

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

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2011 MAY 27 PM 4: 05

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code §31A-2-4(c)(11)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Rule Pertaining to Residential Mortgage Lenders, Brokers, and Loan Originators

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON JULY 1, 2011 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

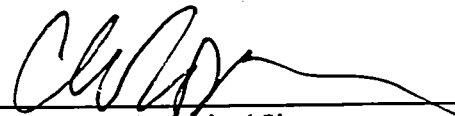
West Virginia Division of Banking

Attn: Robert J. Lamont

One Player's Club Drive, Suite 300

Charleston, West Virginia 25311-1688

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**Proposed Amendments to Title 106, Series 5,
Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators**

SUMMARY OF THE PROPOSED RULE

The proposed amendments to the rule provide slight revisions to the record keeping requirements for licensed lenders and brokers and require that electronic records must be made available in a manner organized by entire individual loan files. It revises when written documentation must be maintained regarding a borrower's ability to repay a loan and clarifies when a determination of tangible net benefit to the borrower must be made for any refinancing of a loan within 2 years. It also establishes the procedure and standards the Division of Banking will use when determining the financial responsibility of applicants for a mortgage loan originator license.

**Proposed Amendments to Title 106, Series 5,
Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators**

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THIS RULE

Recent developments in the use, storage and dissemination of digital data files and document imaging systems in the residential mortgage industry require new rules governing the retention and production of such records for the purposes of regulatory examination and oversight. Furthermore, current regulations provide residential mortgage lenders and brokers an exemption for certain types of loans from the requirement of retaining documentation of the borrower's ability to repay the loan. Recent problems within the residential mortgage lending industry demonstrate the need to extinguish such exemptions and require documentation of the borrower's ability to repay for all "for profit" loans. Additionally, the current version of the rule creates confusion amongst residential mortgage lenders and brokers relating to the necessity of documenting the tangible net benefit accrued to the borrower on a loan refinance transaction. Finally, the current rule is silent regarding the procedure implemented and the standards established by the Division of Banking for determining the financial responsibility of an applicant for a mortgage loan originators license resulting in a lack of knowledge and understanding of said process on the part of the applicant.

FISCAL NOTE FOR PROPOSED RULES

Title 106 Series 5. Rule Pertaining to Residential Mortgage Lenders, Brokers, and Loan Originators

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Banking

Address: One Player's Club Drive, Suite 300
Charleston, West Virginia 25311-1688

Phone Number: 304-558-2294 Email: blamont@wvdob.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed amendments to this legislative rule will have no impact on the costs or revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Title 106 Series 5. Rule Pertaining to Residential Mortgage Lenders, Brokers, and Loan Originators

Rule Title: _____

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The proposed amendments to this legislative rule provide neither increases in existing fees nor the imposition of new fees. The Division will not need additional resources to implement these amendments.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The proposed amendments to this legislative rule provide neither increases in existing fees nor the imposition of new fees. Implementation of the proposed amendments will require no additional resources.

Date: May 25, 2011

Signature of Agency Head or Authorized Representative

Sue M. Clini

TITLE 106
LEGISLATIVE RULE
COMMISSIONER OF BANKING

SERIES 5
RULE PERTAINING TO RESIDENTIAL MORTGAGE
LENDERS, BROKERS, AND LOAN ORIGINATORS

FILED

2011 MAY 27 PM 4:05

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§106-5-1. General.

1.1. Scope. -- This rule establishes the general method for implementing West Virginia Code §§31-17-1, *et seq.* and W.Va. Code §§31-17A-1, et seq.; it applies to all licensees under that those statutes.

1.2. Authority. -- W.Va. Code ~~§§31-17-3 and 31-17-11(a)~~ §31A-2-4(c)(11)

1.3. Filing Date. -- ~~April 5, 2004.~~

1.4. Effective Date. -- ~~July 1, 2004.~~

§106-5-2. Time Frames for Record Keeping by Licensees.

2.1. A residential mortgage lender who acts as the original lender providing the initial funding for a mortgage loan to a borrower must maintain records related to that loan for a period of thirty-six months from the date the loan closes. In cases where the loan does not close, for any reason, that residential mortgage lender must maintain records related to the proposed loan for a period of thirty-six months from the date of the borrower's loan application.

2.2. A residential mortgage lender that does not provide the initial funds for a loan but only purchases, takes assignment of, or services the loan, must maintain records related to that loan for a period of thirty-six months from the date of last entry on the books of that lender.

2.3. A residential mortgage broker must retain records related to mortgage loans for a period of thirty-six months from the date the loan closes. In cases where the loan does not close, for any reason, the residential mortgage broker must maintain records related to the loan proposed for a period of thirty-six months from the date of the latest application, credit

document, required disclosure or request by consumer to terminate the transaction.

§106-5-3. Records That Must Be Maintained by Licensed Residential Mortgage Lenders Who Provide the Initial Funding for a Loan.

3.1. The lender that provides the initial funding for a loan must maintain the following records:

- a. Loan application, signed and dated by the borrower;
- b. Initial Good Faith Estimate provided, whether by broker or lender;
- c. Subsequent Good Faith Estimates provided by lender;
- d. Required Provider List;
- e. Verification of borrower income and employment as required by the lender;
- f. Required early Truth in Lending Act disclosure;
- g. Any early Truth in Lending Act disclosure provided;
- h. Final Truth in Lending Act disclosure;
- i. Credit report, if obtained;
- j. All written and electronic correspondence, including, but not limited to, e-mails and fax transmissions, between the lender and broker and between the lender and borrower;
- k. HUD-1 or HUD-1A Settlement Statement signed by borrowers and lender or settlement agent, if applicable;
- l. Affiliated Business Arrangement Disclosure Statement, if applicable;
- m. Servicing Transfer Disclosure Statement ~~signed by borrower;~~
- n. Notice of Servicing Transfer provided by transferee, if applicable;
- o. Right to Receive Appraisal Disclosure, if

applicable;

- p. Right of Rescission Notice, if applicable;
- q. Tangible Net Benefit Worksheet, if applicable;
- r. Deed of Trust;
- s. Note or other instrument of indebtedness;
- t. Any appraisal of the property, if applicable;
- u. Home Ownership Equity Protection Act disclosure required by 12 C.F.R. § 226.32, if applicable;
- v. Adjustable Rate Mortgage Disclosure, if applicable;
- w. A written justification for using a non-local appraiser, if applicable;
- x. Any commitment or rate lock-in agreements, if applicable;
- y. Copies of all rate sheets used on specific dates and times for the prior three-year period;
- z. A record of all cash, checks, or other monetary instruments received in connection with each residential mortgage loan showing the identity of the payor, the date received, the amount, and purpose;
- aa. A record of all monies disbursed relating to the licensee's business as a mortgage lender including, but not limited to, refunds to borrowers and all disbursements of funds on behalf of borrowers, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which the payment relates, if any;
- bb. Copies of all written complaints received from customers and written records of the disposition of those complaints;
- cc. A general ledger and subsidiary records sufficient to produce an accurate statement of assets and liabilities and profit and loss statement on a monthly basis;
- dd. A record of all charges or fees assessed to the borrower's account reflecting the amount of the charge or fee,

the purpose, and the date imposed;

ee. A copy of the escrow account detail provided to the borrower annually, if applicable; ~~and~~

ff. Copies of any written assessment of a borrower's ability to repay the loan according to its terms, if applicable; ~~and~~
and

gg. Itemization of all fees and charges imposed on each loan and received by the lender and by any third-parties. The itemization must include the nature and amount of each fee or charge and the identity of the recipient.

3.2. All records required to be maintained by section 3.1 shall be kept in the specific loan file relating to the individual borrower or loan applicant except for those records listed in subsections 3.1.z, 3.1.aa, 3.1.bb and 3.1.cc.

§106-5-4. Records That Must be Maintained by Licensed Residential Mortgage Lenders That Purchase or Take Assignment of a Residential Mortgage Loan.

4.1. A lender that, after closing, subsequently purchases or takes assignment of a loan subject to the provisions of W.Va. Code § 31-17-1, *et seq.* must maintain the following records:

- a. The Final Truth in Lending Act Disclosure;
- b. All written correspondence, including, but not limited to, e-mails and fax transmissions, between that lender and the previous lender that held or serviced the loan;
- c. HUD-1 or HUD 1-A Settlement Statement, signed by borrower(s) and initial lender or settlement agent, if applicable;
- d. Notice of Servicing Transfer provided by transferee, if applicable;
- e. The Note or other instrument of indebtedness;
- f. All written and electronic correspondence between that purchaser or assignee and the borrower including, but not limited to, e-mails and facsimile transmissions;
- g. A telephone log reflecting the date and substance of telephone conversations with borrowers;

h. A record of all cash, checks, or other monetary instruments received in connection with a residential mortgage loan showing the identity of the payor, the date received, the amount, and purpose and a description of how funds were applied;

i. A record of all monies disbursed relating to the licensee's business as a mortgage lender including, but not limited to, refunds to borrowers and all disbursements of funds on behalf of borrowers, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which the payment relates, if any;

j. Copies of all written complaints received from customers and written records of the disposition of those complaints;

k. A general ledger and subsidiary records sufficient to produce an accurate statement of assets and liabilities and profit and loss statement on a monthly basis; and

l. A record of all charges or fees assessed to the borrower's account reflecting the amount of the charge or fee, the purpose, and the date imposed.

4.2. All records required to be maintained by section 4.1 shall be kept in the specific loan file relating to the individual borrower or loan applicant except for those records listed in subsections 4.1.g, 4.1.h, 4.1.i, 4.1.j and 4.1.k.

§106-5-5. Records That Must be Maintained by Licensed Residential Mortgage Servicers.

5.1 A lender that, after closing, subsequently services a loan subject to the provisions of W.Va. Code §31-17-1, et seq. must maintain the following records:

a. The Final Truth in Lending Act Disclosure;

b. All written correspondence, including fax transmissions, between that lender and the previous lender that held or serviced the loan;

c. HUD-1 or HUD-1A Settlement Statement, signed by borrower(s) and initial lender or settlement agent, if applicable;

d. A signed Servicing Transfer Disclosure statement;

- e. The Deed of Trust;
- f. Note or other instrument of indebtedness;
- g. Legal instrument(s) assigning the note and deed of trust to purchaser or assignee;
- h. Any appraisals of the property, if applicable;
- i. All written and electronic correspondence between the servicer and the borrower including e-mails and facsimile transmissions;
- j. A telephone log reflecting the date and substance of telephone conversations with borrowers;
- k. A record of all cash, checks, or other monetary instruments received in connection with a residential mortgage loan showing the identity of the payor, the date received, the amount, and purpose and description of how funds were applied;
- l. A record of all monies disbursed relating to the licensee's business as a mortgage lender or servicer including, but not limited to, refunds to borrowers and all disbursements of funds on behalf of borrowers or others, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which the payment relates, if any;
- m. Copies of all written complaints received from customers and written records of the disposition of those complaints;
- n. A general ledger and subsidiary records sufficient to produce an accurate statement of assets and liabilities and profit and loss statement on a monthly basis; and
- o. A record of all charges or fees assessed to the borrower's account reflecting the amount of the charge or fee, the purpose, and the date imposed .

5.2. All records required to be maintained by section 5.1 shall be kept in the specific loan file relating to the individual borrower or loan applicant except for those records listed in subsections 5.1.j, 5.1.k, 5.1.l, 5.1.m and 5.1.n.

§106-5-6. Records That Must be Maintained by Licensed Residential Mortgage Brokers.

6.1 A licensed residential mortgage broker must maintain

the following records:

- a. Initial loan application, signed and dated by the loan officer;
- b. Contract or agreement between the broker and the borrower;
- c. Initial and subsequent Good Faith Estimate(s) provided by the broker;
- d. Required Provider List;
- e. Credit report, if obtained;
- f. Verification of borrower income and employment as required by the initial lender;
- g. Required early Truth in Lending Act disclosure;
- h. Early Truth in Lending Act disclosure provided but not required;
- i. All written and electronic correspondence, including, but not limited to, e-mails and fax transmissions, between the broker and the lender;
- j. HUD-1 or HUD 1A Settlement Statement signed by borrower(s) and initial lender or settlement agent, if applicable;
- k. Affiliated Business Arrangement Disclosure Statements provided to the borrower;
- l. Servicing Transfer Disclosure statement;
- m. Right to Receive Appraisal Disclosure, if applicable;
- n. Right of Rescission Notice, if applicable;
- o. Tangible Net Benefit Worksheet, if applicable;
- p. Appraisal(s) of the property obtained by the broker;
- q. A written justification for using a non-local appraiser, if applicable;

r. Any commitment or rate lock-in agreements, if applicable;

s. Copies of all notes or electronic correspondence, including, but not limited to, e-mails and fax transmissions with borrowers, third party settlement service providers including appraisers, title agents and credit reporting agencies;

t. A record of all cash, checks, or other monetary instruments received in connection with a loan application showing the identity of the payor, the date received, the amount, and purpose;

u. A record of all monies disbursed relating to the licensee's business as a mortgage broker including, but not limited to, refunds to borrowers and all disbursements of funds on behalf of borrowers, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which the payment relates, if any;

v. Copies of all written complaints received from customers and written records of the disposition of those complaints;

w. A general ledger and subsidiary records sufficient to produce an accurate statement of assets and liabilities and profit and loss statement on a monthly basis;

x. A record of all charges or fees assessed to the borrower's account reflecting the amount of the charge or fee, the purpose, and the date imposed;

y. Copies of all rate sheets used on specific dates and times for the prior three-year period; ~~and~~

z. Copies of any written assessments of the borrower's ability to repay the loan according to its terms, if applicable.

aa. The Final Truth in Lending Act Disclosure;

bb. Note or other instrument of indebtedness; and

cc. Itemization of all fees and charges imposed on each loan and received by the broker and by any third-parties. The itemization must include the nature and amount of each fee or charge and the identity of the recipient.

6.2. All records required to be maintained by section 6.1 shall be kept in the specific loan file relating to the individual borrower or loan applicant except for those records listed in subsections 6.1.t, 6.1.u, 6.1.v, 6.1.w and 6.1.y.

§106-5-7. Form and Location of Records.

7.1 All records that licensees must maintain under this rule or W.Va. Code §§31-17-1, et seq. may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium that is readily convertible by the licensee into legible, tangible documents as required by the Commissioner of Banking. All records maintained under this subsection must be available to the Commissioner of Banking, or his or her delegates, in a manner that is organized by entire individual loan files.

7.2 All records that licensees must maintain under this rule or W.Va. Code §§31-17-1, et seq. shall be secured against unauthorized access or damage in a licensed location. However, if a licensee maintains a centralized out-of-state storage facility for such records from multiple states, it shall request the Commissioner to approve its storage of such records in that out-of-state location. The Commissioner shall grant approval provided that:

a. The Commissioner determines that the proposed storage will ensure that the records are secured against unauthorized access or damage; and

b. The licensee agrees, in writing, to make available at its expense for inspection and copying upon request of the Commissioner or his or her designees copies of all requested records in a form which satisfies the requirements of subsection 1 of this section.

7.3. A licensee shall notify the Commissioner promptly of any proposed change in the location of its books and records.

§106-5-8. Advertising.

8.1. Every licensed lender and broker shall maintain and keep available for inspection by representatives of the West Virginia Division of Banking one copy of all advertising material used during the prior three years.

8.2. If the advertising media is a radio or television

broadcast, then a licensee may comply with this requirement by maintaining a copy of the transcript of the advertising.

§106-5-9. Use of Non-local Appraisers.

9.1. If a licensed broker or lender employs an appraiser whose main office is more than seventy-five miles from the property to be appraised, that lender or broker must document, in writing and maintain in accordance with the provisions of subsections 3.1.w. or 6.1.q. of this rule, the reason(s) why such an appraiser was used instead of an appraiser with a main office closer to the property being appraised.

9.2. The seventy-five mile distance used in subsection 9.1 of this rule refers to the driving distance between the main office of the appraiser and the property that is being appraised.

§106-5-10. Improper Influence of Appraisers.

10.1. Any threat, oral or written, direct or implied, by a lender or broker to withhold payment of an appraiser's fee constitutes an attempt to coerce or intimidate an appraiser for the purpose of influencing his or her independent judgment in violation of W.Va. Code § 31-17-8(m)(2).

10.2. Any threat, oral or written, direct or implied, by a lender or broker to cease using the services of an appraiser in the future if that appraiser does not provide an appraisal amount in accordance with the expectations of that lender or broker constitutes an attempt to coerce or intimidate an appraiser for the purpose of influencing his or her independent judgment in violation of W.Va. Code § 31-17-8(m)(2).

§106-5-11. Documentation of Ability to Repay.

11.1. No lender should make a loan unless the lender reasonably believes at the time the loan is closed that the borrower(s) will be able to make the scheduled payments to repay the loan. This reasonable belief must be based upon a consideration of the income of the borrower(s), current debt, employment status and history, and other financial resources other than equity in the dwelling that will secure the loan.

11.2. If a borrower's household debt-to-income ratio will exceed fifty percent upon the extension of new residential mortgage loan as determined from a credit report, credit application, financial statement, then the broker and initial

lender must document, in writing and maintain in accordance with the provisions of subsections 3.1.ff. or 6.1.z. of this rule, an assessment of the borrower's ability to repay the loan according to its terms. Such assessment must be signed by the lender or the lender's representative and the borrower(s) and must consider the household's current debt obligations, the term of the loan, and the borrower(s) circumstances along with their current and projected income and assets, other than a security interest in the real estate taken to secure the loan.

11.3. The requirement of subsection (2) of this section shall not apply if the loan obtained qualifies under guidelines established by the ~~Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association~~, West Virginia Housing Development Fund, the Veterans Administration or ~~other state government or federal government chartered housing provider, or a non-profit housing provider licensed under W.Va. Code §31-17-1, et seq.~~

§106-5-12. Notice of Changes in Loans That are in Process.

12.1. If a lender or broker determines that a borrower does not qualify for the loan amount, terms, or program for which he or she applied and that another loan product is available that would materially differ from the terms requested by the borrower(s) in the initial application, the lender or broker shall decline the loan initially requested, providing the proper notice and disclosure, and then offer new terms and disclosures related to the alternative loan product.

§106-5-13. Criminal Background Checks.

13.1. When evaluating a lender or broker license applicant for financial responsibility, character, reputation or general fitness, the Commissioner may elect to ignore criminal convictions that occurred more than twenty years prior to the filing date of the license application.

§106-5-14. Payments to Unrelated Third Parties.

14.1. Pursuant to W.Va. Code §31-17-8(m)(4), only payments of closing costs to unrelated third parties may not be included in the overall cap on fees, compensation, yield spread premium or points that a borrower is required to pay a licensee.

14.2. In order to qualify as an "unrelated third party" the individual or entity providing services may not be an "affiliated business arrangement" as that term is defined by the Real Estate

Settlement Procedures Act, 12 U.S.C. § 2602, and attendant regulations.

§106-5-15. Tangible Net Benefit Determinations.

15.1. A broker and lender licensee must document tangible net benefit to the borrower before arranging or making any residential mortgage loan that refinances an existing residential mortgage loan that closed within 24 months of the proposed refinancing. This duty exists even if the broker or lender did not arrange or make the existing loan that will be refinanced.

§106-5-16. Determining Financial Responsibility for Mortgage Loan Originators.

16.1. The Division of Banking will initially review the credit report of an applicant for a mortgage loan originator license to determine whether the applicant meets the standards of financial responsibility set forth at W.Va. Code §31-17A-5(c). If the initial review of the credit report reveals information that prevents a determination of sufficient financial responsibility, before making a final decision, the Division will contact the applicant and seek an explanation for his or her financial condition, any supporting documentation, and a plan to improve.

16.2. Additional factors that the Division may consider from the applicant include, but are not limited to:

- a. The existence of a repayment agreement for unpaid debts;
- b. Faithful performance of the applicant's obligations under the repayment agreement;
- c. Active participation in a consumer credit counseling service;
- d. A pending appeal of a negative item on the credit report supported by documentation of the basis of the appeal;
- e. Proof of satisfaction of judgment(s);
- f. Proof of payment of charged off accounts; and
- g. Sudden, significant medical expenses for the

applicant or the applicant's spouse or dependent.