

MARYLAND REGISTER

Proposed Action on Regulations	
<b>Date Filed with AELR Committee</b> May 14, 2024	<b>Date Filed with Division of State Documents</b>  <b>Document Number</b> 24-070-P  <b>Date of Publication in MD Register</b>

**1. Desired date of publication in Maryland Register: June 14, 2024**

**2. COMAR Codification**

<b>Title</b>	<b>Subtitle</b>	<b>Chapter</b>	<b>Regulation</b>
09	03	15	01
09	03	15	02
09	03	15	03
09	03	15	04
09	03	15	05

**3. Promulgating Authority**

Maryland Department of Labor

**4. Name of Regulations Coordinator**

Kimberly Ward

**Telephone Number**

(410) 230-6123

**Mailing Address**

1100 Eutaw St. Ste. 605  
Baltimore, MD 21201

**Email**

KimberlyS.Ward@maryland.gov

**5. Name of Person to Call About this Document**

Amy Hennen

**Telephone Number**

4102306094

**Mailing Address**

1100 Eutaw St. Ste. 611

**Email**

amy.hennen@maryland.gov

**6. Check applicable items:**

- New Regulations
- Amendments to Existing Regulations
- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval

**7. Is there Emergency text that is identical to this Proposal:**

Yes  No

**8. Incorporation by Reference**

Incorporation by Reference (IBR) approval form(s) attached and 16 copies of documents proposed for incorporation submitted to DSD. (Submit 16 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 General Provisions Article, §3-302(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 Emily Hanson, Assistant Attorney General, telephone #410-230-6121, on May 7, 2024. A written copy of the approval is on file at this agency.

### Name of Authorized Officer

Tony Salazar

### Title

Commissioner

### Telephone No.

410-230-6361

### Date

May 7, 2024

## Title 09

# MARYLAND DEPARTMENT OF LABOR

## Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

### 09.03.15 Shared Appreciation Agreements

Authority: Financial Institutions Article, §§2-105.1, 12-926, and 12-1030 Annotated Code of Maryland

#### Notice of Proposed Action

[24-070-P]

The Commissioner of Financial Regulation proposes to:

adopt new Regulations .01 - .05 under new Subtitle COMAR 09.03.15 Shared Appreciation Agreements.

#### Statement of Purpose

The purpose of this action is to modernize Maryland's consumer lending laws as a result of the Legislature's adoption of Ch. 568 (H.B. 1150), Acts of 2023, which confirmed shared appreciation agreements are subject to the Maryland Mortgage Lender Law (Commercial Law Article, §§ 12-901(a) and 12-1001(a), 12-901(g) and (g-1) through (l), 12-913.1, 12-922, 12-1001(j) and (k-1) through (m), and 12-1013, 12-901(n), 12-926, 12-1001(o), and 12-1030, Financial Institutions Article, §§ 11-501(a), 11-501(h-1) through (q) and 11-501(r), Annotated Code of Maryland) and aligning Maryland with other states already regulating shared appreciation agreements.

This action enhances the Office of Financial Regulation's (OFR's) licensing regulations by adding:

- (1) Definitions for certain undefined terms used in shared appreciation agreements;
- (2) A description of the required disclosures in shared appreciation agreements;

- (3) Procedures for the calculation of a property value;  
 (4) A description of the ability to repay standard.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The economic impact of the proposed action is expected to be low.

**II. Types of Economic Impact.**

Impacted Entity	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:		
(1) Non-depository licensees	(-)	Minimal
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:		
(1) Consumers	(+)	Impactful

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

D(1). The proposed action imposes no additional fees or charges. The proposed action may, in some cases, increase record-keeping and compliance costs for regulated entities. The Commissioner cannot provide exact estimates of these costs; however, in most instances, it is expected that the aggregate impact on any licensee is unlikely to be significant.

F(1). It is expected that the public will directly benefit from the proposed disclosures and clarity they provide regarding these types of transactions as well as by establishing an ability to repay standard.

**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 Amy Hennen, Director of Legislative Response, Office of Financial Regulation, 1100 Eutaw St. Ste. 611, Baltimore, MD 21201, or call 4102306094, or email to amy.hennen@maryland.gov. Comments will be accepted through July 14, 2024. A public hearing has not been scheduled.

TONY SALAZAR  
 Commissioner

**Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: **FY 25**

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

No

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

undefined

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

**The Office of Financial Regulation can implement these regulations with existing resources.**

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

G. Small Business Worksheet:

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

## **Title 09**

# **MARYLAND DEPARTMENT OF LABOR**

## **Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION**

### **.09.03.15 Shared Appreciation Agreements**

#### **.01 Definitions**

- A. *In this Chapter, the following words have the meanings indicated.*
- B. *Terms defined.*

(1) *“Actual change in value” means, with respect to each scenario included on the disclosure form found in Appendix A, the average annual change in value for homes in the State of Maryland over the most recent number of years used in that scenario.*

(2) *“Annual percentage rate” has the meaning in 12 CFR 1026.22(a) as amended from time to time.*

(3) *“Annualized cost” means a measure of the cost of credit, expressed as a yearly rate, provided to allow a borrower to compare the cost of a shared appreciation agreement with the cost of other forms of credit.*

(4) *“Arms-length sale” means a transaction for the sale of property between two unrelated and unaffiliated parties of equal bargaining power acting independently and in their respective self-interests.*

(5) *“Automated valuation model” or “AVM” means a statistically based estimate of a property’s value based on publicly available information such as comparable sales, property characteristics, and price trends.*

(6) *“Borrower” means a person who receives funds under a shared appreciation agreement.*

(7) *“Broker price opinion” or “BPO” means an estimate, provided by a real estate broker licensed by the State or other qualified professional, of the price for which a property is likely to sell.*

(8) *“Commitment” has the meaning stated in Commercial Law Article §12-922.*

(9) *“Estimated fair market value” means:*

(a) *An estimate of value determined through either the use of an appraisal from an appraiser licensed by the State or the use of an automated valuation model or broker price opinion; or*

(b) *An estimate of value provided by the borrower, if a disclosure is provided before the lender obtains an appraisal, automated valuation model, or broker price opinion.*

(10) *“Final payment amount” means the amount a borrower will be required to pay the lender at the termination of the shared appreciation agreement.*

(11) *“Final value” means the value of the property at the termination of the Shared Appreciation Agreement as calculated using the Estimated Fair Market Value of the property, or, in an arms-length sale, the sale price of the property.*

(12) *“Financing agreement” has the meaning stated in Commercial Law Article §12-922.*

(13) *“Lender” means a person who makes a mortgage loan under a shared appreciation agreement*

(14) *“Share based repayment amount” means the lender’s share of the property’s appreciation or value at the termination of the shared appreciation agreement as calculated without regard to any contractual limit on the repayment amount.*

(15) "Shared appreciation agreement" has the meaning stated in Maryland Financial Institutions Article 11-501(R)

(16) "Starting value" means the estimated fair market value of a property minus any discount applied by the lender.

(17) "Truth in Lending Act" refers to 15 U.S.C. 1601, et seq and its implementing regulations under 12 CFR 1026

## **.02 Required Disclosures**

### **A. Financing Agreements and Commitments**

(1) In addition to providing any other disclosures required by Maryland Commercial Law Article Title 12, Subtitles 9 and 10, a lender receiving an application for a shared appreciation agreement shall, regardless of lien position, provide a borrower with a financing agreement.

(2) The lender shall satisfy the requirement to provide a financing agreement for a mortgage loan made under a shared appreciation agreement in the following manner:

(a) By providing the disclosure form found in Appendix A of this regulation, or a substantially similar form, within 10 business days after the date an application for a shared appreciation agreement is completed; and

(b) By calculating the annualized cost based on the term in each scenario within the form in Appendix A of this regulation using the method prescribed in 12 CFR Pt 1026 Appendix J for calculating an annual percentage rate.

(3) If the terms of the disclosure provided by the lender under §A(2) are subject to change, a lender offering a shared appreciation agreement, regardless of lien position, shall provide a borrower with a commitment.

(4) The lender shall satisfy the requirement to provide a commitment for a mortgage loan made under a shared appreciation agreement in the following manner:

(a) By providing the disclosure form found in Appendix A of this regulation, or a substantially similar form, with a statement that the terms therein are not subject to change, at least 72 hours before the settlement time agreed to by both parties; and

(b) By calculating the annualized cost based on the term in each scenario within the form in Appendix A of this regulation using the method prescribed in 12 CFR Pt 1026 Appendix J for calculating an annual percentage rate.

### **B. Compliance with Disclosures in Appendix A**

(1) A form will be considered substantially similar to the one in Appendix A if it includes all information provided in Appendix A of this regulation.

(2) A lender shall disclose the following information regarding the estimated fair market value of the property:

(a) The method used to calculate the estimated fair market value;

(b) The amount, if any, by which the lender is discounting the estimated fair market value in establishing the property's initial value;

(c) The estimated fair market value of the property and any discount applied to that value in determining the starting value; and

(d) The potential impact of that discount on their repayment amount.

### **C. Compliance with Applicable Law**

Compliance with this regulation shall constitute compliance with any requirements under Commercial Law Article, §12-922 or §12-1022 to provide a financing agreement or a commitment.

## **.03 Calculation of Property Value**

### **A. Means of Calculating the Property Value**

(1) The lender shall use the estimated fair market value to determine the starting value of the property.

(2) The starting value may represent a discount of the estimated fair market value at the time the shared appreciation agreement is executed.

(3) Except as provided in Part B of this section, the lender shall use the same method for calculating the estimated fair market value in connection with determining the starting value and the final value.

(4) An appraisal, AVM, or BPO used to determine fair market value must be obtained by the lender from an unaffiliated third-party.

(5) In complying with the requirements of Subsection A(2) of Regulation .02 of this Chapter, a lender may use a value stipulated by the borrower as the estimated fair market value if the lender has not yet obtained an appraisal, BPO or AVM and the terms of the disclosure provided under Regulation .02 of this chapter are subject to change.

(6) In complying with the requirements of Subsection A(4) of Regulation .02 of this Chapter, a lender shall use an appraisal, BPO or AVM.

### **B. Sale of Property**

If a shared appreciation agreement terminates with the sale of the property, the final value may not exceed the sale price if:

(1) The sale was an arms-length sale;

(2) The property was not sold as part of a foreclosure; and

(3) The borrower did not retain an interest in the property, including an interest as a life estate.

## **.04 Calculating Values in Appendix A**

### **A. Actual Appreciation**

*Actual change in value shall be calculated using the All-Transactions House Price Index as published by the Federal Reserve Bank of St. Louis unless this index becomes unavailable in which case the Commissioner may designate an alternate index.*

*B. Final Payment Amount*

*The final payment amount shall be the lender's share of appreciation or equity, plus, if applicable under the terms of the agreement, any other amounts payable by the borrower at termination, minus any amount over any repayment limit to which the lender and the borrower have agreed.*

**.05 Ability to Repay**

*A lender offering a shared appreciation agreement is deemed to have given due regard to a borrower's ability to repay if disclosures are provided by the lender to the borrower in compliance with Regulation 02 of this chapter provided that:*

- A. The shared appreciation agreement does not require periodic payments prior to termination of the agreement; and*
- B. The term of the shared appreciation agreement is no less than five years.*