

MARYLAND REGISTER

Proposed Action on Regulations

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| Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations | Date Filed with AELR Committee | TO BE COMPLETED BY DSD |
| | 12/15/2014 | Date Filed with Division of State Documents |
| | | Document Number |
| | | Date of Publication in MD Register |
| | | |

1. Desired date of publication in Maryland Register: 1/23/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

09 03 06 02, .24, and .25

3. Name of Promulgating Authority

Department of Labor, Licensing, and Regulation

4. Name of Regulations Coordinator Telephone Number
Donnice M Turner 410-230-6008

Mailing Address

500 N. Calvert Street, 4th Floor

City State Zip Code
Baltimore MD 21202

Email
donniturner@dllr.state.md.us

5. Name of Person to Call About this Document Telephone No.
Brian Patrick Weeks 410-230-6359

Email Address
brianp.weeks@maryland.gov

6. Check applicable items:

- New Regulations

- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: December 11, 2014.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes - No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Brian Patrick Weeks, Assistant Attorney General, (telephone #410-230-6359) on December 12, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Gordon Cooley

Title

Telephone No.

Acting Commissioner of Financial Regulation 410-230-6361

Date

December 12, 2014

Title 09
DEPARTMENT OF LABOR, LICENSING, AND
REGULATION

Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.06 Mortgage Lenders

Authority: Financial Institutions Article, §§2-105.1 and 11-503, Annotated Code of Maryland

Notice of Proposed Action

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The Commissioner of Financial Regulation proposes to amend existing Regulation .02 and adopt new Regulations .24 -.25 under COMAR 09.03.06 Mortgage Lenders.

Statement of Purpose

The purpose of this action is to require licensed mortgage servicers to provide the Commissioner of Financial Regulation with information about the transfer or sale of mortgage servicing rights where the transfer or sale includes 5,000 or more loans. The proposed regulations also establish obligations for all licensed mortgage servicers who engage in transfers or sales of servicing rights as either the party obtaining the right to service the loan or the party transferring the right to service the loan. The proposed regulation is a response to a significant shift in the market for mortgage servicing rights, which has been fueled by large deals to transfer or sell mortgage servicing rights. The shift in the market for mortgage servicing rights has produced a rapid expansion in market share for non-bank, state-regulated mortgage servicers, and a concomitant reduction in market share for federally regulated depository institutions.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The reporting requirement will have a minimal economic impact on mortgage servicers that are licensed by the Commissioner of Financial Regulation. The reporting requirement is narrowly tailored to only apply to transactions for the transfer or sale of servicing rights of 5,000 or more loans. The Commissioner arrived at this threshold by researching past deals for transfers of mortgage servicing rights involving state-licensed mortgage servicers using public filings. Due to the limited number of transactions that the reporting requirement will apply to, the economic impact in Maryland is expected to be small. Additionally, the Commissioner expects that licensed mortgage servicers will be able to comply with the new obligations for mortgage servicing transfers

without any significant additional expenditures. The proposed regulations do not mandate that a servicer maintain any particular policies and procedures relating to transfer of mortgage servicing rights. The proposed regulations do impose specific obligations on transferor and transferee servicers, but the Commissioner feels that these obligations will not have a significant economic impact, since they are generally consistent with current industry practice and reflect core functions of the mortgage servicer business model, such as payment processing and loss mitigation activity.

| II. Types of Economic Impact. | Revenue (R+/R-) | Magnitude |
|---|-------------------------|----------------|
| | Expenditure (E+/E-) | |
| A. On issuing agency: | NONE | |
| B. On other State agencies: | NONE | |
| C. On local governments: | NONE | |
| | Benefit (+) Cost (-) | Magnitude |
| D. On regulated industries or trade groups: | (-) | Minimal |
| E. On other industries or trade groups: | NONE | |
| F. Direct and indirect effects on public: | | |
| Economic Benefits to Consumers | (+) | Indeterminable |

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

D. The assumption is that the economic impact of the reporting requirement on licensed mortgage servicers will be mitigated by two factors: (1) the 5,000 loan threshold that triggers the reporting requirement, and (2) the fact that mortgage servicers should already collect much of the data required by the proposed regulation before executing a contract for the transfer or sale of servicing rights. The economic impact of the new obligations related to all mortgage servicing transfers is also expected to be minimal. This assumption is based on the fact that the obligations focus heavily on loss mitigation, which will only apply to servicers that are involved in the transfer or sale of servicing rights for delinquent mortgage loans. Furthermore, many of the obligations are already industry standards, such as the obligation to accept and continue processing pending loss mitigation applications.

F. The establishment of a reporting requirement for mortgage servicing transfers should lead to economic benefits for Maryland consumers. The assumption is that the reporting requirement will ensure that the Commissioner is able to adequately assess potential risks to the safety and soundness of larger nonbank servicers due to rapid growth. The information will also allow the Commissioner to address any negative impacts that a transfer or sale of servicing rights may have had on a particular Maryland consumer. To the extent that the proposed regulations help the Commissioner ensure the safety and soundness of larger nonbank mortgage servicers and address loan-level issues, Maryland consumers will benefit from this action. The establishment of obligations related to all transfers or sales of mortgage servicing rights involving licensed mortgage servicers should also produce economic benefits for consumers. The assumption is that compliance with the framework established by the proposed regulations will mitigate existing problems with larger transfers, including interruptions in service to distressed borrowers.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jedd Bellman, Assistant Commissioner for Enforcement and Compliance, Division of Financial Regulation, Department of Labor, Licensing and Regulation, 500 North Calvert Street, Room 402, or call 410-230-6390, or email to jedd.bellman@maryland.gov, or fax to 410-333-0475. Comments will be accepted through March 2, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 15

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The regulations impose a reporting requirement that only applies to transactions for the transfer or sale of mortgage servicing rights for 5,000 or more loans. Small businesses typically would not engage in transactions of this magnitude.

The regulations also impose obligations for all licensed mortgage servicers involved in the transfer or sale of mortgage servicing rights. However, most of the obligations relate to delinquent loans. Because of the increased capacity and staffing levels required to service delinquent loans, most if not all of the servicers with delinquent loans in their portfolio will have staffing levels that exceed the staffing level established in the statutory definition of small business.

G. Small Business Worksheet:

Attached Document:

Title 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.06 Mortgage Lenders

Authority: Financial Institutions Article, §§2-105.1 and 11-503, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (19) (text unchanged)

(20) *Loan modification.*

(a) *“Loan modification” means a change to one or more of the terms of a mortgage loan.*

(b) *“Loan modification” includes, but is not limited to, one or more of the following:*

(i) *A reduction in interest rate;*

(ii) *A conversion from a variable interest rate to a fixed interest rate;*

(iii) *An extension of term length; and*

(iv) *A reduction in principal.*

(21) *“Loss mitigation option” means an alternative to foreclosure offered by the owner or assignee of a mortgage loan that a mortgage servicer makes available to the borrower.*

(22) *“Master Servicer” means a mortgage servicer that owns the right to service a mortgage loan.*

[(20)] (23) — [(22)] (25) (text unchanged)

(26) *“Mortgage servicer” means a person that engages in one or more of the following actions:*

(a) *Collects or receives one or more of the following types of payments on behalf of the owner of the mortgage loan or another third party, including a master servicer:*

(i) *Principal;*

(ii) *Interest;*

(iii) *Tax;*

(iv) *Insurance; or*

(v) *Any other payment due under the applicable security instrument.*

- (b) Evaluates borrower eligibility for loss mitigation options offered by the owner of the mortgage loan;
- (c) Communicates to borrowers regarding loss mitigation options offered by the owner of the mortgage loan;
- (d) Is responsible for any other action taken to protect the secured party's interest in the property under the applicable security instrument, including:
 - (i) Maintenance of hazard and mortgage insurance coverage; and
 - (ii) Preservation of the property.
- (e) Conducts or supervises the foreclosure process, except if the person is an attorney acting as a substitute trustee in a foreclosure action under a deed of trust; and
- (f) Makes or procures a mortgage loan if the person is also the holder of the mortgage servicing right or has been delegated one or more of the functions described in §B(26)(a)-(e) of this regulation by the holder of the mortgage servicing right.
- (27) "Mortgage servicing right" means the right to perform one or more of the functions listed in §B(26)(a)-(e) of this regulation.
- [23] (28) — [(26)] (31) (text unchanged)
- (32) "Subservicer" means a mortgage servicer that does not own the mortgage servicing right, but that services a mortgage loan on behalf of, and under an agreement with, a master servicer.
- (33) "Transfer Date" means the date on which the physical transfer of the servicing or subservicing responsibility to the transferee servicer or subservicer occurs.
- (34) Transfer of servicing rights.
 - (a) "Transfer of servicing rights" means the transfer or sale of mortgage servicing rights.
 - (b) "Transfer of servicing rights" includes a transfer of mortgage servicing rights from a master servicer to a subservicer pursuant to an agreement, if one of the parties is a licensed mortgage servicer.
 - (c) "Transfer of servicing rights" does not include a transfer of mortgage servicing rights that occurs before the first payment is due under the applicable security instrument.
- (35) "Transferee servicer" means a licensed mortgage servicer that obtains the right to service a loan under either a subservicing agreement or an agreement for the sale of mortgage servicing rights.
- (36) "Transferor servicer" means a licensed mortgage servicer that transfers the right to service a loan under either a subservicing agreement or an agreement for the sale of mortgage servicing rights.
- [(27)] (37) (text unchanged)

.24 Notice of Mortgage Servicing Transfers.

A. General Information Regarding Transfers of Servicing Rights.

- (1) For each transfer of servicing rights involving 5,000 or more loans, a transferee servicer shall provide the Commissioner with the following information at least 60 days before the transfer date, regardless of whether the transfer of servicing rights includes Maryland loans:
 - (a) Whether the transfer agreement is a subservicing agreement or an agreement for the sale of mortgage servicing rights;
 - (b) The names of all parties to the agreement;
 - (c) The total number of loans that will be transferred;
 - (d) The total unpaid principal balance for the loans that will be transferred;
 - (e) The total number of additional staff that has been or will be hired in order to service the transferred loans;
- and
- (f) Whether the pool of transferred loans includes Maryland loans.

(2) Waiver of 60 Day Requirement.

- (a) A transferee servicer may submit a written request to the Commissioner for a waiver from the 60 day requirement in §A(1) of this regulation.
- (b) After receipt of a written request, the Commissioner may grant a waiver from the 60 day requirement in §A(1) of this regulation if extenuating circumstances exist, such as where a court or regulator required the transfer.

B. Information Regarding Maryland Loans.

- (1) For each transfer of servicing rights subject to §A of this regulation that includes one or more Maryland loans, a transferee servicer shall provide the following information, accurate as of the date of submission to the Commissioner, at least 60 days before the transfer date:
 - (a) The total number of Maryland loans in the pool of transferred loans;
 - (b) A breakdown of the Maryland loans by investor type and FICO score;
 - (c) The number of Maryland loans that are delinquent, broken out by 30+, 90+, and 360+ days delinquent;
 - (d) The number of Maryland loans with a permanent loan modification;
 - (e) The number of Maryland loans for which the borrower has completed a trial loan modification and the transferor servicer has not supplied an executed copy of a permanent loan modification to the borrower;
 - (f) The number of Maryland loans with a loan modification that is in a trial period;
 - (g) The number of Maryland loans where the borrower has submitted a complete loss mitigation application and the transferor servicer has not made a decision regarding eligibility for a loss mitigation option;

(h) The number of Maryland loans that have incomplete loss mitigation applications; and
(i) The number of Maryland loans that include an escrow for taxes, insurance, ground rent, or other charges or levies.

(2) Waiver of 60 Day Requirement.

(a) A transferee servicer may submit a written request to the Commissioner for a waiver from the 60 day requirement in §B(1) of this regulation.

(b) After receipt of a written request, the Commissioner may grant a waiver from the 60 day requirement in §B(1) of this regulation if extenuating circumstances exist, such as where a court or regulator required the transfer.

C. For a transfer of servicing rights subject to §B of this regulation, a transferee servicer shall designate an officer, director, or member of senior management as the contact person authorized to discuss, negotiate, and make decisions for the resolution of complaints related to the servicing of Maryland loans that are in the pool of transferred loans.

D. Subsequent to receipt of the information required by §§B and C of this regulation, the Commissioner may request, and a transferee servicer shall provide, additional information before the transfer date, including, but not limited to:

(1) The name and loan number of a Maryland borrower whose loan is included in one or more of §B(1)(a)-(i) of this regulation; and

(2) An informational plan describing how the transferee servicer will manage risks related to the transfer.

E. Calendar-Year Information Regarding Mortgage Servicing Transfers.

(1) If, at the conclusion of a calendar year, a transferee servicer has acquired mortgage servicing rights, including subservicing rights, for 5,000 or more loans, a transferee servicer shall provide the information required by §§B and C of this regulation to reflect all transfers of servicing rights during the preceding calendar year, even if no single transfer of servicing rights was for 5,000 or more loans.

(2) Subsequent to receipt of the information required by §E(1) of this regulation, the Commissioner may request, and a transferee servicer shall provide, additional information, including, but not limited to, the name and loan number of a Maryland borrower whose loan is included in one or more of §B(1)(a)-(i) of this regulation.

F. The Commissioner may allow the submission of information and documents required under this regulation by an electronic method, including the NMLSR.

.25 Obligations Related to Mortgage Servicing Transfers.

A. Policies and Procedures.

(1) If a licensee is involved in a transfer of mortgage servicing rights as either a transferor or a transferee servicer, the licensee shall have policies and procedures in place to ensure compliance with applicable state and federal law regarding mortgage servicing, including, but not limited to, evaluation of borrowers for loss mitigation options.

(2) Examples of appropriate policies and procedures include:

(a) Requiring counterparties to provide all necessary documents and information, including all information needed to validate the debt and process payments, before the transfer date;

(b) Flagging all loans with pending offers of loss mitigation options or approved loss mitigation options;

(c) Ensuring that discussions with borrowers and any loss mitigation requests, applications, or documentation are provided to the transferee servicer;

(d) Testing transferor servicer and transferee servicer systems of record to ensure compatibility of transferred data;

(e) Identifying and promptly addressing data errors, missing information or documents, and other loan level issues;

(f) Creating a customer service plan for responding to inquiries from borrowers and for identifying whether a loan is subject to a pending loss mitigation application, offer of a loss mitigation option, or approved loss mitigation agreement;

(g) Creating a customer service plan for responding to and processing loss mitigation requests or inquiries from successors in interest of borrowers; and

(h) Remediating actual harm to borrowers that results from a transfer of servicing rights.

B. Obligations of Transferor Servicers.

(1) On or before the transfer date, a transferor servicer shall take all of the following actions:

(a) Provide all necessary loan level documents and information, including a complete history of loss mitigation activity, to the transferee servicer;

(b) Provide an itemization of all payments applied to the account, including any fees incurred by the borrower;

(c) Flag for the transferee servicer all loans with any of the following:

(i) a pending loss mitigation application;

(ii) an approved loss mitigation option;

(iii) a pending written complaint; or

(iv) a pending notice of error.

(d) Provide descriptions to the transferee servicer of loss mitigation options that are unique to the transferor servicer, including the criteria for determining eligibility;

(e) Describe specific regulatory requirements that are applicable to some or all of the transferred loans; and

(f) Describe specific requirements related to the terms of a settlement agreement that are applicable to some or all of the transferred loans.

(2) A transferor servicer shall forward all borrower payments received after the transfer date to the transferee servicer.

(3) Subject to Financial Institutions Article, §11-518, Annotated Code of Maryland, if a transferor servicer's failure to promptly comply with §B(1)-(2) of this regulation causes demonstrable financial loss to the borrower or harm to the borrower's credit score, the transferor servicer shall promptly take affirmative action to correct the violation including, but not limited to:

(a) Providing restitution of money or property to the affected borrower; and

(b) Taking steps to repair the borrower's credit score.

C. Obligations of Transferee Servicers.

(1) On or after the transfer date, a transferee servicer shall comply with all of the following requirements:

(a) Accept and continue processing pending loss mitigation applications within the timeframes that were applicable to the transferor servicer under relevant state and federal law;

(b) Honor trial and permanent loan modification agreements entered into by the transferor servicer;

(c) Provide general information about the transfer process to borrowers, including notice of a borrower's complaint resolution rights under applicable state and federal law;

(d) Confirm the amount and status of scheduled payments, including any fees incurred before the transfer date, with information and documents provided by the transferor servicer from its system of record; and

(e) Respond, within the timeframes established by applicable state and federal law, to any pending written complaint or pending notice of error sent to the transferor servicer.

(2) A transferee servicer may not take any of the following actions on or after the transfer date:

(a) Attempt to obtain from the borrower any missing information or documents that were previously submitted by the borrower to the transferor servicer, without first contacting the transferor servicer to attempt to obtain the missing information or documents; or

(b) Engage in any of the following activities before complying with §C(1)(d)-(e) of this regulation:

(i) Charge a late fee or any other fee in connection with the servicing of the loan;

(ii) Begin or continue collection activities; or

(iii) Provide information about delinquency to a credit reporting agency.

(3) Subject to Financial Institutions Article, §11-518, Annotated Code of Maryland, if a transferee servicer's failure to comply with §C(1)-(2) of this regulation causes demonstrable financial loss to the borrower or harm to the borrower's credit score, the transferor servicer shall promptly take affirmative action to correct the violation including, but not limited to:

(a) Providing restitution of money or property to the affected borrower; and

(b) Taking steps to repair the borrower's credit score.

GORDON COOLEY
Acting Commissioner of Financial Regulation