

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

Form #3

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2011 JUL 21 AM 10:47

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

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: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 15, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division Of Banking  
One Player's Club Drive, Suite 300  
Charleston, West Virginia 25311-1688  
304-558-2294

LEGISLATIVE RULE TITLE: \_\_\_\_\_  
Rule Pertaining to Mortgage Lenders, Brokers, and  
Loan Originators

1. Authorizing statute(s) citation W.Va. Code §31A-2-4(c)(11)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
May 27, 2011

b. What other notice, including advertising, did you give of the hearing?  
Posted for public review at www.wvdob.org, and provided to interested parties including, AARP, Mortgage Bankers Association, National Association of Mortgage Brokers, National Association of Independent Housing Professionals, Mountain State Justice, Consumer Protection Division of the West Virginia Attorney General's Office.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 1, 2011

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached     X     No comments received \_\_\_\_\_

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 21, 2011

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Robert J. Lamont, Chief Legal Counsel  
Loren C. Allen, Deputy Legal Counsel  
One Player's Club Drive, Suite 300  
Charleston, West Virginia 25311-1688  
304-558-2294 (phone)  
304-558-0442 (fax)  
blamont@wvdob.org  
lallen@wvdob.org

- g. **IF DIFFERENT FROM ITEM 'f',** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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

**SUMMARY OF THE AGENCY APPROVED 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.

APPENDIX B

**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@wvdo.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. Cini*

TITLE 106  
LEGISLATIVE RULE  
COMMISSIONER OF BANKING

2011 JUL 21 AM 10:47

OFFICE OF THE SECRETARY OF STATE

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

**§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; ~~i~~  
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:

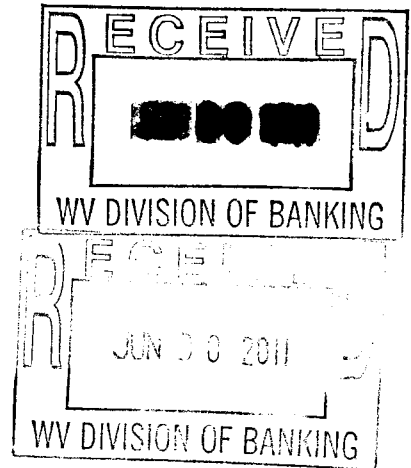
- a. The existence of a repayment agreement for unpaid debts;
- b. Faithful performance of the applicant's obligations under the repayment agreement;
- c. Active participation in a consumer credit counseling service;
- d. A pending appeal of a negative item on the credit report supported by documentation 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.



June 30, 2011

Loren C. Allen, Esq.  
Deputy Counsel  
West Virginia Division of Banking  
One Players Club Drive, Suite 300  
Charleston, West Virginia 25311-1638



Dear Ms. Allen:

On behalf of the Mortgage Bankers Association<sup>1</sup> (MBA), thank you for the opportunity to comment on the proposed amendments to the Title 106, Series 5, "Rules For Record Keeping Requirements For Licensed Lenders And Brokers." The proposed changes offer improvements and we offer further enhancements for your consideration.

### **Credit Reports**

MBA supports West Virginia on proposed amendments to Section 106-5-16, "Determining Financial Responsibility for Mortgage Loan Originators." The proposed amendments, concerning credit reports for licensing mortgage loan originators, would allow a mortgage loan originator applicant, who fails to meet the standards of financial responsibility, to explain his or her financial condition, provide evidence and a plan to improve.

Under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), every state licensed mortgage loan originator is required to complete the credit report authorization process through the Nationwide Mortgage Licensing System (NMLS) allowing state regulators the authority to pull a credit report on mortgage license originator applicants.

The SAFE Act requires that mortgage loan originator applicants have "demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that applicants will operate honestly, fairly, and effectively." There is no standard or minimum score.

However, because the SAFE Act sets minimum requirements, some states have required a minimum credit score, which has caused a patchwork of credit report provisions across the country and rendered multi-state exams lengthy and costly.

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

A low credit score should not eliminate an otherwise qualified mortgage loan originator ~~with~~ first providing that applicant the opportunity to explain his or her financial condition. MBA, therefore, supports these proposed amendments that will allow qualified, financially responsible applicants, who have had unforeseen financial hardship, the ability to explain circumstances contributing to a low credit score and prove a debt management plan.

### **Electronic Records**

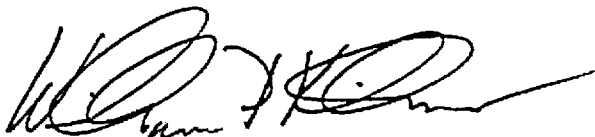
Developments in the use of technology and document imaging systems in the residential mortgage industry necessitate modernizing record keeping rules. MBA favors electronic record keeping to the maximum extent possible, including respecting the amendments in Sections 106-5-3 and 106-5-4 which add emails to the list of records that a mortgage loan originator must retain.

### **Documenting Net Tangible Benefit**

MBA believes in strong underwriting standards and ensuring a borrower's ability to repay. Under current West Virginia law, Section 31-17-8 requires a licensee to document in writing the net tangible benefit of any refinancing of a loan that closed within 24 months of the proposed refinancing. The proposed amendment to Section 106-5-15, which would require a licensee to document net tangible benefit before arranging or making a refinance loan, will ensure that borrowers are given the best possible loan for their financial situation. However, MBA suggests that the language clearly state that the documentation occur at application. As the language currently is written, "A broker and lender licensee much document tangible net benefit to the borrower before arranging or making any residential mortgage loan," may be interpreted as before taking an application, which would be before the lender has sufficient information to determine net tangible benefit.

Once again, we appreciate the opportunity to provide comments to the proposed amendments. If you have any questions, please do not hesitate to contact Chelsea Crucitti at [ccrucitti@mortgagebankers.org](mailto:ccrucitti@mortgagebankers.org) or (202) 557-2811.

Sincerely,



William P. Killmer  
Senior Vice President  
Legislative and Political Affairs



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Earl Ray Tomblin  
Governor

Sara M. Cline  
Commissioner

July 13, 2011

William P. Killmer  
Senior Vice President  
Mortgage Bankers Association  
1717 Rhode Island Ave., NW, Suite 400  
Washington, DC 20036

Re: Comment on Proposed Amendments to Title 106, Series 5

Dear Mr. Killmer:

Thank you for your comments regarding the Division of Banking's proposed amendments to Title 106, Series 5, Rule Pertaining to Residential Mortgage Lenders, Brokers and Loan Originators. We appreciate your support of the amendments regarding the procedures to be used in determining financial responsibility of mortgage loan originators and the inclusion of e-mails on the list of records that should be retained by licensees.

The purpose behind our amendment adding a new section 15 regarding tangible net benefit determinations is to clarify that a broker or lender licensee must make such determinations if the new loan falls within the 24 month time period even if the licensee did not make or broker the original loan. This has been the Division's consistent interpretation of W.Va. Code §31-17-8(d) since that provision was amended in 2002. The language in the proposed amendment to the legislative rule is intended to insure that the licensee has documented tangible net benefit on the new loan when it has been made (by the lender) or arranged (by the broker). Since it is possible that not all of the information that may be required to determine tangible net benefit would be available at the time of application, we have elected to keep the amendment as drafted.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "R. J. Lamont".

Robert J. Lamont  
Legal Counsel