

# HOUSE BILL 363

I2, I3

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CF SB 270

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By: **The Speaker (By Request – Administration) and Delegates Aumann, Barkley, Barnes, Barve, Benson, Bobo, Bohanan, Braveboy, Bronrott, Burns, G. Clagett, V. Clagett, Conway, Doory, Eckardt, Frick, Gaines, Griffith, Gutierrez, Guzzone, Haddaway, Healey, Hecht, Heller, Holmes, Howard, Hucker, Ivey, James, Jones, Kaiser, Krysiak, Lafferty, Lee, Levi, Levy, Love, Manno, Mathias, McIntosh, Montgomery, Morhaim, Nathan-Pulliam, Niemann, Pena-Melnyk, Ramirez, Riley, Ross, Rudolph, Shewell, Sophocleus, Stein, Stukes, Tarrant, F. Turner, V. Turner, Vaughn, Waldstreicher, and Walker**

Introduced and read first time: January 25, 2008

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Credit Regulation – Mortgage Lending and Other Extensions of Credit**

3 FOR the purpose of prohibiting a lender from requiring or authorizing the imposition  
4 of a prepayment penalty, fee, premium, or other charge in connection with  
5 certain subprime loans; prohibiting certain lenders and credit grantors from  
6 making certain mortgage loans without giving due regard to the borrower's  
7 ability to repay the loans; requiring due regard to a borrower's ability to repay  
8 to include verification of certain income by review of certain written  
9 documentation; altering the threshold amount of a commercial loan on which  
10 prepayment charges or penalties may be charged; providing that no prepayment  
11 charges may be imposed on consumer borrowers in connection with certain open  
12 end credit; requiring a certain representation by a mortgage broker to be  
13 contained in a finder's fee agreement; authorizing the Commissioner of  
14 Financial Regulation to participate in the establishment and implementation of  
15 a multistate automated licensing system for mortgage lenders and mortgage  
16 originators and to adopt certain regulations to facilitate implementation of the  
17 system; requiring certain license applicants to have and maintain a certain net  
18 worth; requiring the Commissioner to deny an application for certain licenses  
19 filed by persons with certain felony convictions; requiring the Commissioner to  
20 set certain fees by regulation and to publish certain fee schedules; requiring  
21 certain licensees to file surety bonds in certain amounts; altering the procedures  
22 for renewing a certain license; altering certain examination requirements for a  
23 mortgage originator's license; requiring mortgage originators to reside within

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



100 miles of the licensed office locations from which they work; requiring the Commissioner to revoke the mortgage originator license of any licensee who, while licensed, has been convicted of certain felonies; defining certain terms; repealing a certain definition; making certain conforming changes; providing for the application of this Act; and generally relating to credit regulation, extensions of credit, mortgage lending, and mortgage origination.

BY renumbering

Article – Commercial Law

Section 12–105(a), (b), (c), and (d), respectively to be Section 12–105(b), (c), (e), and (f), respectively

Annotated Code of Maryland

(2005 Replacement Volume and 2007 Supplement)

BY adding to

Article – Commercial Law

Section 12–105(a) and (d), 12–905(g), and 12–925

Annotated Code of Maryland

(2005 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,

Article – Commercial Law

Section 12–105(c)

Annotated Code of Maryland

(2005 Replacement Volume and 2007 Supplement)

(As enacted by Section 1 of this Act)

BY repealing and reenacting, with amendments,

Article – Commercial Law

Section 12–127, 12–311, 12–409.1, 12–805, and 12–1029

Annotated Code of Maryland

(2005 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,

Article – Financial Institutions

Section 2–105.1, 11–506(a) and (d), 11–507(b), 11–508, 11–511, 11–515(c), 11–605(a) and (b), 11–606(b), 11–609(b), and 11–615(a)

Annotated Code of Maryland

(2003 Replacement Volume and 2007 Supplement)

BY adding to

Article – Financial Institutions

Section 11–503.1, 11–612.1, and 11–615(f)

Annotated Code of Maryland

(2003 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, without amendments,

Article – Financial Institutions

Section 11–507(a)(1) and 11–515(a)(1)  
Annotated Code of Maryland  
(2003 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 12–105(a), (b), (c), and (d), respectively, of Article – Commercial Law of the Annotated Code of Maryland be renumbered to be Section(s) 12–105(b), (c), (e), and (f), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

**Article – Commercial Law**

12–105.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “ANNUAL PERCENTAGE RATE” HAS THE MEANING STATED IN 12 C.F.R PART 226.

(3) “FULLY INDEXED RATE” MEANS THE INDEX RATE APPLICABLE TO A MORTGAGE LOAN FOR A RESIDENTIAL REAL PROPERTY AT THE TIME IT IS ORIGINATED, PLUS THE MARGIN THAT WILL APPLY AFTER THE EXPIRATION OF AN INTRODUCTORY INTEREST RATE.

(4) “MORTGAGE LOAN” HAS THE MEANING STATED IN § 11–501 OF THE FINANCIAL INSTITUTIONS ARTICLE.

(5) “RESIDENTIAL REAL PROPERTY” MEANS OWNER–OCCUPIED REAL PROPERTY HAVING A DWELLING ON IT DESIGNED PRINCIPALLY AS A RESIDENCE WITH ACCOMMODATIONS FOR NOT MORE THAN FOUR FAMILIES.

(6) “SUBPRIME LOAN” MEANS:

(I) IN THE CASE OF AN ADJUSTABLE RATE MORTGAGE LOAN SECURED BY A FIRST LIEN ON RESIDENTIAL REAL PROPERTY THAT CAN INCREASE IN INTEREST RATE BUT NOT DECREASE IN INTEREST RATE BELOW THE FULLY INDEXED RATE AT THE TIME OF ORIGINATION, A MORTGAGE LOAN FOR WHICH THE ANNUAL PERCENTAGE RATE IS GREATER THAN 2 PERCENTAGE POINTS ABOVE THE YIELD ON UNITED STATES TREASURY SECURITIES HAVING COMPARABLE PERIODS OF MATURITY:

1                               **1. AS OF THE 15TH DAY OF THE PRECEDING MONTH**  
2 **IF THE RATE IS SET BETWEEN THE FIRST AND 14TH DAY OF THE MONTH; AND**

3                               **2. AS OF THE 15TH DAY OF THE CURRENT MONTH IF**  
4 **THE RATE IS SET ON OR AFTER THE 15TH DAY; AND**

5                               **(II) FOR ALL OTHER MORTGAGE LOANS SECURED BY A**  
6 **FIRST LIEN ON RESIDENTIAL REAL PROPERTY, A MORTGAGE LOAN FOR WHICH**  
7 **THE ANNUAL PERCENTAGE RATE IS GREATER THAN 3 PERCENTAGE POINTS**  
8 **ABOVE THE YIELD ON UNITED STATE TREASURY SECURITIES HAVING**  
9 **COMPARABLE PERIODS OF MATURITY:**

10                              **1. AS OF THE 15TH DAY OF THE PRECEDING MONTH**  
11 **IF THE RATE IS SET BETWEEN THE FIRST AND THE 14TH DAY OF THE MONTH;**  
12 **AND**

13                              **2. AS OF THE 15TH DAY OF THE CURRENT MONTH IF**  
14 **THE RATE IS SET ON OR AFTER THE 15TH DAY.**

15               (c) **[If] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, IF**  
16 **the loan contract provides for them, the following fees and charges also may be**  
17 **collected and are not interest under this subtitle:**

18                              (1) A service charge for investigation and the continued servicing of  
19 collateral for a commercial loan secured by inventory or accounts receivable;

20                              (2) A service charge made by a broker or dealer dealing in investment  
21 securities if:

22    (i) Money is advanced on the security of pledged investment  
23 securities; and

24    (ii) Services are rendered in the collection, crediting, and  
25 disbursement of income on the investment securities and in the furnishing of income  
26 tax and other information in connection with that income;

27                              (3) A delinquent or late charge of the greater of \$2 or 5 percent of the  
28 total amount of any delinquent or late periodic installment of principal and interest, if:

29    (i) The delinquency has continued for at least 15 calendar days;  
30 and

31    (ii) A delinquent or late charge has not already been charged for  
32 the same delinquency; and

(4) A prepayment charge or penalty on a prepayment of the unpaid principal balance of the loan, if the loan is secured by a home, by a combination of home and business property, or by agricultural property, or if the loan is a commercial loan not in excess of [\$5,000] **\$15,000**, provided that the charge or penalty:

(i) May be imposed only on prepayments made within three years from the date the loan is made; and

(ii) May not exceed an amount equal to two months' advance interest on the aggregate amount of all prepayments made in any 12-month period in excess of one third of the amount of the original loan.

**(D) (1) IN CONNECTION WITH A SUBPRIME LOAN, A LENDER MAY NOT REQUIRE OR AUTHORIZE THE IMPOSITION OF A PENALTY, FEE, PREMIUM, OR OTHER CHARGE IN THE EVENT THE SUBPRIME LOAN IS PREPAID IN WHOLE OR IN PART.**

**(2) THE PROHIBITION UNDER PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO A SUBPRIME LOAN WITH A PRINCIPAL AMOUNT THAT EXCEEDS THE CONFORMING SUBPRIME LOAN SIZE LIMIT FOR A SINGLE FAMILY DWELLING AS ESTABLISHED FROM TIME TO TIME BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION.**

12-127.

(a) (1) In this section the following words have the meanings indicated.

(2) ["Covered loan" means a mortgage loan made under this subtitle that meets the criteria for a loan subject to the federal Home Ownership Equity Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the mortgage loan shall be one percentage point less than those specified in 15 U.S.C. § 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.] **"FULLY INDEXED RATE" MEANS THE INDEX RATE APPLICABLE TO A MORTGAGE LOAN FOR A RESIDENTIAL REAL PROPERTY AT THE TIME IT IS ORIGINATED, PLUS THE MARGIN THAT WILL APPLY AFTER THE EXPIRATION OF AN INTRODUCTORY INTEREST RATE.**

(3) "Mortgage loan" has the meaning stated in § 11-501 of the Financial Institutions Article.

(4) "Residential real property" means owner-occupied real property having a dwelling on it designed principally as a residence with accommodations for not more than four families.

(b) (1) A lender may not make a [covered] **MORTGAGE** loan without giving due regard to the borrower's ability to repay the loan in accordance with its terms, **INCLUDING THE FULLY INDEXED RATE OF THE MORTGAGE LOAN, IF APPLICABLE, AND PROPERTY TAXES AND HOMEOWNER'S INSURANCE WHETHER OR NOT AN ESCROW ACCOUNT IS ESTABLISHED FOR THE COLLECTION AND PAYMENT OF THESE EXPENSES.**

(2) A borrower is presumed to be able to repay a **MORTGAGE** loan if at the time the **MORTGAGE** loan is made the borrower's total scheduled monthly payment obligations, including the [required loan payment]**PRINCIPAL, INTEREST, PROPERTY TAXES, AND HOMEOWNER'S INSURANCE**, do not exceed 45 percent of the borrower's monthly gross income.

[(3) This section does not apply to a covered loan to a borrower whose monthly gross income is greater than 120 percent of the median family income for the metropolitan statistical area in which the residential real property securing the loan is located.]

**(C) (1) DUE REGARD TO A BORROWER'S ABILITY TO REPAY A MORTGAGE LOAN MUST INCLUDE VERIFICATION OF THE BORROWER'S GROSS MONTHLY INCOME BY REVIEW OF WRITTEN DOCUMENTATION REASONABLY BELIEVED BY THE LENDER TO BE ACCURATE AND COMPLETE.**

**(2) ACCEPTABLE WRITTEN DOCUMENTATION INCLUDES:**

**(I) A WRITTEN STATEMENT SUBMITTED BY THE BORROWER;**

**(II) A COPY OF THE BORROWER'S FEDERAL INCOME TAX RETURN;**

**(III) THE BORROWER'S MOST RECENT PAY STUB; AND**

**(IV) A WRITTEN STATEMENT SUBMITTED BY THE BORROWER'S EMPLOYER.**

12-311.

(a) (1) In this section the following words have the meanings indicated.

(2) "Covered loan" means a mortgage loan made under this subtitle that meets the criteria for a loan subject to the federal Home Ownership Equity Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the

mortgage loan shall be one percentage point less than those specified in 15 U.S.C. § 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.

**(3) “FULLY INDEXED RATE” MEANS THE INDEX RATE APPLICABLE TO A MORTGAGE LOAN FOR A RESIDENTIAL REAL PROPERTY AT THE TIME IT IS ORIGINATED, PLUS THE MARGIN THAT WILL APPLY AFTER THE EXPIRATION OF AN INTRODUCTORY INTEREST RATE.**

~~[(3)]~~ **(4)** “Home buyer education or housing counseling” means instruction on preparing for home ownership, shopping for a home, obtaining a mortgage, loan closing, and life as a homeowner.

**(5) “MORTGAGE LOAN” HAS THE MEANING STATED IN § 11-501 OF THE FINANCIAL INSTITUTIONS ARTICLE.**

~~[(4)]~~ **(6)** “Residential real property” means owner-occupied real property having a dwelling on it designed principally as a residence with accommodations for not more than four families.

(b) A lender may not take as security for a loan any:

(1) Confession of judgment or power of attorney to him or to a third person to confess judgment or appear for the borrower in a judicial proceeding;

(2) Assignment or order for payment of wages;

(3) Instrument in which blanks are left to be filled after execution; or

(4) Note, promise to pay, or security instrument which does not state:

(i) The principal amount of the loan;

(ii) A schedule of payments or a description of the schedule; and

(iii) The agreed amount and rate of interest, charges, and fees.

(c) (1) A lender may not take any security interest in:

(i) Real property for any loan under \$2,000 in value or amount;

or

(ii) Personal property for any loan under \$700 in value or

amount.

(2) Any lien taken in violation of this subsection is void.

(3) This subsection does not apply to or affect a lien on an interest in real property which results from a judgment obtained by the lender based on a loan otherwise secured or unsecured.

(d) (1) A lender may not make a [covered] **MORTGAGE** loan without giving due regard to the borrower's ability to repay the loan in accordance with its terms, **INCLUDING THE FULLY INDEXED RATE OF THE MORTGAGE LOAN, IF APPLICABLE, AND PROPERTY TAXES AND HOMEOWNER'S INSURANCE WHETHER OR NOT AN ESCROW ACCOUNT IS ESTABLISHED FOR THE COLLECTION AND PAYMENT OF THESE EXPENSES.**

(2) A borrower is presumed to be able to repay a **MORTGAGE** loan if at the time the **MORTGAGE** loan is made the borrower's total scheduled monthly payment obligations, including the [required loan payment] **PRINCIPAL, INTEREST, PROPERTY TAXES, AND HOMEOWNER'S INSURANCE**, do not exceed 45 percent of the borrower's monthly gross income.

[(3) This subsection does not apply to a covered loan to a borrower whose monthly gross income is greater than 120 percent of the median family income for the metropolitan statistical area in which the residential real property securing the loan is located.]

**(E) (1) DUE REGARD TO A BORROWER'S ABILITY TO REPAY A MORTGAGE LOAN MUST INCLUDE VERIFICATION OF THE BORROWER'S GROSS MONTHLY INCOME BY REVIEW OF WRITTEN DOCUMENTATION REASONABLY BELIEVED BY THE LENDER TO BE ACCURATE AND COMPLETE.**

**(2) ACCEPTABLE WRITTEN DOCUMENTATION INCLUDES:**

**(I) A WRITTEN STATEMENT SUBMITTED BY THE BORROWER;**

**(II) A COPY OF THE BORROWER'S FEDERAL INCOME TAX RETURN;**

**(III) THE BORROWER'S MOST RECENT PAY STUB; AND**

**(IV) A WRITTEN STATEMENT SUBMITTED BY THE BORROWER'S EMPLOYER.**

[(e)] **(F) (1)** In this subsection, "loan application" has the meaning stated in § 12–125 of this title.

(2) At the time a borrower completes a loan application for a covered loan, the lender shall provide the borrower with:



(i) A written recommendation that the borrower seek home buyer education or housing counseling; and

(ii) A list of agencies and organizations approved by the county in which the residential real property securing the covered loan is located to provide home buyer education or housing counseling.

12-409.1.

(a) (1) In this section the following words have the meanings indicated.

(2) “Covered loan” means a mortgage loan made under this subtitle that meets the criteria for a loan subject to the federal Home Ownership Equity Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the mortgage loan shall be one percentage point less than those specified in 15 U.S.C. § 1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.

**(3) “FULLY INDEXED RATE” MEANS THE INDEX RATE APPLICABLE TO A SECONDARY MORTGAGE LOAN FOR A RESIDENTIAL REAL PROPERTY AT THE TIME IT IS ORIGINATED, PLUS THE MARGIN THAT WILL APPLY AFTER THE EXPIRATION OF AN INTRODUCTORY INTEREST RATE.**

**[(3)] (4)** “Home buyer education or housing counseling” means instruction on preparing for home ownership, shopping for a home, obtaining a mortgage, loan closing, and life as a homeowner.

**[(4)] (5)** “Residential real property” means owner-occupied real property having a dwelling on it designed principally as a residence with accommodations for not more than four families.

(b) (1) A lender may not make a [covered] **SECONDARY MORTGAGE** loan without giving due regard to the borrower’s ability to repay the **SECONDARY MORTGAGE** loan in accordance with its terms, **INCLUDING THE FULLY INDEXED RATE OF THE SECONDARY MORTGAGE LOAN, IF APPLICABLE, AND PROPERTY TAXES AND HOMEOWNER’S INSURANCE WHETHER OR NOT AN ESCROW ACCOUNT IS ESTABLISHED FOR THE COLLECTION AND PAYMENT OF THESE EXPENSES.**

(2) A borrower is presumed to be able to repay a **SECONDARY MORTGAGE** loan if at the time the **SECONDARY MORTGAGE** loan is made the borrower’s total scheduled monthly payment obligations, including the [required loan payment] **PRINCIPAL, INTEREST, PROPERTY TAXES, AND HOMEOWNER’S INSURANCE**, do not exceed 45 percent of the borrower’s monthly gross income.

1 [(3) This subsection does not apply to a covered loan to a borrower  
2 whose monthly gross income is greater than 120 percent of the median family income  
3 for the metropolitan statistical area in which the residential real property securing the  
4 loan is located.]

5 (C) (1) DUE REGARD TO A BORROWER'S ABILITY TO REPAY A  
6 SECONDARY MORTGAGE LOAN MUST INCLUDE VERIFICATION OF THE  
7 BORROWER'S GROSS MONTHLY INCOME BY REVIEW OF WRITTEN  
8 DOCUMENTATION REASONABLY BELIEVED BY THE LENDER TO BE ACCURATE  
9 AND COMPLETE.

10 (2) ACCEPTABLE WRITTEN DOCUMENTATION INCLUDES:

11 (I) A WRITTEN STATEMENT SUBMITTED BY THE  
12 BORROWER;

13 (II) A COPY OF THE BORROWER'S FEDERAL INCOME TAX  
14 RETURN;

15 (III) THE BORROWER'S MOST RECENT PAY STUB; AND

16 (IV) A WRITTEN STATEMENT SUBMITTED BY THE  
17 BORROWER'S EMPLOYER.

18 [(c)] (D) (1) In this subsection, "loan application" has the meaning stated  
19 in § 12-125 of this title.

20 (2) At the time a borrower completes a loan application for a covered  
21 loan, the lender shall provide the borrower with:

22 (i) A written recommendation that the borrower seek home  
23 buyer education or housing counseling; and

24 (ii) A list of agencies and organizations approved by the county  
25 in which the residential real property securing the covered loan is located to provide  
26 home buyer education or housing counseling.

27 12-805.

28 (a) A mortgage broker may not receive any fee in the form of a note,  
29 mortgage, or other evidence of indebtedness.

30 (b) Payment of the finder's fee to the mortgage broker out of the proceeds of  
31 the loan is not considered as interest to the lender if the finder's fee is not in excess of  
32 that permitted by this subtitle.

(c) If the finder's fee is paid from the proceeds of the loan, the lender shall comply with the disclosure provisions of § 12-106 of this article or the federal Truth in Lending Act and in addition shall advise the borrower, in writing, of the borrower's right to a refund of the finder's fee upon the exercise of any right of rescission of the loan.

(d) (1) A finder's fee may not be charged unless it is pursuant to a written agreement between the mortgage broker and the borrower which is separate and distinct from any other document.

(2) The terms of the proposed agreement shall:

(I) [be] **BE** disclosed to the borrower before the mortgage broker undertakes to assist the borrower in obtaining a loan or advance of money [and shall];

(II) [specify] **SPECIFY** the amount of the finder's fee; **AND**

(III) **CONTAIN A REPRESENTATION BY THE MORTGAGE BROKER THAT THE MORTGAGE BROKER IS ACTING AS A MORTGAGE BROKER AND NOT AS A LENDER IN THE TRANSACTION.**

(3) A copy of the agreement, dated and signed by the mortgage broker and the borrower, shall be provided to the borrower within 10 business days after the date the loan application is completed.

12-905.

**(G) IN CONNECTION WITH A PREPAYMENT OF A LOAN BY A CONSUMER BORROWER, THE CREDIT GRANTOR MAY NOT IMPOSE A PREPAYMENT CHARGE.**

**12-925.**

**(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(2) "FULLY INDEXED RATE" MEANS THE INDEX RATE APPLICABLE TO A MORTGAGE LOAN FOR A RESIDENTIAL REAL PROPERTY AT THE TIME IT IS ORIGINATED, PLUS THE MARGIN THAT WILL APPLY AFTER THE EXPIRATION OF AN INTRODUCTORY INTEREST RATE.**

**(3) "MORTGAGE LOAN" HAS THE MEANING STATED IN § 11-501 OF THE FINANCIAL INSTITUTIONS ARTICLE.**

1           **(B) (1) A CREDIT GRANTOR MAY NOT MAKE A MORTGAGE LOAN**  
2 **WITHOUT GIVING DUE REGARD TO THE BORROWER'S ABILITY TO REPAY THE**  
3 **MORTGAGE LOAN IN ACCORDANCE WITH ITS TERMS, INCLUDING THE FULLY**  
4 **INDEXED RATE OF THE MORTGAGE LOAN, IF APPLICABLE, AND PROPERTY**  
5 **TAXES AND HOMEOWNER'S INSURANCE WHETHER OR NOT AN ESCROW ACCOUNT**  
6 **IS ESTABLISHED FOR THE COLLECTION AND PAYMENT OF THESE EXPENSES.**

7           **(2) A BORROWER IS PRESUMED TO BE ABLE TO REPAY A**  
8 **MORTGAGE LOAN IF AT THE TIME THE LOAN IS MADE THE BORROWER'S TOTAL**  
9 **SCHEDULED MONTHLY PAYMENT OBLIGATIONS, INCLUDING THE PRINCIPAL,**  
10 **INTEREST, PROPERTY TAXES, AND HOMEOWNER'S INSURANCE, DO NOT EXCEED**  
11 **45 PERCENT OF THE BORROWER'S MONTHLY GROSS INCOME.**

12           **(C) (1) DUE REGARD TO A BORROWER'S ABILITY TO REPAY A**  
13 **MORTGAGE LOAN MUST INCLUDE VERIFICATION OF THE BORROWER'S GROSS**  
14 **MONTHLY INCOME BY REVIEW OF WRITTEN DOCUMENTATION REASONABLY**  
15 **BELIEVED BY THE CREDIT GRANTOR TO BE ACCURATE AND COMPLETE.**

16           **(2) ACCEPTABLE WRITTEN DOCUMENTATION INCLUDES:**

17                   **(I) A WRITTEN STATEMENT SUBMITTED BY THE**  
18 **BORROWER;**

19                   **(II) A COPY OF THE BORROWER'S FEDERAL INCOME TAX**  
20 **RETURN;**

21                   **(III) THE BORROWER'S MOST RECENT PAY STUB; AND**

22                   **(IV) A WRITTEN STATEMENT SUBMITTED BY THE**  
23 **BORROWER'S EMPLOYER.**

24 12-1029.

25           **(a) (1) In this section the following words have the meanings indicated.**

26                   **(2) "Covered loan" means a mortgage loan made under this subtitle**  
27 **that meets the criteria for a loan subject to the federal Home Ownership and Equity**  
28 **Protection Act set forth in 15 U.S.C. § 1602(aa), as modified from time to time by**  
29 **Regulation Z, 12 C.F.R. Part 226, except that the comparison percentages for the**  
30 **mortgage loan shall be one percentage point less than those specified in 15 U.S.C. §**  
31 **1602(aa), as modified from time to time by Regulation Z, 12 C.F.R. Part 226.**

32                   **(3) "FULLY INDEXED RATE" MEANS THE INDEX RATE APPLICABLE**  
33 **TO A MORTGAGE LOAN FOR A RESIDENTIAL REAL PROPERTY AT THE TIME IT IS**

1 **ORIGINATED, PLUS THE MARGIN THAT WILL APPLY AFTER THE EXPIRATION OF**  
2 **AN INTRODUCTORY INTEREST RATE.**

3 **[(3)] (4)** “Home buyer education or housing counseling” means  
4 instruction on preparing for home ownership, shopping for a home, obtaining a  
5 mortgage, loan closing, and life as a homeowner.

6 **(5) “MORTGAGE LOAN” HAS THE MEANING STATED IN § 11-501**  
7 **OF THE FINANCIAL INSTITUTIONS ARTICLE.**

8 (b) (1) A credit grantor may not make a [covered] **MORTGAGE** loan  
9 without giving due regard to the borrower’s ability to repay the **MORTGAGE** loan in  
10 accordance with its terms, **INCLUDING THE FULLY INDEXED RATE OF THE**  
11 **MORTGAGE LOAN, IF APPLICABLE, AND PROPERTY TAXES AND HOMEOWNER’S**  
12 **INSURANCE WHETHER OR NOT AN ESCROW ACCOUNT IS ESTABLISHED FOR THE**  
13 **COLLECTION AND PAYMENT OF THESE EXPENSES.**

14 (2) A borrower is presumed to be able to repay a **MORTGAGE** loan if at  
15 the time the **MORTGAGE** loan is made the borrower’s total scheduled monthly  
16 payment obligations, including the [required loan payment] **PRINCIPAL, INTEREST,**  
17 **PROPERTY TAXES, AND HOMEOWNER’S INSURANCE,** do not exceed 45 percent of  
18 the borrower’s monthly gross income.

19 **[(3)]** This subsection does not apply to a loan to a borrower whose  
20 monthly gross income is greater than 120 percent of the median family income for the  
21 metropolitan statistical area in which the residential real property securing the loan is  
22 located.]

23 **(C) (1) DUE REGARD TO A BORROWER’S ABILITY TO REPAY A**  
24 **MORTGAGE LOAN MUST INCLUDE VERIFICATION OF THE BORROWER’S GROSS**  
25 **MONTHLY INCOME BY REVIEW OF WRITTEN DOCUMENTATION REASONABLY**  
26 **BELIEVED BY THE CREDIT GRANTOR TO BE ACCURATE AND COMPLETE.**

27 **(2) ACCEPTABLE WRITTEN DOCUMENTATION INCLUDES:**

28 **(I) A WRITTEN STATEMENT SUBMITTED BY THE**  
29 **BORROWER;**

30 **(II) A COPY OF THE BORROWER’S FEDERAL INCOME TAX**  
31 **RETURN;**

32 **(III) THE BORROWER’S MOST RECENT PAY STUB; AND**

33 **(IV) A WRITTEN STATEMENT SUBMITTED BY THE**  
34 **BORROWER’S EMPLOYER.**

1           [(c)] **(D)**       (1)    In this subsection, “loan application” has the meaning stated  
2 in § 12–1022 of this subtitle.

3                       (2)    At the time a borrower completes a loan application for a covered  
4 loan, the credit grantor shall provide the borrower with:

5                               (i)    A written recommendation that the borrower seek home  
6 buyer education or housing counseling; and

7                               (ii)   A list of agencies and organizations approved by the county  
8 in which the residential real property securing the covered loan is located to provide  
9 home buyer education or housing counseling.

## 10                               **Article – Financial Institutions**

11   2–105.1.

12           **(A)   (1)    IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
13 **MEANINGS INDICATED.**

14                       **(2)    “MORTGAGE LENDER” HAS THE MEANING STATED IN § 11–501**  
15 **OF THIS ARTICLE.**

16                       **(3)    “MORTGAGE ORIGINATOR” HAS THE MEANING STATED IN**  
17 **§ 11–601 OF THIS ARTICLE.**

18           **(B)**   The Commissioner may adopt and enforce regulations reasonably  
19 necessary to carry out the authority and responsibility of the office of Commissioner.

20           **(C)   (1)    THE COMMISSIONER MAY PARTICIPATE IN THE**  
21 **ESTABLISHMENT AND IMPLEMENTATION OF A MULTISTATE AUTOMATED**  
22 **LICENSING SYSTEM FOR MORTGAGE LENDERS AND MORTGAGE ORIGINATORS.**

23                       **(2)    TO FACILITATE IMPLEMENTATION OF A MULTISTATE**  
24 **AUTOMATED LICENSING SYSTEM, THE COMMISSIONER MAY ADOPT**  
25 **REGULATIONS THAT WAIVE OR MODIFY THE REQUIREMENTS OF §§ 11–507,**  
26 **11–511, 11–606, AND 11–609 OF THIS ARTICLE.**

27   **11–503.1.**

28           **(A)    THE COMMISSIONER SHALL SET BY REGULATION THE FEES**  
29 **PROVIDED FOR IN THIS SUBTITLE.**

1       **(B) THE FEES ESTABLISHED BY THE COMMISSIONER UNDER THIS**  
2 **SECTION SHALL BE REASONABLE AND SET IN A MANNER THAT WILL PRODUCE**  
3 **FUNDS SUFFICIENT TO COVER THE ACTUAL DIRECT AND INDIRECT COSTS OF**  
4 **REGULATING LICENSEES IN ACCORDANCE WITH THE PROVISIONS OF THIS**  
5 **SUBTITLE.**

6       **(C) THE COMMISSIONER SHALL PUBLISH THE FEE SCHEDULE SET BY**  
7 **THE COMMISSIONER.**

8 11-506.

9       (a) To qualify for a license, an applicant shall satisfy the Commissioner that  
10 the applicant:

11               **(1) [is] IS** of good moral character and has sufficient financial  
12 responsibility, business experience, and general fitness to:

13               **[(1)] (I)** Engage in business as a mortgage lender;

14               **[(2)] (II)** Warrant the belief that the business will be conducted  
15 lawfully, honestly, fairly, and efficiently; and

16               **[(3)] (III)** Command the confidence of the public; **AND**

17               **(2) HAS, AND AT ALL TIMES WILL MAINTAIN, A MINIMUM NET**  
18 **WORTH COMPUTED ACCORDING TO GENERALLY ACCEPTED ACCOUNTING**  
19 **PRINCIPLES OF \$25,000, OR OF UP TO \$500,000 IF THE COMMISSIONER SO**  
20 **REQUIRES AFTER CONSIDERING THE FOLLOWING FACTORS:**

21               **(I) THE NATURE AND VOLUME OF THE BUSINESS OR**  
22 **PROPOSED BUSINESS OF THE APPLICANT;**

23               **(II) THE AMOUNT, NATURE, QUALITY, AND LIQUIDITY OF**  
24 **THE ASSETS OF THE APPLICANT;**

25               **(III) THE AMOUNT AND NATURE OF THE LIABILITIES,**  
26 **INCLUDING CONTINGENT LIABILITIES, OF THE APPLICANT;**

27               **(IV) THE HISTORY OF, AND PROSPECTS FOR, THE**  
28 **APPLICANT TO EARN AND RETAIN INCOME;**

29               **(V) THE QUALITY OF THE OPERATIONS OF THE APPLICANT;**

30               **(VI) THE QUALITY OF THE MANAGEMENT OF THE**  
31 **APPLICANT;**

1                   **(VII) THE QUALITY AND NATURE OF THE PERSON THAT**  
2 **CONTROLS THE APPLICANT; AND**

3                   **(VIII) ANY OTHER FACTOR THE COMMISSIONER CONSIDERS**  
4 **RELEVANT.**

5           (d)    **(1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
6 **SUBSECTION, THE** Commissioner may deny an application for a license to any person  
7 who has been officially reprimanded or has committed any act that would be a ground  
8 for suspension or revocation of a license under this subtitle.

9                   **(2) THE COMMISSIONER SHALL DENY AN APPLICATION FOR A**  
10 **LICENSE FILED BY:**

11                   **(I) AN INDIVIDUAL WHO HAS BEEN CONVICTED WITHIN THE**  
12 **LAST 10 YEARS OF A FELONY INVOLVING FRAUD, THEFT, OR FORGERY; AND**

13                   **(II) AN ENTITY THAT HAS A DIRECTOR, OFFICER, PARTNER,**  
14 **MEMBER, OR OWNER OF 10 PERCENT OR MORE OF THE ENTITY WHO HAS BEEN**  
15 **CONVICTED WITHIN THE LAST 10 YEARS OF A FELONY INVOLVING FRAUD,**  
16 **THEFT, OR FORGERY.**

17 11-507.

18           (a)    **(1)** To apply for a license, an applicant shall complete, sign, and  
19 submit to the Commissioner an application made under oath on the form that the  
20 Commissioner requires.

21           (b)    With each application, the applicant shall pay to the Commissioner **THE**  
22 **FOLLOWING FEES:**

23                   **(1) A nonrefundable investigation fee [of \$100] SET BY THE**  
24 **COMMISSIONER; and**

25                   **(2) A license fee [of either:**

26                           **(i) \$1,000 if the applicant applies for a license to be issued on or**  
27 **after January 1 and on or before December 31 of an even-numbered year;**

28                           **(ii) Effective January 1, 1999, \$500 if the applicant applies for a**  
29 **license to be issued on or after January 1 and on or before December 31 of an**  
30 **odd-numbered year; or**



(iii) Notwithstanding subparagraph (i) or (ii) of this paragraph, \$1,000 if the applicant applies for a license to be issued on or after October 1, 1997 and on or before December 31, 1997] **SET BY THE COMMISSIONER.**

11-508.

(a) An applicant for a new license or for the renewal of a license shall file a surety bond with each original application and any renewal application for the license.

(b) The surety bond shall:

(1) Run to the Commissioner and be for the benefit of any mortgage loan borrower who has been damaged by a violation committed by a licensee of any law or regulation governing the activities of mortgage lenders;

(2) Be issued by a surety company authorized to do business in the State;

(3) Be conditioned that the applicant shall comply with all Maryland laws regulating the activities of mortgage lenders and mortgage loan lending; and

(4) Be approved by the Commissioner.

(c) If an applicant has not conducted a mortgage lending business any time during the 36 months prior to the filing of an original application for a license, the applicant shall provide a sworn statement setting forth that fact[, and shall file with the original application a surety bond in the amount of \$15,000].

(d) (1) If an applicant has conducted a mortgage lending business any time during the 36 months prior to the filing of an original or renewal application, the applicant shall provide a sworn statement setting forth the aggregate principal amount of mortgage loans secured or to be secured by property located in Maryland and applied for and accepted or mortgage loans secured or to be secured by property located in Maryland and applied for, procured, and accepted by the mortgage lender during the 12 months immediately preceding the month in which the application is filed.

(2) If an applicant has conducted a mortgage lending business any time during the 36 months prior to the filing of an original application, but during that time has not acted as a mortgage lender in Maryland, the applicant shall provide with the original application a sworn statement setting forth the aggregate principal amount of loans secured or to be secured by residential real property 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.

(3) Except as provided in [subsections (c) and] **SUBSECTION (e)** of this section, the applicant shall file with the original or renewal application:

(i) Where the aggregate principal amount of loans set forth in the sworn statement was \$3,000,000 or less, a surety bond in the amount of [~~\$25,000~~] **\$50,000**;

(ii) Where the aggregate principal amount of loans set forth in the sworn statement was more than \$3,000,000 but not more than \$10,000,000, a surety bond in the amount of [~~\$50,000~~] **\$100,000**; and

(iii) Where the aggregate principal amount of loans set forth in the sworn statement was more than \$10,000,000, a surety bond in the amount of [~~\$75,000~~] **\$150,000**.

(e) Notwithstanding any other provisions of this section, and subject to approval by the Commissioner, if an applicant files five or more original or renewal applications at the same time, the applicant may provide a blanket surety bond for all licensed offices in the amount of [~~\$375,000~~] **\$1,000,000**.

(f) Subject to approval by the Commissioner, an applicant for license who files an application for a new license or for the renewal of a license may satisfy the bonding requirement under this section by establishing a trust account with or obtaining an irrevocable letter of credit from a financial institution insured by the Federal Deposit Insurance Corporation in an amount equal to the bond required under this section.

(g) The Commissioner may adopt regulations reasonably necessary to assure that the proper surety bond amount established by this section is maintained by each licensee throughout each licensing term. The regulations may provide for periodic reporting, recalculation, and enforcement of required bond amounts.

11-511.

(a) [(1) A license issued on or before September 30, 1997 expires on December 31 of the year in which it was issued, unless the license is renewed for a 2-year term, as provided in this section.

(2) A license issued on or after October 1, 1997 expires on December 31 in each odd-numbered year after December 31, 1997 unless the license is renewed for a 2-year term as provided in this section.] **A LICENSE EXPIRES ON THE SECOND ANNIVERSARY OF ITS DATE OF ISSUE.**

(b) [On or before December 1 of the year of] **AT LEAST 30 DAYS BEFORE ITS** expiration, a license may be renewed for an additional 2-year term, if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the Commissioner a renewal fee [of \$1,000] **SET BY THE COMMISSIONER**;

(3) Files a bond or bond continuation certificate for the amount required under § 11-508 of this subtitle; and

(4) Submits to the Commissioner:

(i) A renewal application on the form that the Commissioner requires; and

(ii) Satisfactory evidence of compliance with any continuing education requirements set by regulations adopted by the Commissioner.

(c) If a license is issued for less than 2 full years and is surrendered voluntarily, or is suspended or revoked, the Commissioner may not refund any part of the license fee regardless of the time remaining in the license term.

(d) The Secretary may determine that licenses issued under this subtitle shall expire on a staggered basis.

11-515.

(a) (1) The Commissioner shall examine the business of each licensee:

(i) In accordance with a schedule established by the Commissioner; and

(ii) At any other time that the Commissioner reasonably considers necessary.

(c) A licensee shall pay to the Commissioner a **PER-DAY** fee [of not more than \$250 per day] **SET BY THE COMMISSIONER** for each of the Commissioner's employees engaged in:

(1) An examination required under subsection (a)(1) of this section; and

(2) Any other examination or investigation conducted under this section that [results in the discovery of a violation of this subtitle by the licensee] **THE COMMISSIONER REASONABLY CONSIDERS NECESSARY**.

11-605.

(a) To qualify for a license, an applicant shall satisfy the Commissioner that:

(1) The applicant:

(i) Has at least 3 years of experience in the mortgage lending business and has completed any required courses for continuing education established by the Commissioner; or

(ii) Has completed 40 hours of classroom education and achieved a passing grade on a written examination [developed and administered by the person conducting the classroom education course approved by the Commissioner for new applicants; and] **AS REQUIRED BY REGULATION;**

(2) The applicant is of good moral character and has general fitness to warrant the belief that the applicant will act as a mortgage originator in a lawful, honest, fair, and efficient manner; **AND**

**(3) THE APPLICANT RESIDES WITHIN 100 MILES OF THE LICENSED OFFICE LOCATION AT WHICH THE APPLICANT WILL WORK AS A LICENSEE.**

(b) **(1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE** Commissioner may deny an application for a license filed by an individual who has committed an act that would serve as a sufficient ground for suspension or revocation of a license under this subtitle or a mortgage lender license under Subtitle 5 of this title.

**(2) THE COMMISSIONER SHALL DENY AN APPLICATION FOR A LICENSE FILED BY AN INDIVIDUAL WHO HAS BEEN CONVICTED WITHIN THE LAST 10 YEARS OF A FELONY INVOLVING FRAUD, THEFT, OR FORGERY.**

11-606.

(b) With each application, the applicant shall pay to the Commissioner:

(1) A nonrefundable investigation fee [of \$100] **SET BY THE COMMISSIONER;** and

(2) A license fee [of \$300] **SET BY THE COMMISSIONER.**

11-609.

(b) On or before December 1 of the year of expiration, a license may be renewed for an additional 2-year term if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the Commissioner a renewal fee [of \$300] **SET BY THE COMMISSIONER;** and

(3) Submits to the Commissioner:

(i) A renewal application on the form that the Commissioner requires; and

(ii) Satisfactory evidence of compliance with any continuing education requirements set by regulations adopted by the Commissioner.

**11-612.1.**

**(A) THE COMMISSIONER SHALL SET BY REGULATION THE FEES PROVIDED FOR IN THIS SUBTITLE.**

**(B) THE FEES ESTABLISHED BY THE COMMISSIONER UNDER THIS SECTION SHALL BE REASONABLE AND SET IN A MANNER THAT WILL PRODUCE FUNDS SUFFICIENT TO COVER THE ACTUAL DIRECT AND INDIRECT COSTS OF REGULATING LICENSEES IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBTITLE.**

**(C) THE COMMISSIONER SHALL PUBLISH THE FEE SCHEDULE SET BY THE COMMISSIONER.**

**11-615.**

(a) Subject to the hearing provisions of § 11-616 of this subtitle, **AND EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION**, the Commissioner may suspend or revoke the license of any licensee if the licensee:

(1) Makes any material misstatement in an application for a license;

(2) Is convicted under the laws of the United States or of any state of a felony or a misdemeanor that is directly related to the fitness and qualification of the individual to act as a mortgage originator;

(3) In connection with any mortgage loan or loan application transaction:

(i) Commits any fraud;

(ii) Engages in any illegal or dishonest activities; or

(iii) Misrepresents or fails to disclose any material facts to a person entitled to that information;

1                   (4)   Violates any provision of this subtitle, any regulation adopted  
2 under this subtitle, or any other law regulating mortgage lending or mortgage  
3 origination in the State; or

4                   (5)   Otherwise demonstrates unworthiness, bad faith, dishonesty, or  
5 any other quality that indicates that the business of the licensee has not been or will  
6 not be conducted honestly.

7                   **(F)   IF THE COMMISSIONER DETERMINES THAT A LICENSEE HAS BEEN**  
8 **CONVICTED OF A FELONY INVOLVING FRAUD, THEFT, OR FORGERY WHILE THE**  
9 **LICENSEE HAS BEEN LICENSED, THE COMMISSIONER SHALL REVOKE THE**  
10 **LICENSE OF THE LICENSEE.**

11                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be  
12 construed to apply only prospectively and may not be applied or interpreted to have  
13 any effect on or application to any contract, agreement, or loan entered into, or the  
14 granting of any license under Title 11, Subtitle 5 or 6 of the Financial Institutions  
15 Article, before the effective date of this Act.

16                   SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 June 1, 2008.