application date. Individuals are asked if they have “ever” been subject to particular types of criminal, civil, or regulatory actions.

**Arbitration Disclosure**: The individual disclosures require information on involvement in financial services-related arbitration proceedings.

**Termination Disclosure**: The individual disclosures require information on any discharge or resignation following the allegation of violations of the law, violations of industry standards of conduct, or allegations of fraud, dishonesty, theft, or the wrongful taking of property.

Establishing Financial Responsibility

As described in the next sections, net worth requirements, surety bond requirements, and credit reports are used to establish the financial responsibility of license applicants.

**Net Worth Requirements (MD Code §11-508.1)**

Proof of minimum net worth is a requirement for obtaining a license as a mortgage lender. The purpose of a net worth requirement is to ensure that financially sound and responsible individuals and entities are joining the mortgage profession. The net worth that the law requires a license applicant to demonstrate and to maintain depends upon whether the applicant lends money. Minimum net worth requirements are based on the amount of money that the applicant lent within the 12-month period prior to the application.
The net worth requirements are:

- $25,000 for applicants that do not lend money, such as a mortgage broker (MD Code §11-508.1(a)(1))
- $25,000 for applicants that lent no more than $1,000,000 and secured the debt with borrowers’ dwellings or residential real estate (MD Code §11-508.1(a)(2)(i))
- $50,000 for applicants that lent more than $1,000,000 but no more than $5,000,000 and secured the debt with borrowers’ dwellings or residential real estate (MD Code §11-508.1(a)(2)(ii))
- $100,000 for applicants that lent more than $5,000,000 but no more than $10,000,000 and secured the debt with borrowers’ dwellings or residential real estate (MD Code §11-508.1(a)(2)(iii))
- $250,000 for applicants that lent more than $10,000,000 and secured the debt with borrowers’ dwellings or residential real estate (MD Code §11-508.1(a)(2)(iv))

Applicants and licensees should refer to the Advisory Notice that the Commissioner of Financial Regulation has issued on “Meeting the New Minimum Net Worth Requirements.” The Advisory resolves confusion between lenders and brokers by stating that a broker is not engaged in lending activities, in “…table funding where the licensee appears in the loan documents as the lender.” The Advisory also states that brokers cannot use their lines of credit to satisfy net worth requirements.

The Advisory also explains what types of documents the Commissioner will accept when an applicant or licensee is trying to establish that it has met minimum net worth requirements. The Advisory is included in the Appendix and is also available online: [http://www.dllr.state.md.us/finance/advisories/advisoryminworth08.shtml](http://www.dllr.state.md.us/finance/advisories/advisoryminworth08.shtml).

**Surety Bond Requirements (MD Code §11-508)**

The purpose of surety bonds is to ensure that funds are available to indemnify borrowers who are harmed if a licensee breaches its contract with a borrower or harms a borrower by violation of state or federal lending laws. Maryland’s Department of Financial Regulation also allows the use of a letter of credit or a trust account to satisfy the surety bond requirement.

Maintaining a surety bond is critical to keeping a license. The Department of Financial Regulation’s requirements provide that termination of a surety bond, letter of credit or trust account will result in:

- An immediate cessation of business
- License suspension

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If the mortgage lender does not succeed in obtaining a substitute bond, letter of credit, or trust account within 30 days after the termination occurs, “…an application for a new license shall be filed with all application and investigation fees.”

Applicants must secure and maintain a surety bond based on the volume of mortgage business conducted within the 12-month period prior to the application. These amounts are:

- $50,000 for an applicant whose mortgage business represents a total amount of $3,000,000 or less (MD Code §11-508(d)(3)(i))
- $100,000 for an applicant whose mortgage business represents a total amount of $3,000,001 to $10,000,000 (MD Code §11-508(d)(3)(ii))
- $150,000 for an applicant whose mortgage business represents a total amount that exceeds $10,000,000 (MD Code §11-508(d)(3)(iii))

An applicant may be able to use a blanket surety bond of $750,000 if it files five or more applications at the same time. However, the applicant must obtain the approval of the Department of Financial Regulation. (MD Code §11-508(e))

**How to Calculate Mortgage Business Volume (MD Code §11-508)**

License applicants and licensees will probably need the assistance of an accountant and guidance from the Department of Financial Regulation when trying to calculate business volume for purposes of determining their net worth requirements and the amount of their surety bonds. These calculations must be based on generally accepted accounting principles. The calculations will also depend, in part, on the guidance provided by the Department of Financial Regulation in the Advisory on New Net Worth Requirements.

In addition to the Advisory, the law provides guidelines for a license applicant that has conducted mortgage lending business in a state other than Maryland prior to seeking a Maryland license.

If an applicant has conducted mortgage lending business during the 36 months prior to its filing of a license application in Maryland, the applicant must include, with the application, a sworn statement that sets forth ...

*the aggregate principal amount of loans secured or to be secured by a dwelling or residential real estate located in states other than Maryland and applied for, procured, and accepted by the mortgage lender during the 12 months preceding the month in which the application is filed.* (MD Code §11-508(d)(2))

**Credit Reports (MD Code §11-506.1(d)(2)(i))**

Credit reports are an important tool for ensuring that those who enter the mortgage profession are fiscally responsible. The Maryland Mortgage Lender Law requires the submission of credit reports with an application for a mortgage lender license. Applicants must provide authorizations for credit reports on all of the individuals who are listed on the MU2 form. These individuals include:

- Each individual listed as a control person on the MU1 form
• Each individual listed on page 7 of the MU1 form as a qualifying individual
• Sole proprietors

**Financial Disclosures**

Applicants are required to complete financial disclosures on the MU1 and MU2 forms. The MU1 form requires business entities and sole proprietors that are applying for a mortgage lender license to disclose whether they have:

• Within the past ten years, been a mortgage lender or broker that was the subject of a bankruptcy petition
• Ever had a bonding company deny, pay out, or revoke a bond
• Any unsatisfied judgments or liens pending

The MU2 form requires individual control persons and qualifying individuals to disclose whether they have:

• Within the past ten years, filed a bankruptcy petition or been the subject of an involuntary bankruptcy action
• Within the past ten years, exercised control over an organization that has filed a bankruptcy petition or been the subject of an involuntary bankruptcy action
• Ever had a bonding company deny, pay out, or revoke a bond
• Any unsatisfied judgments or liens pending

**Discussion Scenario: Consumer Complaint Letter**

March 16, 2011
State of Maryland
Department of Financial Regulations

To Whom It May Concern:

On February 2, 2011 I telephoned the Marvelous Mortgage Company of Anytown, Maryland. I spoke to a Robert DoGood. On that day, Mr. DoGood advised me that his company was one of the most competitive in the state. He told me the rate to refinance my mortgage for 15 years would be 6.625% and zero points. He also told me that based upon the information I gave and my credit report that I would also qualify for this loan with ease – “slam dunk” I believe were his exact words.

A sudden death in my family made it impossible for me to see Mr. DoGood until February 14th. On the morning of the 14th, I called Mr. DoGood to confirm our appointment and to verify that my rate would still be 6.625% with zero points – which he indeed confirmed. That evening when Mr. DoGood arrived at my home for our appointment (late), he advised me that turmoil in the
market that afternoon caused the rates to go up to 6.75%. We proceeded to complete the application anyway.

After apologizing for his lateness, Mr. DoGood quickly completed the application, told me to review the documents and disclosures he asked me to sign, and because he was unable to make copies of our originals at that time, he said he would have his processor forward my originals back to me with some additional papers.

I left a message for Mr. DoGood on February 28th. When he returned my call, I asked how everything was going and he said “fine.” I indicated that I had read that rates were going up and I was relieved because I knew I had a 30-day lock. I asked when the appraisal was going to be done and he said that it had been ordered but that the appraisers were quite busy this time of year. He said he would check on it, but not to worry, I would be closing soon.

On March 16th, Mr. DoGood advised me that my rate would be 7.375%. I told Mr. DoGood that wasn’t what I was told my rate would be and that I wanted my money back. He said that the fees he collected from me were already spent and that my rate was “floating.” He said he would forward a copy of the appraisal to me but that no money would be refunded.

I am sick about the loss of money as well as the time I have wasted, especially now that rates are almost a full point higher! Can you please help me get my money back?

Thank you,
I.M. NotHappy

Marvelous Mortgage Company Loan Log

Borrower: I.M. NotHappy Loan No. 12341-0
Address: 4332 W Anywhere St LO/Proc: R. DoGood/L. Smith

2/14/11 Notes to processor
Linda – copy attached original documents and return to borrower. Open file and send GFE, TIL and broker agreement. Lock loan at Investor A at 6.625% and zero points. (RD)

2/16/11
Opened file, ordered appraisal, sent originals back to borrower. (LS)

2/18/11
Credit report back – looks OK – alt. doc, should be ready to go to UW as soon as I get appraisal. (LS)

2/18/11 Notes to processor
Linda – lock-in fax confirmation to Investor A shows busy, called Stan in secondary marketing dept., he shows NO LOCK! Rates have moved…will have to float. Notice we didn’t send the GFE/TILA/Retention …back date disclosures but do not send lock confirmation or retention agreement. (RD)

2/28/11 Notes to processor
Linda – borrower called on appraisal. What is status? (RD)
Notes to LO

2/28/11
Rob – I called Fabulous Appraisal – Betty said they let their clerical person go because of mistakes, couldn’t find order. Will send Tom out ASAP. Rates are rising and loan is still not locked yet. (LS)

3/4/11
Loan submitted to Investor A (LS)

3/7/11 Notes to LO
Rob – loan approved – rate is floating; need to send approval letter. (LS)

3/7/11 Notes to processor
Send approval out dated March 9 at original rate and zero points. Will advise borrower we are unable to close… don’t see lock agreement in file (RD)

3/11/11
Advised borrower, investor needed 48 hours notice to close, plus loan has to fund within rescission period. Only thing we can do is wait until original “lock” expires, then get the best market price. Will call borrower on 3/16/11. (RD)

Discussion Questions:

Refer to the Consumer Complaint Letter. How do you think this complaint might be:
- Handled by the regulator?
- Handled by Marvelous Mortgage Company?

Refer to the Marvelous Mortgage Company Loan Log. How could better communication have affected or prevented the complaint? What about follow-up?

Refer to the Consumer Complaint Letter and Loan Log. What potential perceptions have been created by the interaction between the consumer and the mortgage company?
- Perception of the regulator
- Perception of the consumer
- Perception of the mortgage company owner/management

Do you think the loan originator’s actions were ethical or unethical? What most influenced your decision?

Consumer Complaint Letter: The Potential Outcome

It is a possibility that a complaint letter such as this could motivate the regulator to investigate the mortgage broker company. While Rob DoGood’s actions might not be standard operating procedure for all loan originators at his company, I.M. NotHappy’s complaint certainly puts the company at risk for being put under the microscope.

The company would be wise to take a close look at its policies and procedures pertaining to rate locks and floating rates. Management may need to retrain staff and ensure loan originators are clear on following borrower requests to lock an interest rate.
Based on discrepancies between the consumer’s complaint letter to the regulator and the notes in the Loan Log, it appears that Rob DoGood did a poor job of communicating with I.M. NotHappy and, in fact, may have lied about certain aspects of the loan process. Appropriately advising the customer about the rate lock situation, and possibly the appraisal, seem questionable.

Ultimately the loan originator handled the rate lock in a sloppy and unethical manner. Mistakes happen, but the customer should have been advised immediately when it was discovered that the rate was not locked as expected. The telling event is I.M. NotHappy’s description of a call placed to Rob DoGood on February 28th – the loan originator was well aware the rate was floating based on the Loan Log, but the customer was under the impression the rate was locked.

Module 2

Learning Objectives

In Module 2, participants will:

- Examine the licensing requirements for branch offices, as well as renewal requirements for mortgage lenders
- Review licensing requirements for loan originators
- Become familiar with loan originator exemptions, qualifications, and the application process
- Take a look at the licensing process for insurance producers/loan originators
- Learn about recordkeeping requirements and prohibited practices for licensees

Using Experience to Enhance Professionalism

It is their knowledge and experience that distinguishes professionals from other members of the work force. Therefore, Maryland’s Mortgage Lender Law uses experience requirements to enhance and improve the professionalism of those individuals and business entities that are in the business of negotiating, making, and servicing loans.

The experience requirement for a mortgage lender license is three years of experience in the mortgage lending business. (MD Code §11-506(b)(1)) The individuals who are required to meet this experience requirement are:

- The applicant, if the applicant is a sole proprietor (MD Code §11-506(b)(2))
- At least one of the coventurers or partners if the applicant is a joint venture or a general or limited partnership (MD Code §11-506(b)(3))
- At least one principal officer or member if the applicant is any other type of business entity (MD Code §11-506(b)(4))
The applicant must identify the individual who meets the three-year experience requirement as the “qualifying individual” on the MU1 form.

**Licensing of a Branch Office**

The Mortgage Lender Law requires that applicants for a mortgage lender license submit a separate application and separate licensing fee for each location. Each branch office must have a branch manager or other individual who is accountable for the mortgage lending or loan servicing activities that take place in the office.

License applicants must also obtain a separate surety bond, letter of credit, or trust account for each business location. As previously mentioned, if the applicant files five or more applications at the same time, it can use a blanket surety bond of $750,000 to provide coverage for all offices.

Applicants must use the MU3 form to submit branch office license applications through the NMLS. In addition to the fees that the license applicant must pay with the submission of the MU3 form, a nonrefundable surcharge of $500 is also due if the applicant began acting as a mortgage lender at a branch location without first obtaining a license for the new location. (MD Code §11-507(e))

**Renewing Mortgage Lender Licenses (MD Code §11-511)**

Licenses must be renewed by January 1st and will expire each year on December 31st. (MD Code §11-511(c)) New licenses are effective on the date issued, and will expire on December 31st of the year in which the license is initially issued. (MD Code §11-511(a))

In order to renew a mortgage lender license, a licensee must submit the following to the NMLS:

- A renewal application and a total fee of $1,100, which includes the statutory fee of $1,000 plus a $100 NMLS processing fee (MD Code §11-511(b)(2)) and (MD Code §11-511(d))
- A surety bond or a bond continuation certificate (MD Code §11-511(b)(3))
- Evidence of the completion of education requirements by the manager of each branch office and other employees who are required to complete initial and continuing education (MD Code §11-511(b)(4)(ii))

If licensees fail to renew by December 31st, they may still be able to take advantage of the late-renewal period in NMLS, called the reinstatement period. Renewal requests may be submitted during the reinstatement period using the same steps as a normal renewal. According to the NMLS website, “Generally, Maryland will continue to allow renewal requests until January 30.”

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3 NMLS website. Streamlined Annual Renewals.  
http://mortgage.nationwidelicensingsystem.org/slr/common/renewals/Pages/default.aspx?state=MD
The Mortgage Lender Law requires mortgage lenders to submit an annual report through the NMLS. The existing regulations do not specify the contents of this report or provide any other particulars regarding its submission. Licensees should look for new regulations or advisory letters from the Department of Financial Regulation regarding the requisite content of this report. (MD Code §11-513.1)

**Licensing Requirements for Loan Originators**

On May 11, 2009, the NMLS began accepting license applications for those seeking an initial mortgage loan originator license in Maryland. In order to apply for a license as a mortgage originator, applicants must complete the MU4 form that is available on the NMLS website.

The MU4 form serves not only as the application form, but also as a form that licensed mortgage loan originators can use to:

- Terminate a relationship with an employer or sponsor, indicating a basis for the termination, such as voluntary or involuntary resignation or discharge from employment
- Surrender or cancel a license
- Amend an existing license or registration

On the first page of the MU4 form, license applicants must provide personal information including their name, gender, address, and date and place of birth. This page also includes a consent form, authorizing all current and former employers and law enforcement agencies to provide the information pertinent to the applicant’s fitness to serve as a loan originator.

Applicants for the mortgage loan originator license must submit the MU4 form with a total, nonrefundable fee of $355, which includes the statutory fee of $225 plus an investigation fee of $100 (for new applicants) and an NMLS processing fee of $30. In addition, a $15 fee for a credit report will be added if one has not been authorized through the NMLS in the past 30 days, and a $39 fee will be added if a federal criminal background check is authorized at the time of application (total license cost of $409).4

In addition to the information requested on the MU4 form, applicants for a loan originator license must meet additional requirements established by the Department of Financial Regulation and the NMLS. These requirements include:

- Fingerprint and background check
- Credit reports
- Surety bond requirements
- Education requirements
- Proof of employment

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Use of a unique identifier

**Tracking of Loan Originators**

As the individuals who work directly with consumers, it is important to take steps to ensure that mortgage loan originators are ethical, fiscally responsible, and have up-to-date knowledge about mortgage lending. Requirements for fingerprints, credit reports, surety bonds, and education allow regulators to establish an applicant’s fitness to serve borrowers.

Unique concerns in the licensing of loan originators include:

- Ensuring that a loan originator works under the supervision of a licensed mortgage lender or an exempt financial institution
- Ensuring that a loan originator does not have more than one employer
- Ensuring that regulators can track loan originators
- Proof of employment and the use of a unique identifier allow the Department of Financial Regulation and the NMLS to address these concerns.

We will explore these areas further in a subsequent section of this course.

**Establishing Ethical Responsibility**

Through submissions of information through the NMLS, the Department of Financial Regulation is able to investigate the background of license applicants to determine the ethical fitness of those who plan to accept loan applications and negotiate lending terms.

**Special Disclosure Requirements**

The Department of Financial Regulation seeks to establish the ethical fitness of an applicant by requiring him/her to disclose information on any criminal, civil, or regulatory actions taken against him/her. The special disclosures required on the MU4 form include:

**Criminal Disclosures**, requiring the applicant to disclose whether he/she has:

- At any time, been charged or convicted of a felony or pled guilty or nolo contendere (no contest) to a felony
- At any time, been charged, convicted, pled guilty, or pled nolo contendere to a misdemeanor, committed in any jurisdiction, that involves financial services, fraud, the making of fraudulent or false statements, omissions, theft, forgery, bribery, forgery, perjury, counterfeiting, extortion or conspiracy
- Any pending charges
**Regulatory Action Disclosures**, requiring the applicant to disclose whether a regulatory agency has ever:

- Found that the applicant was involved in the making of false statements or omissions or acting dishonestly or unethically
- Found that the applicant was involved in the violation of financial-services regulations
- Found that the applicant caused a financial services business to have its license denied, suspended or revoked
- Denied, revoked, or suspended a license held by the applicant
- Issued an order against the applicant for violation of laws that prohibit fraud or deceptive conduct

**Civil Judicial Disclosures**, requiring the applicant to disclose whether he/she has ever been:

- Subject to an injunction in connection with activity related to providing financial services
- Found to have violated any laws or regulations that relate to financial services
- A party to a settlement agreement, which he/she entered to resolve an action for the alleged violation of laws and regulations that relate to financial services

The applicant must also disclose involvement in pending lawsuits.

**Arbitration/Civil Litigation Disclosures**, requiring the applicant to disclose whether he/she has ever been a respondent/defendant in a financial services-related arbitration proceeding or lawsuit that was initiated by a consumer and that resulted in a judgment against the applicant or a settlement that is still pending.

**Criminal Background Check**

Completion of a criminal background check is another requirement used to ensure the ethical responsibility of individuals who are seeking a mortgage originator license. Applicants must state on the MU4 form that they have submitted or will promptly submit fingerprint cards. The consent form signed before a notary allows the Department of Financial Regulation to obtain information about the applicant from law enforcement agencies such as the FBI.

The Maryland Mortgage Lender Law also provides that the Department can request fingerprints at any other time when they are needed to conduct a criminal records check.

**Establishing Financial Responsibility**

As described below, surety bond requirements and financial disclosures on the MU4 form are used to establish the financial responsibility of license applicants.
Credit Reports (MD Code §11-604(e)(2)(i))

The Maryland Mortgage Lender Law requires license applicants to provide the NMLS with the authorization to obtain a credit report from a consumer reporting agency.

Surety Bond Requirements (MD Code §11-619(b)(1))

The Maryland Mortgage Lender Law allows applicants for a mortgage loan originator license to use the surety bond of their mortgage lender/employer to meet the surety bond requirement.

Financial Disclosures

Individual loan originators must make similar disclosures to those made by lender licensees on the MU1 and MU2 forms. In addition to providing a credit report, license applicants must disclose on the MU4 form whether the applicant has:

- Within the past ten years, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition
- Within the past ten years, exercised control over an organization that has filed a bankruptcy petition or been the subject of an involuntary bankruptcy action
- Ever had a bonding company deny, pay out, or revoke a bond on the applicant
- Any unsatisfied judgments or liens pending

Use of Applicant’s Financial Reports and Disclosures

The Maryland Mortgage Lender Law provides that the finding of an individual applicant’s inability to meet financial responsibility standards cannot be based solely on:

- Medical debts, including judgments against the applicant for payment of medical debt (MD Code §11-605(c)(1))
- Debts and judgments arising from divorce proceedings, unless these debts and judgments relate to child support (MD Code §11-605(c)(2))
- Foreclosures on the applicant’s principal residence (MD Code §11-605(c)(3))
- The applicant’s credit score (MD Code §11-605(c)(4))
- The applicant’s involvement in a Chapter 11 bankruptcy proceeding (please note, this is a business bankruptcy, not an individual or personal bankruptcy proceeding) (MD Code §11-605(c)(5))

Experience and Education Requirements

The Maryland Mortgage Lender Law uses education requirements, experience, and disclosures about employment history to assess an applicant’s ability to work with consumers as a loan originator.
In order to obtain an initial license as a loan originator, an applicant must show that he/she has:

- Completed 20 hours of approved pre-licensing education, including at least the following:
  - Three hours of federal law and regulations
  - Three hours of ethics, fraud, consumer protection and fair lending
  - Two hours of lending standards for nontraditional mortgage products, and
  - Five hours of Maryland-specific instruction on mortgage-related law, including two hours of the Maryland Finder’s Fee Law
  - Seven hours of general electives pertaining to mortgage origination
  (MD Code §11-606(a))
- Successfully passed the National and Uniform State Test (UST) components (MD Code §11-606.1(a))

Maryland adopted the Uniform State Test on April 1, 2013. As a result, license applicants are no longer responsible for passing a Maryland-specific licensing exam. Instead, applicants must take the National Test Component with UST, which consists of 125 total questions, 115 of which are scored. There is also a Stand-alone UST available until April 1, 2014 for those license applicants who have previously passed the National Test without the UST component.

Applicants are permitted to take the test three consecutive times, provided that at least 30 days passes between examinations. Those who fail the test three times must wait at least six months before taking the examination again. Those who fail to maintain a valid license for at least five years are required to take the examination again prior to their re-application.

The MU4 form requires applicants to provide an employment history for the ten-year period that precedes the submission of the license application. The instructions on the form ask the applicant to “account for all time.” This includes providing information on part-time or self employment, unemployment, homemaking, military service, study and travel.

**Unique Concerns in the Licensing of Loan Originators**

Predatory lending practices and fraud are often the work of unscrupulous loan originators who perpetrate lending schemes, profit from illegal gains, and disappear before employers, lenders, or loan purchasers can track them down to hold them accountable for their actions. One of the stated purposes of the NMLS is the creation of a system that “…fights mortgage fraud and predatory lending… [and]…increases accountability among mortgage industry professionals.”

Methods that lending laws and the NMLS use for eliminating unscrupulous participants from the mortgage industry include:

- A loan originator’s employment and supervision by a single licensed or exempt employer
- The use of mandatory notifications for a loan originator’s employment, new employment, and termination of employment
Assignment of a “unique identifier” to a loan originator

These requirements are discussed in the following sections.

Requirements Related to a Loan Originator’s Employment

After obtaining a license, it is illegal for a loan originator to engage in mortgage lending activities unless he/she has employment with a licensed mortgage lender or with an exempt individual or entity. During the time that he/she does not have employment with a mortgage lender or an exempt employer, the loan originator has a non-active status and cannot originate loans. A licensed originator can abandon his/her non-active status and begin working as a loan originator after:

- Securing employment as a loan originator (MD Code §11-603(a))
- Notifying the Department of Financial Regulations, in writing, that he/she has secured employment with a licensed mortgage lender or an exempt employer (MD Code §11-603(c)(5)(i))
- Amending the sponsorship information on the NMLS by submitting the amendment, in the form required by the Commissioner, which states that the loan originator is an employee (MD Code §11-603(c)(2)(iii))

A loan originator can also work for a mortgage lender whose office is located outside of the State of Maryland if the lender has a registered agent in Maryland. (MD Code §11-603(e)) Previously, an out-of-state lender was required to maintain a physical office in Maryland; however, a new law eliminates the physical office requirement.  

At any time that a loan originator becomes unemployed again, he/she must notify the Department of Financial Regulation within ten business days. (MD Code §11-603(c)(3)) This and all other notice requirements that relate to new employment or the termination of employment must be made through the NMLS, using the MU4 form. Regulators would regard staff changes as a material change if the employee is a mortgage loan originator and the licensee that employs a loan originator who changes employment is also subject to a notification requirement.

Assignment of a Unique Identifier (MD Code §11-603(c)(1)(iii))

The NMLS assigns a number to each licensed loan originator. The number helps the NMLS to track loan originators who become licensed in multiple states.

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Decisions on Loan Originator License Applications

The Department of Financial Regulation may issue a loan originator license if the Commissioner finds:

- No revocations of a loan originator license in any jurisdiction (MD Code §11-605(a)(1))
- No convictions, guilty pleas, or pleas of nolo contendere for a felony during the seven-year period that precedes the application (MD Code §11-605(a)(2)(i))
- No convictions, guilty pleas, or pleas of nolo contendere for a felony at any time for felonies that involve fraud, dishonesty, a breach of trust, or money laundering (MD Code §11-605(a)(2)(ii))
- Sufficient evidence of the applicant’s financial responsibility and general fitness to support a finding that the loan originator will be fair, honest, and efficient (MD Code §11-605(a)(3))
- Completion of approved pre-licensing education requirements and successfully pass the National and Uniform State Test components (MD Code §11-605(a)(4)) and (5))
- Satisfaction of the surety bond requirement (by the applicant’s employer) (MD Code §11-605(a)(6))

The law provides that the requirements listed above represent the minimum standards that a license applicant must meet in order to obtain a license. If the Commissioner decides to issue a license on the basis of such findings, the license must include the following information:

- The name of the licensed mortgage loan originator
- The name of the loan originator’s employer
- The “unique identifier” issued to the loan originator by the NMLS

Licensing For Insurance Producers/Loan Originators (MD Code §11-603.1)

Subtitle 6 of the Maryland Mortgage Lender Law includes licensing provisions for “affiliated insurance producers/mortgage loan originators.” These individuals are defined as those who do one or more of the following:

- Originate mortgage loans for banks, savings and loan associations, and credit unions that are in good standing (MD Code §11-603.1(a)(1))
- Have good standing as a licensed insurance producer under the Insurance Articles of the Maryland Code (MD Code §11-603.1(a)(2))
- Hold an appointment as an insurance producer for an insurer that controls, is controlled by, or is under common control with: (MD Code §11-603.1(a)(3))
  - Banks, savings and loan associations, and credit unions that are in good standing (MD Code §11-603.1(a)(3)(i))
A mortgage lender licensee that only originates loans pursuant to an exclusive contract with a bank, savings and loan, or credit union (MD Code §11-603.1(a)(3)(ii))

An application for a license as an affiliated insurance producer/loan originator must include each of the following:

- The identity of the bank, savings and loan, credit union, or mortgage lender licensee with which the loan originator is or will be affiliated (MD Code §11-603.1(e)(2)(i-ii))
- The identity of the insurer with which the license applicant holds an appointment (MD Code §11-603.1(e)(2)(iii))
- Signature from an authorized representative of the bank, savings and loan, credit union, or mortgage lender licensee with which the loan originator is or will be affiliated (MD Code §11-603.1(e)(3))

If an applicant secures a license as an affiliated insurance producer/loan originator, he/she can only originate loans on behalf of the bank, savings and loan association, credit union, or mortgage lender licensee identified on the license. (MD Code §11-603.1(h))

**Loan Originator License Renewals (MD Code §11-609)**

The license for a mortgage loan originator is valid for one year. The effective date for a renewed license is January 1st and the expiration date is December 31st of each year. In order to renew a license successfully, a loan originator must:

- Complete a renewal application by December 31st and pay a renewal fee
- Demonstrate that he/she has completed eight hours of approved continuing education

**Continuing Education for Loan Originators (MD Code §11-612)**

Prior to applying for their annual license renewal, loan originators are required to complete eight hours of continuing education. Courses are reviewed and approved by the NMLS, and the topics must include:

- Three hours of federal law and regulations relating to mortgage origination
- Two hours of ethics, including fraud, consumer protection and fair lending
- Two hours of lending standards for the nontraditional mortgage product marketplace
- One hour of Maryland mortgage-related law

(MD Code §11-612(a)), (COMAR 09.03.06.17(C)(2))

In order to receive credit for an approved continuing education course, loan originators must take a course for which they have not previously earned credit. Loan originators can only receive credit for a course in the year that they complete the course. Maryland-licensed originators can receive credit for an NMLS-approved continuing education course that they complete in another
state, as long as the course addresses subject matter that is not specific to the other state. (MD Code §11-612(f))

The Maryland Mortgage Lender Law offers loan originators a way to complete their approved requirements quickly. Loan originators who teach an approved course can earn two hours of credit for each hour that they commit to teaching. (MD Code §11-612(e))

**Recordkeeping Requirements (COMAR 09.03.06.04)**

The recordkeeping requirements for mortgage lenders are set forth in the regulations of the Department of Financial Regulation. These regulations require the retention of records for the following amounts of time:

- Mortgage lenders must retain records for 25 months after a loan is denied, repayment of the total amount of the loan is complete, or the loan is sold, whichever comes first
- Mortgage servicers must retain records for 25 months after the borrower has made the final payment on the loan or there is a change in loan servicer, whichever comes first
- Licensees serving as mortgage brokers must retain records for 25 months after the loan is denied or made

(COMAR 09.03.06.04(A)(2))

The regulations are very specific about the content of the records. Mortgage lenders and servicers are required, at a minimum, to retain the following documents for each loan that they make or service:

- Date of loan closing
- APR and interest rate on the loan
- Documentation of the amounts disbursed from the proceeds of the loan or paid directly by the borrower
- Documentation of the agreement between the broker and borrower if the broker is paid from the proceeds of the loan
- Accurate loan payment history
- Index used to calculate the interest rate on an adjustable rate loan
- Name of assignee and date of assignment if the loan is assigned
- Documents that represent whether the loan is secured by a first or second lien on the borrower’s dwelling
- All Truth-in-Lending documents
- Amounts received from borrowers for payment of third party settlement services
- Records that show the third party settlement services that were provided and the amounts paid for them
- Dates on which the licensee ordered the credit report, appraisal, and other services
• Documents that the licensee relied on for underwriting purposes
• Optional insurance products purchased by the borrower and written authorization by the borrower for each type of coverage
• Record of any foreclosure action initiated by the licensee, including the name and license number of the loan originator and mortgage lender that originated the loan
• Amount of any origination or discount fee
(COMAR 09.03.06.04(B)(1))

Licensees who serve as mortgage brokers must retain copies of the items listed above when it obtains these records in the process of processing and underwriting a loan. Brokers are also required to keep:
• A copy of the agreement between the broker and the borrower
• A record of the lender for whom the loan was brokered
(COMAR 09.03.06.04(B)(2))

Licensees are required to keep these records in their original form or to keep them in an approved electronic or micro-photographic form. (COMAR 09.03.06.04(A)(1))

**Special Recordkeeping Requirements for Loan Servicers (COMAR 09.03.06.04(B)(3))**

Loan servicers have ongoing recordkeeping requirements. On or before the 25th day of each month, licensees who function as loan servicers must provide the Department of Financial Regulation with a report that contains the following information about the preceding month:
• The number of mortgage loans serviced
• The number of loans that are in default, with an indication of how many loans are delinquent by 30, 60, or 90 days or more
• The number of foreclosure actions pending against loans that the licensee services
• Information on loss mitigation activities such as loan modification
• Steps taken by the licensee to identify borrowers who are at risk for default

The Commissioner of the Department of Financial Regulation has the authority to ask loan servicers for additional information and to ask for the reports on a day other than the 25th of the month. The Commissioner can also publish the loan servicers’ reports as long as the personally identifying information of borrowers is omitted. (COMAR 09.03.06.04(B)(4))

**Prohibited Practices**

The Maryland Mortgage Lender Law lists a number of practices that are prohibited by licensees. The Department of Financial Regulation has drafted a document that identifies common errors made by licensees, frequent complaints against licensees, and frequent violations of the Maryland Mortgage Lender Law and other lending laws. This document is included in the
Appendix, and license applicants and licensees should review it to identify prohibited practices and typical compliance errors.

**Use of an Unlicensed Location for Execution of a Lending Agreement (MD Code §11-505(e)(1))**

The law prohibits the signing or executing of a note or a deed of trust on a second mortgage in any location other than:

- The licensed location of the lender or broker
- The office of the borrower’s attorney
- The office of a title company
- The office of an attorney for a title company

This prohibition creates an exception if the borrower makes a written request to use a different location and the request is due to the borrower’s illness.

**Working as a Loan Originator Without Employment by a Licensed Lender (MD Code §11-603(a-b))**

Individuals who are licensed as mortgage loan originators are only authorized to engage in loan origination activities when employed by a licensed mortgage lender or by a lender that is exempt from the licensing requirement of the law. Furthermore, a loan originator cannot have more than one license or work for more than one licensed mortgage lender or exempt lender.

**Making False Statements on License Applications (MD Code §11-517(a)(1))**

License applicants submit their applications under oath. It is a violation of the law to knowingly make false statements on license applications. Furthermore, the knowing submission of a license application containing a false statement to the Commissioner constitutes perjury, which is a criminal offense.

**Special Prohibitions Related to Advertising (COMAR 09.03.06.05)**

The regulations include a number of prohibitions that relate to advertisements disseminated by licensees. These include prohibitions against:

- Using advertisements that contain false, misleading, or deceptive statements about making, brokering, or servicing mortgage loans
- Misrepresenting lending rates or terms
- Advertising under any name other than the name that appears on the license, although a licensee may use the trade name of a parent corporation
Discussion Scenario: Problematic Advertising

Marvelous Mortgage Company, a licensed mortgage broker in Maryland, mailed thousands of solicitations to Maryland residents as part of its advertising campaign. The mailers were sent to consumers who have federally-insured loans and to consumers with adjustable-rate mortgages. The mailers offered the possibility of hundreds or thousands of dollars in refunds, and many appeared to be from the federal government. Only in the small print footnote did the Marvelous Mortgage Company disclose that the true purpose of the mailer was to solicit the recipient for a home loan.

It also featured first mortgages at 1% with no points and no fees. Regulators said that during one period where 91 loans were reviewed only ten borrowers actually received the 1% rate. However, each of those ten borrowers ended up paying $10,000 in points and fees and ended up paying 7.89% APR.

Finally, in big bold letters the mailer advertised “Immediate Loan Approval!!”

Maryland Mortgage Lender Law requires mortgage professionals to comply with the advertising provisions of Regulation Z (12 C.F.R. 1026.16). When the Commissioner saw this ad, it provided notice that it intended to revoke the Marvelous Mortgage Company’s license to do business in Maryland.

Discussion Questions

- What specifically could be changed in this mailing to align it with state and federal mortgage laws?
- From a consumer’s perspective, how would this mailing be misleading?
- Discuss effective, legal means of advertising for mortgage products. Provide an example or two.

Discussion Feedback

Advertisements and promotional materials are a valuable method of increasing business and providing name recognition for a business. While advertisements are meant to entice and attract consumers, it is critical that they do not give misleading information or result in deceptive trade practices such as “bait-and-switch.” Language such as “immediate approval,” when no such perk exists, and promotion of loan rates/terms that are not actually available are classic examples of deceptive and misleading advertising. Additionally, giving the impression that a marketing piece is actually communication from a federal agency is outright fraud.

Mortgage professionals can ensure their advertisements meet state and federal guidelines by only including truthful statements and offering rates/terms which are available to qualified applicants. Additionally advertisements should meet disclosure requirements; for instance the federal Truth-in-Lending Act requires that APR and other terms are disclosed when certain trigger terms are included. Additionally, instead of just focusing on the advertisement of loan products, mortgage
professionals can attract consumers and differentiate themselves by highlighting things like service, experience and customer care.

**Module 3**

**Learning Objectives**

In Module 3, participants will:

- Achieve awareness of the authority of the Department of Financial Regulation and its Commissioner
- Review duties of licensees to borrowers, including instruction on the Tangible Net Benefit Rule and rules for higher-priced mortgages

**Authority of the Commissioner of the Department of Financial Regulation**

The authority of the Department of Financial Regulation and its Commissioner is in no way diluted by the use of the NMLS. The Department continues to have the authority to:

- Make licensing decisions
- Issue orders
- Impose penalties
- Investigate licensees or any persons that should be licensed based on their activities
- Conduct hearings
- Enforce compliance with the law

**Authority to Make Licensing Decisions**

Although license applications are submitted through the NMLS, the Commissioner of the Department of Financial Regulation continues to have the authority to make licensing decisions, which include decisions to deny, suspend, or revoke a mortgage lender or mortgage loan originator license.

With regard to license revocations, there are two circumstances in which the law requires the Commissioner to revoke a license. The Commissioner must revoke a loan originator license if the loan originator, while licensed:

- Is convicted of a felony
- Has a mortgage loan originator license revoked in any other jurisdiction

(MD Code §11-615(f))
**Authority to Issue Orders and Impose Penalties**

The Commissioner has authority to issue an order requiring a licensee or any persons that should be licensed based on their activities to:

- Cease and desist from a practice that is in violation of the law
- Take affirmative action to correct any violation of the law by returning money or property to a person who is injured by the violation

(MD Code §11-615(c)(1)(i))

The Commissioner also has authority to impose civil penalties in the following amounts:

- $5,000 for each violation of the Maryland Mortgage Lender Law
- $5,000 for each violation of an order from the Commissioner to cease and desist a practice that violates the law

(MD Code §11-615(c)(1)(ii))

**Authority to Conduct Investigations (MD Code §11-613(d))**

The Commissioner has authority to conduct investigations of entities and individuals licensed under the Maryland Mortgage Lender Law. While conducting these investigations, the Commissioner has authority to:

- Examine the books and records of a licensee or of any other person that the Commissioner believes to have violated state and federal lending laws
- Subpoena documents
- Summon witnesses
- Charge the licensee a fee for each employee of the Department involved in an investigation of the licensee (the current fee is $250 per day for each employee) (COMAR 09.03.06.23(D))

If an investigation leads to an enforcement action, the Commissioner must report the enforcement action to the NMLS. (MD Code §11-622(a))

**Duties of Licensees to Borrowers**

Since the crash of the subprime lending market and the rise in default and foreclosure rates, many mortgage professionals, consumers, legislators, and regulators have questioned whether mortgage professionals owe particular duties to consumers who come to them to obtain a mortgage.

The Department of Financial Regulation addresses this question in its regulations for mortgage lenders and loan originators. The regulations provide that mortgage loan originators owe “…a duty of good faith and fair dealing in communications and transactions with a borrower.” (COMAR 09.03.09.04(A)) The duty owed by mortgage lenders is broader. The regulations
provide that mortgage lenders owe “…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….” (COMAR 09.03.06.20(A))

**Tangible Net Benefit Rule**

The regulations state that the duty of good faith and fair dealing requires mortgage originators and mortgage lenders to recommend the refinancing of a mortgage only if it will result in a tangible net benefit for the borrower. Included in the regulations is a list of lending terms and strategies that may be regarded as tangible net benefits in a refinance. The list includes:

- Obtaining a lower interest rate
- Obtaining a lower monthly payment, including principal, interest, taxes, and insurance
- Obtaining a shorter amortization schedule
- Changing from an adjustable rate to a fixed rate
- Eliminating a negative amortization feature
- Eliminating a balloon payment feature
- Receiving cash-out from the new loan in an amount greater than all closing costs incurred in connection with the loan
- Avoiding foreclosure
- Eliminating private mortgage insurance
- Consolidating other existing loans into a new mortgage loan

(COMAR 09.03.06.20(B))

Mortgage lenders and loan originators may demonstrate that they have given reasonable consideration to the tangible net benefit of a transaction by requiring the borrower to complete and sign a tangible net benefit worksheet. A copy of the worksheet is included in the Appendix to this course and is also available on the Commissioner of Financial Regulation’s website.

**Rules for Transactions Involving Higher Priced Mortgages**

As a response to the high foreclosure rate on subprime loans and other expensive mortgage products, the Department has addressed higher priced mortgages in its regulations. These mortgages are discussed at greater length in the section of the course that addresses Maryland’s Finder’s Fee Law and predatory lending laws. It should be noted that the duty of good faith and fair dealing that licensees owe to borrowers includes recommending that a borrower consider other less expensive loans for which he/she may qualify.
When servicing higher-priced mortgages, loan servicers are required to demonstrate their good faith and fair dealing by:

- Promptly responding to a borrower’s request by providing an accurate accounting of the debt owed
- Providing information on loss mitigation options to borrowers who are in default
- Providing adequate personnel and telephone facilities to promptly answer and respond to borrower inquiries regarding their mortgage loans
- Pursuing loss mitigation when possible

(COMAR 09.03.06.20(A)(3))

Striving to uphold these duties of good faith and fair dealing in mortgage lending transactions is an important goal for all mortgage professionals. The entire mortgage lending community is currently under scrutiny as a result of poor lending and borrowing decisions that were made during the boom in subprime lending. Compliance with the provisions of the Maryland Mortgage Lender Law and with regulations issued by the Department of Financial Regulation will restore professionalism to the business of mortgage lending and increase consumer confidence in lenders, brokers, and loan servicers.

**Maryland Applications and Forms**

There are several forms and applications available on the website of the Maryland Department of Labor and Licensing. They include:

- Amendments including change of control and change of address (must have your NMLS log in information)
- Application for a Maryland Mortgage Lender License – Forms MU1 and/or MU3 (must have your NMLS log in information)
- Fingerprint Cards Request Form
- Surety Bond Form
- Secondary Mortgage Commercial Loan Disclosure

All of these forms can be found online here: [http://www.dllr.state.md.us/finance/industry/mortlend.shtml#forms](http://www.dllr.state.md.us/finance/industry/mortlend.shtml#forms)

**Discussion Scenario: Loan Funding Issues**

Triple A Mortgage Corporation began doing business two years ago. They incurred a large amount of start up expenses and had not been successful in finding efficient operational procedures. Despite the operational havoc, business was going great! Their phones were ringing and potential borrowers were very receptive to the mortgage loan programs the company offered. Jeff, the company’s accountant, ran into a problem one month with paying the company’s operational expenses. He decided to “borrow” a significant amount of funds from Triple A
Mortgage Company’s escrow account just for a few weeks to pay the bills. At the same time, Triple A Mortgage Company’s sales team was experiencing a high volume of closings.

The time came to disburse funds after several mortgage closings, as required by Maryland Mortgage Lender Law. The closing agent failed to disburse funds for 25 agreements it entered into with Maryland residential mortgage loan customers. Triple A Mortgage Corporation was ordered to cease and desist several months later due to violation of Maryland state laws.

**Discussion Questions**

- Which state (and federal) laws did Triple A Mortgage Company violate?
- If you are the President of Triple A Mortgage Company and you find out what Jeff has been doing, how would you react and why?
- If you were Jeff, what could you have done differently to avoid these prohibited acts?
- Discuss the impact of failing to disburse funds or untimely fund distribution on the whole mortgage process.

**Discussion Feedback**

When handling funds on behalf of a consumer or lender for loan funding or the payment of third party services, mortgage professionals are required to manage those funds carefully. Escrow requirements are covered not only under Maryland but also under the federal Real Estate Settlement Procedures Act (RESPA).

Because escrow funds are not the property of the mortgage professional, the funds must be handled according to the instructions of their owner. By “borrowing” money for business expenses, Jeff was actually misappropriating the funds, which is not a minor offense in most jurisdictions. If the President of the company was aware of Jeff’s actions, he/she would also be guilty. However, upon discovery of Jeff’s actions, if the President took action, such as termination, replacement of the funds, etc. the company’s liability could potentially be minimized.

Failing to disburse funds and mishandling escrow funds is not only a violation of the law. It also puts a black mark on the mortgage industry. Consumer trust greatly diminishes if borrowers believe that their financial matters will not be handled with diligence and care.

**Module 4**

**Learning Objectives**

In Module 4, participants will:

- Learn the obligations held under the Maryland Finder’s Fee Law, including disclosure requirements, fees, prohibited practices, and penalties
Introduction to the Maryland Finder’s Fee Law

Maryland’s Finder’s Fee Law has been included in the Maryland Code since 1979. In more recent years, the law has found application in mortgage lending transactions, where it is used to discourage mortgage brokers from:

- Charging excessive fees
- Encouraging consumers to refinance mortgage loans repeatedly within a short period of time with no appreciable benefit to them

The application of the law to mortgage brokers was successfully challenged in a Maryland Circuit Court in 2004. However, in 2005, the Maryland Court of Appeals reversed the Circuit Court’s opinion and upheld the application of the law to brokers and the fees that they charge. The Finder’s Fee Law is located in the Commercial Law section of the Maryland Code under Title 12, which addresses credit regulations. Along with other laws related to consumer credit, the Finder’s Fee Law protects consumers in mortgage lending transactions.

The following material reviews the provisions of the Finder’s Fee Law and the landmark case that affirms its relevance to mortgage brokers. This section of the course also offers a review of some additional provisions in Title 12 that protect consumers from abusive or predatory lending practices.

Definitions (MD Code §12-801)

The Finder’s Fee Law offers definitions for only a few terms. It defines “lender” and “mortgage broker” by referring to the definitions of these terms under the Maryland Mortgage Lender Law. The term “borrower” is broadly defined as “…an individual who obtains a loan or advance of money.” (MD Code §12-801(b))

The most important definition under the law is the definition of “finder’s fee.”

The law states:

‘Finder’s fee’ means any compensation or commission directly or indirectly imposed by a broker and paid by or on behalf of the borrower for the broker’s services in procuring, arranging, or otherwise assisting a borrower in obtaining a loan or advance of money. (MD Code §12-801(d))

The law applies to all mortgage lending transactions. It does not apply to commercial and corporate loans or to loans made by automobile or recreational vehicle dealers in connection with the sale of their vehicles. (MD Code §12-802)
Borrower or Lender Paid Broker Compensation

Perhaps because they function as “middlemen” between borrowers and lenders, the compensation of mortgage brokers has always generated a considerable amount of controversy. The federal Real Estate Settlement Procedures Act (RESPA) and state predatory lending laws have provided a legal basis for challenging broker fees and ensuring that they are not excessive. In Maryland, the Finder’s Fee Law sets specific limits on the amount of compensation that mortgage brokers can earn in lending transactions. Before examining the provisions of the Finder’s Fee Law, this section offers a review of the sources of broker compensation and the controversy that has surrounded them.

Direct Compensation for Mortgage Brokers (MD Code §12-804)

Mortgage brokers can earn direct compensation, which includes loan origination fees, document preparation fees, application fees, and processing fees. Borrowers make direct payments to brokers for these charges prior to or at the time of closing. One form of direct compensation that is particularly controversial is the use of markups. Markups and up-charges occur when one settlement service provider increases the fee charged by another settlement service provider, and retains the additional fees. Consumers regard markups as an unethical price gouging, and many have challenged the practice in lawsuits.

In 2002, the legality of markups was at issue in a case involving a Maryland resident who used the services of Crossland Mortgage Corporation to obtain a mortgage. When Tyna Boulware applied for a mortgage loan, Crossland ordered a credit report, which cost $15. At the closing, Crossland charged Boulware $65 for the credit report. Crossland retained the $50 overcharge without performing any additional services for the plaintiff.

Boulware unsuccessfully challenged the markup in federal court, claiming that it was a violation of Section 8 of RESPA. In reaching a decision in favor of Crossland, the Fourth Circuit cited decisions from other federal courts, which held that RESPA prohibits the splitting of fees between two parties, and that a unilateral markup by a single party does not violate the law.

On the issue of markups, the Department of Housing and Urban Development (HUD) has been at odds with the mortgage industry and has taken a position that favors consumers. HUD argues that markups made by, and for the benefit of, a single party are in violation of RESPA’s prohibition on fee-splitting. Some federal courts have sided with HUD, and have ruled in favor of plaintiffs who claim that markups are illegal.

Even though Maryland is within a federal judicial district that does not find markups to be illegal, regulations promulgated by the Department of Financial Regulations prohibit them. The regulations state “...a licensee may not retain a fee, or any portion of a fee, collected from the borrower if the fee is represented as a charge to be paid to a third party for services in connection with the loan.” (COMAR 09.03.06.09(A))

This regulation clearly prohibits licensees from retaining any portion of a fee collected from the borrower to pay for third party settlement services. Furthermore, under its recordkeeping
regulations, the Department requires licensees to retain records that show the amounts received from borrowers for the payment of third party settlement services and records that show the amounts actually paid out. As a result of this regulation, the Department could determine whether a licensee has complied with its rule against markups.

**Maryland Finder’s Fee Law**

The Finder’s Fee Law addresses broker compensation or commissions that are charged by brokers and paid by borrowers for the broker’s loan origination services. The law has only a few provisions, and they serve the following purposes:

- To create disclosure requirements related to the charges imposed by mortgage brokers
- To create prohibited practices related to mortgage broker compensation
- To establish the fees that mortgage brokers are permitted to charge
- To establish the right of borrowers to earn a refund from mortgage brokers in certain circumstances
- To establish penalties for violations of the Finder’s Fee Law

Each of these provisions is discussed in greater detail in the following sections.

**Disclosure Requirements of the Finder’s Fee Law**

The Finder’s Fee Law requires mortgage brokers to provide loan applicants with a written agreement that is separate from the other disclosures made during a mortgage lending transaction.

The disclosure required by the Finder’s Fee Law must include the following information:

- The amount that the broker will charge to the borrower for helping the borrower obtain a loan (MD Code §12-805(d)(2)(ii))
- The fact that the broker is acting as a broker and not as a lender (MD Code §12-805(d)(2)(iii))

In addition to the above disclosure, mortgage brokers must advise loan applicants, in writing, of his/her right to a refund of a finder’s fee if he/she obtains a loan but exercises the right to rescind it. (MD Code §12-805(c))

Mortgage brokers must provide the disclosure to loan applicants and sign the agreement before providing any loan origination services. They must also give a signed and dated copy of the agreement to a loan applicant within ten business days after the completion of a loan application. (MD Code §12-805(d)(3))

Mortgage brokers should note that the Department of Financial Regulation has indicated that violations of the requirements for broker agreements are a frequent compliance issue.
Specific compliance failures include:

- Failing to provide a broker agreement
- Failing to provide the broker agreement in a separate and distinct document
- Failing to obtain signatures and dates on the broker agreement
- Failing to indicate, in the agreement, the amount or the percent of the loan that will be the broker fee
- Collecting a greater broker fee at the time of settlement than the amount specified in the agreement
- Failing to provide the agreement within the time frame prescribed by the law

In an Advisory Notice to mortgage brokers, the Department of Financial Regulation stated that brokers also violate the Finder’s Fee Law by failing to specify the exact amount of the broker’s fee in the written agreement. The Advisory Notice states: “Phrases such as ‘not to exceed’, ‘up to’ and ‘from x to x’ are unacceptable.”

**Prohibited Practices Related to Mortgage Broker Compensation**

Each of the following prohibitions serves to protect consumers from excessive costs and unfair practices in mortgage lending transactions.

**Prohibited Relationship between Broker and Lender:** The law prohibits a mortgage broker from acting as a director, officer, or employee of a lender who funds a loan subject to broker compensation. The underlying reason for this prohibition is to ensure that brokers do not have any conflicts of interest while they are working to match loan applicants with mortgage products. For example, if a broker works as the employee of a lender, he/she will direct the borrower towards mortgage products that his/her employer offers instead of searching the market for products that meet the particular needs of a loan applicant. (MD Code §12-803)

**Prohibited Forms of Payment:** The law prohibits a mortgage broker from receiving any fee in the form of a note, mortgage, or other evidence of indebtedness. The purpose of this prohibition is to discourage brokers from allowing borrowers to finance broker fees, which is a common practice when brokers repeatedly refinance a mortgage for a borrower. (MD Code §12-805(a))

**Prohibition on Fee Collection When Serving as Another Type of Professional:** If a licensed real estate broker, insurer, salesperson, or attorney secures a mortgage loan for a client while acting in his/her professional capacity, he/she may not collect a finder’s fee in connection with the mortgage lending transaction. The purpose of this prohibition is to prevent consumers from paying multiple fees for the same service. For example, if a broker secures a loan while serving as a real estate agent or as an attorney, the law prevents him/her from charging the borrower twice for identical services performed in more than one professional capacity. (MD Code §12-808)

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6 [http://dllr.maryland.gov/finance/advisories/advisory05-06.shtml](http://dllr.maryland.gov/finance/advisories/advisory05-06.shtml)
Using the Finder’s Fee Law to Evade Other Requirements: The law prohibits the use of its provisions to circumvent limits that Maryland law imposes on charges which lenders make to consumers. (MD Code §12-809)

Fees that Mortgage Brokers Are Permitted to Charge

The Finder’s Fee Law specifies the fees that mortgage brokers are allowed to charge to a consumer.

Finder’s Fee, Limited to 8% (MD Code §12-804(a))

The law allows brokers to charge borrowers a fee for the compensation or commission that they earn for obtaining a loan. However, the law limits the amount of the compensation or commission to 8% of the amount of the loan.

Appraisal and Credit Report Fees (MD Code §12-804(b)(1))

The law allows a mortgage broker to charge the borrower for the actual cost of any appraisal or credit report obtained by the mortgage broker.

Limited Fees for Refinances (MD Code §12-804(c))

The law limits the fee that a broker can charge when obtaining a mortgage secured by the same property more than once within a 24-month period. The fee for the refinance is limited to the amount of the second loan that is in excess of the initial loan. This is another provision in the law that is intended to discourage the repeated refinancing of a loan.

No Fees for Lenders Serving as Brokers (MD Code §12-808)

The law prohibits a broker from charging a fee for compensation or commission if the broker or any of its owners, partners, directors, officers, or employees is also the lender.

Borrower’s Right to a Refund (MD Code §12-806)

The Finder’s Fee Law provides that a borrower is entitled to a refund of any compensation or commission paid to a mortgage broker in the following two circumstances:

- The loan is not closed; or
- The borrower exercises his/her right to rescind the loan transaction

As noted in the next section, borrowers may also be entitled to refunds in excess of the amount of compensation or commission paid, if the mortgage broker is in violation of the Finder’s Fee Law.
Penalties for Violations of the Finder’s Fee Law (MD Code §12-807)

The Finder’s Fee Law provides that if a broker violates the provisions of the law, he/she must pay the greater the following amounts:

- Three times the amount of the fee that the broker collected from the borrower in compensation or as a commission (MD Code §12-807(1))
- $500 (MD Code §12-807(2))

An Advisory Notice issued by the Commissioner of Financial Regulation on August 5, 2005 warned mortgage brokers that enforcement actions brought under the Finder’s Fee Law led to the refund of more than $1,200,000 to consumers. These refunds represented the return of all or some of the finder’s fees that borrowers had paid to brokers. The fact that the Department of Financial Regulation has shown its resolve to enforce the provisions of the law is good reason for brokers to understand the limitations and prohibitions that the law creates. A copy of the Advisory Notice is included in the Appendix to this course.

Federal Preemption

Federal preemption occurs when a federal law supersedes a state law that addresses identical regulatory concerns. State legislators and regulators rarely welcome the preemption of a state law, particularly when a federal law overrides a state law that is intended to protect consumer interests. With more immediate knowledge of the concerns of the consumers that live within their jurisdictions, state legislators and regulators legitimately consider themselves better suited to address these concerns than members of Congress or federal regulators.

Proposals to preempt state laws that protect consumers from abuses in the lending market have met with considerable resistance. For example, in many states, consumers, consumer interest groups, state regulators and state legislators have fought to hold onto consumer protections that they have gained through the enactment and enforcement of predatory lending laws.

As discussed in the following section, the issue of preemption was central to a case in Maryland that challenged the application of the Finder’s Fee Law to mortgage brokers. If the mortgage broker in the case had succeeded with its preemption argument, the Finder’s Fee Law would no longer represent compliance concerns for brokers. However, the plaintiff managed to defeat the preemption argument, and Maryland mortgage brokers must continue to conduct business with an awareness of the requirements and prohibitions of the Finder’s Fee Law.

Discussion Scenario: Maryland Court of Appeals-Landmark Decision

The Finder’s Fee Law was the subject of a highly publicized case, Linda Sweeney vs. Savings First Mortgage. The decision from the Court of Appeals offers a thorough discussion of the Finder’s Fee Law and of federal preemption. Following is an outline of the issues raised in the case and addressed in the court’s decision. A review of the case will enable course participants
to attain a greater understanding of the Finder’s Fee Law and of the steps that are necessary to maintain compliance with it.

Specific provisions of the Finder’s Fee Law that are addressed in the Sweeney case include:

- Section 12-804(a), which limits mortgage broker compensation to 8% of the amount of the loan
- Section 12-804(c), which limits the amount of mortgage broker compensation when a broker obtains a loan secured by the same property more than once within a 24-month period

**Facts of the Case, Part 1**

On August 29, 2000, Linda Sweeney refinanced a mortgage, which was secured by her home in Frederick, Maryland. The amount of the loan was $140,250. Savings First Mortgage was the mortgage broker that obtained the loan for Ms. Sweeney. For its services, Savings First charged a fee of $8,427.

On July 12, 2001, Ms. Sweeney refinanced her home again, securing a loan for $158,400. Once again, Savings First brokered the loan. In this transaction, it charged a fee of $10,788. In both of the lending transactions, Ms. Sweeney financed the broker’s fee.

In 2004, Ms. Sweeney filed an action against Savings First. The legal basis for the lawsuit was the provision in the Finder’s Fee Law that states:

* A mortgage broker obtaining a mortgage loan with respect to the same property more than once within a 24-month period may charge a finder’s fee only on so much of the loan as is in excess of the initial loan.

Applying this provision of the law to the facts, Ms. Sweeney claimed that Savings First was only entitled to earn a mortgage broker fee on $18,150, which represents the difference between the amount of first loan and the amount of the second loan. With the origination of the second loan occurring less than a year after the initial refinance, the fee limitation was applicable.

If Savings First had followed the limitations imposed by the Finder’s Fee Law, the charge for its services in obtaining the second loan would be limited to 8% of $18,150, or $1,452. However, Savings First argued that the Federal Depository Institutions Deregulation and Monetary Control Act (DIDMCA) preempted the Finder’s Fee Law. DIDMCA, which was enacted in 1980, preempted state usury laws that limited the interest and fees that lenders could charge in mortgage lending transactions. The Circuit Court agreed with the preemption argument raised by Savings First and dismissed the case.

**Discussion Questions**

- Consider the requirements of the Maryland Finder’s Fee Law. Were the fees earned by Savings First on the initial transaction and the refinance transaction appropriate?
Consider the facts of the case from an ethical standpoint. Were the total fees earned by Savings First on both of Ms. Sweeney’s transactions fair?

If you were the consumer, how would you have reacted to the fees charged by the broker?

Facts of the Case, Part 2

In 2005, Ms. Sweeney appealed the decision of the Circuit Court. The Court of Appeals agreed to hear the case in order to determine whether Maryland’s Finder’s Fee Law, and its limits on mortgage broker fees, is preempted by DIDMCA. The Court of Appeals concluded that the federal law does not preempt the Finder’s Fee Law, and its decision was based on the court’s finding that:

- DIDMCA applies only to creditors
- Mortgage brokers are not creditors, as they are defined under DIDMCA

In the words of the court, “...Savings First, as a mortgage broker, did not qualify as a creditor regulated by the DIDMCA.”

Discussion Feedback

The decision in the Sweeney case affirms the application of the Maryland Finder’s Fee Law to mortgage brokers. In order to comply with the law, mortgage brokers must therefore keep the following requirements in mind when calculating their fees:

- Ensure that their fees do not exceed 8% of the loan amount
- Calculate the fee based on the difference between the amount of an initial loan and the amount of a refinance that takes place within 24 months of the preceding loan

As will be discussed in the next section, the Home Ownership and Equity Protection Act (HOEPA) creates certain rules for loans in which points and fees exceed the thresholds established under the law. This means that Maryland Law allows mortgage brokers to charge up to 8%, however, if over the points and fees threshold established by HOEPA, the loan is considered high-cost and must meet additional requirements.

As previously noted, compliance with the disclosure requirements is also extremely important and failure to meet these requirements has been a basis for many enforcement actions by the Department of Financial Regulation.

Predatory Lending Provisions of Title 12

The Finder’s Fee Law protects consumers from excessive mortgage broker fees and from the abusive lending practice of repeatedly refinancing a loan, with no appreciable benefit to the borrower. There are additional provisions in Title 12 that are intended to protect consumers in mortgage lending transactions that involve high-cost loans. Many of these provisions address abusive lending practices that are commonly referred to as “predatory lending.”
These additional sections of Title 12 that the course will review include:

- **Section 12-124.1**: This section defines “covered loans” and creates special requirements for them
- **Section 12-124**: This section of the law creates a prohibition on the financing of insurance products in certain lending transactions
- **Section 12-127**: This section of the law creates a requirement for lenders to consider a borrower’s ability to repay a loan
- **Section 12-311**: This section creates a requirement for proof of the ability to repay and a requirement for homebuyer education or counseling if the loan is a “covered loan”
- **Section 12-409.1**: This section creates prohibited lending terms for second mortgages

Many states have enacted predatory lending laws, addressing abusive lending terms and practices in a single piece of legislation. On the federal level, the Home Ownership and Equity Protection Act (HOEPA) attempts to safeguard consumers from some of the onerous lending terms and abusive practices that are associated with high-cost home loans. The Maryland laws that address predatory lending are located in several areas of the Commercial Law chapter of the Maryland Code.

Maryland’s predatory lending provisions generally address lenders and not brokers. However, as the originators of mortgages and as those who have contact with loan applicants, brokers must know the limitations and prohibitions that these provisions create. Each of the provisions that is relevant to predatory lending is discussed below, and in the order in which it appears in Title 12.

**Covered Loans (MD Code §12-124.1)**

In order to identify the types of loans that receive additional protections under Title 12 of Maryland’s Commercial Code, it is necessary to understand how the law defines a “covered loan.” In defining “covered loan,” the Maryland law references HOEPA and establishes threshold requirements, as HOEPA does, to determine which loans carry the risks associated with high-cost home loans.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law and includes a section regarding amendments to HOEPA thresholds.

Effective January 10, 2014, the interest rate threshold established by the new law will be as follows:

- For first-lien mortgages, the rate trigger is 6.5% above the average prime offer rate (8.5% if the dwelling is personal property and the transaction is less than $50,000).
- For subordinate liens, the rate trigger is 8.5% above the average prime offer rate.
In addition, HOEPA will extend coverage to purchase loans and will no longer be limited to refinance transactions.7

Covered loans in Maryland are those that meet an interest rate threshold, which is slightly different than the HOEPA rate, making covered loans in Maryland:

- First lien loans with an interest rate that exceeds the rate on Treasury securities with a comparable term by 7%
- Subordinate lien loans with an interest rate that exceeds comparable Treasury securities by 9%
- Those that meet the HOEPA points and fees threshold, which has been amended to include more loans (note that with recent amendments to both federal and state law, mortgage professionals are urged to consult the Maryland Code for updated guidance):
  - **Loans of $20,000 or More:** The threshold is triggered if the points and fees exceed 5% of the total transaction amount.
  - **Loans of Less Than $20,000:** The threshold is triggered if the points and fees exceed the lesser of 8% of the total transaction amount or $1,000.
  - **Loans with Prepayment Penalties:** The threshold is triggered if a loan includes a prepayment penalty provision that is in force for more than 36 months after closing, or if the loan allows prepayment penalties to exceed more than 2% of the amount prepaid.

Amendments to HOEPA have created a second class of loans called “higher-priced mortgages.” These will be addressed in a subsequent section of this course.

**Requirements to Consider Repayment Ability (MD Code §12-127)**

Section 12-127 of Maryland Commercial Law requires lenders to consider a borrower’s ability to repay a loan. It is a common predatory lending practice to enter mortgage lending agreements without determining whether borrowers have the ability to repay their loans. Unscrupulous lenders and mortgage brokers are willing to make loans without verification of income and employment and without a meaningful assessment of debt-to-income ratios.

In extreme cases, lenders have given loans to elderly borrowers on fixed incomes in spite of the fact that monthly mortgage payments would exceed their monthly incomes. Lending without considering repayment ability is sometimes referred to as equity-based or collateral-based lending.

The provisions of Section 12-127 apply to “mortgage loans,” which are defined with reference to the Maryland Mortgage Lender Law as loans for personal, family, or household use that are secured by a dwelling. Reverse mortgages are excluded from the definition.

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Under Section 12-127, an assessment of repayment ability must take into account the borrower’s ability to:

- Make payments at the fully indexed interest rate (in the case of loans with an adjustable feature)
- Pay property taxes
- Pay homeowner’s insurance

An analysis of repayment ability must include consideration of the borrower’s debt-to-income ratios. Verification of income and assets must be verified with written documentation that includes:

- W-2 forms (MD Code §12-127(c)(2)(i))
- Copies of the borrower’s income tax returns (MD Code §12-127(c)(2)(ii))
- Payroll receipts (MD Code §12-127(c)(2)(iii))
- Records from a financial institution (MD Code §12-127(c)(2)(iv))

The lender must “reasonably believe” that the written documentation used to verify income and assets is accurate. (MD Code §12-409.1(c)(1)(ii))

**Restrictions on Lending Terms and Special Requirements for HOEPA Loans (MD Code §12-311)**

Section 12-311 includes some provisions that address mortgage loans, which are defined with reference to the Maryland Mortgage Lender Law as loans for personal, family, or household use and secured by a dwelling. It creates additional provisions that address “covered loans,” which are defined as loans that meet either the interest rate or the fee threshold under HOEPA.

Requirements that this section creates for mortgage loans also include:

- Considering a borrower’s ability to repay (MD Code §12-311(d))
- Verifying a borrower’s ability to repay using third-party written documentation, such as payroll receipts, W-2 forms, income tax returns, or records from a financial institution (MD Code §12-311(c)(1)(ii))

In order to prevent predatory practices that can lead to the loss of home equity or loss of the home in foreclosure proceedings, this section prohibits the following practices when making a mortgage loan:

- Lenders cannot execute lending agreements that have blanks to be filled in after the closing (MD Code §12-311(b)(3))
- Lenders cannot complete a lending transaction unless the promissory note, or other promise to pay, includes the principal amount of the loan, a schedule of payments, and the rate of interest, charges, and fees (MD Code §12-311(b)(4))
- Lenders cannot take a security interest in real property for a loan under $2,000 (MD Code §12-311(c)(1)(i))
- Lenders cannot take a security interest in personal property for a loan under $700 (MD Code §12-311(c)(1)(ii))
- Lenders cannot take, as security for a loan, a confession of judgment or an assignment of wages (MD Code §12-311(b))

In addition to the above requirements and prohibitions, Section 12-311 creates special requirements for “covered loans.” These are the same requirements for home buyer education and counseling that are created by Section 12-124.1. Lenders making “covered loans” must provide a written recommendation for education or counseling and must provide the loan applicant with a list of agencies and organizations that offer these services.

**Prohibited Lending Terms (MD Code §12-409)**

Section 12-409 establishes three prohibited lending terms for loans that are secured by a second mortgage or other subordinate lien on residential real estate. These three prohibited terms are:

- An acceleration clause that allows the lender to demand immediate payment of the unpaid balance of a loan for any reason other than the borrower’s failure to comply with the payment terms and other terms of the lending agreement (MD Code §12-409(1))
- Any term that requires a borrower to waive any rights provided under the subtitle on credit regulations that addresses second mortgages (MD Code §12-409(2))
- Any term requiring the borrower to assign his/her wages (MD Code §12-409(3))

**Requirements for Closed-end Mortgages (MD Code §12-1029)**

Included in a subtitle on closed-end credit transactions, Section 12-1029 reiterates many of the requirements for consideration of repayment ability and homebuyer counseling that are addressed in preceding sections of Title 12. This section applies to mortgage loans and covered loans for closed-end credit.

In a closed-end transaction, a lender disburses all of the funds at closing and demands repayment within a specified period of time. During the repayment period, borrowers cannot request an increase in the principal amount of the loan. A mortgage refinancing and a closed-end home equity loan are examples of closed-end mortgages. Due to the fact that closed-end loans are secured by the borrower’s dwelling, special protections are created for borrowers in these transactions to ensure that they do not lose their homes as a result of onerous terms in the lending agreement or predatory practices.

The protections that Section 12-1029 offers to all consumers who engage in mortgage lending transactions are those that come from requiring lenders to consider repayment ability and to verify it using third-party written documentation. The protections that Section 12-1029 offers to consumers who apply for “covered loans” are those that come from their receipt of a recommendation for home buyer counseling and a list of counselors.
**Maryland’s Laws and the Predatory Lending Laws of Other States**

In 1999, North Carolina became one of the first states to adopt predatory lending legislation, and many states have used the North Carolina law as a model for their own laws. Like HOEPA, which Congress enacted in 1994, the North Carolina law and other state laws identify a group of loans that are subject to special protections. These loans are identified with interest rate and fee triggers.

The protections that these laws offer include:

**Special Disclosures:** HOEPA and many state laws require the use of special disclosures to alert borrowers that they may lose their homes if they fail to adhere to the payment schedules set forth in their lending agreements.

**Prohibited Lending Terms:** HOEPA and many state predatory lending laws include prohibitions for the use of particular lending terms such as:

- Negative amortization
- Balloon payments, if the loan has a short term
- Prepayment penalty provisions that are effective for more than two or three years
- Oppressive mandatory arbitration provisions
- Provisions to accelerate indebtedness
- Increased interest rate after default

**Prohibited Lending Practices:** HOEPA and many state predatory lending laws include prohibitions for the use of particular lending practices such as:

- Lending without consideration of the borrower’s repayment ability
- Repeated refinancing of a loan (loan flipping)
- Direct payment to home improvement contractors
- Originating loans based on the equity available in a home and not on repayment ability
- Offering and financing optional single-premium insurance product

Although Maryland does not have a law that is exclusively dedicated to predatory lending, many of the concerns that relate to predatory lending are addressed in Title 12 of Maryland’s Commercial Law. For example, the Finder’s Fee Law discourages loan flipping. Numerous provisions in Title 12 require consideration and verification of repayment ability, thereby discouraging equity-based lending decisions. By recommending homeowner counseling, other provisions in the law serve to warn consumers that expensive loans, which meet the interest rate or fee thresholds for HOEPA, are not the most advantageous mortgage products.

In addition to these laws, the Department of Financial Regulation has recently adopted new regulations that offer special protection to consumers who may consider obtaining risky loan
products such as higher-priced mortgages. The following section will review the particular types of loans affected by these regulations and the requirements that they create for mortgage professionals in Maryland.

**Special Rules for Higher-Priced Mortgage Loans**

The Department of Financial Regulation adopted new regulations, which became effective on November 3, 2008. These regulations are intended to protect consumers who accept “higher-priced mortgage loans.” This regulation is similar to updated provisions created under HOEPA for “higher-priced mortgages.”

In order to understand the new regulation, it is necessary to know the meanings of the following terms:

**Average Prime Offer**: The average prime offer rate is the average of interest rates, indexes, margins, points, and other information relevant to loan pricing for prime rate loans. (COMAR 09.03.06.02(B)(4))

**Higher-Priced Mortgage**: The regulations define a higher-priced mortgage loan as a mortgage loan with an interest rate that exceeds the “average prime offer” by the following amounts:

- 1.5 percentage points for loans secured by a first lien
- 3.5 percentage points for loans secured by a subordinate lien
- 2.5 percentage points for loans secured by a first lien jumbo loan

It is important to note that “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 §1026.35, as it may be amended from time to time.” (COMAR 09.03.06.02(B)(13)(b))

The Federal Reserve publishes average prime offer rates on the Internet. They represent the average of interest rates, indexes, margins, points, and other information relevant to loan pricing for prime rate loans.  

The following types or loans are excluded from the definition of higher-priced mortgage loan:

- A transaction to finance the initial construction of a dwelling
- A bridge loan with a term of 12 months or less
- A reverse mortgage
- A home equity line of credit that is subject to the requirements of the federal Truth-in-Lending Act for home equity credit plans

(COMAR 09.03.06.02(B)(13)(c))

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These exclusions are identical to those created under HOEPA. The primary objective of the Federal Reserve in establishing this definition of higher-priced mortgages was to “...cover the subprime market and generally exclude the prime market.”

The new regulations require mortgage lenders who offer higher-priced mortgages to:

- Include information in promotional materials that addresses the risks associated with higher-priced mortgages, such as negative amortization and loss of home equity (COMAR 09.03.06.21(C)(2)(a))
- Establish risk management policies for use when offering higher-priced mortgages. For example, mortgage lenders should train loan originators to provide borrowers with information on the risks associated with higher-priced mortgage and should review compensation programs to make certain that it is not rewarding originators for directing borrowers towards particular products. (COMAR 09.03.06.21(C)(2)(b))
- Establish control systems to ensure that third party originators that a mortgage lender licensee uses are operating in compliance with the policies and procedures (COMAR 09.03.06.21(C)(2)(c))

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Appendix

- Tangible Net Benefit Worksheet
- Commissioner of Financial Regulation Advisory Notice
- HUD-approved counseling agencies in Maryland