Sunset Review:
Evaluation of the Office of the Commissioner of Financial Regulation, the Banking Board, and the State Collection Agency Licensing Board

Department of Legislative Services
October 2010

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Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

October 2010

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
Executive Director

Warren G. Deschenaux
Director

October 29, 2010

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the Office of the Commissioner of Financial Regulation (Commissioner's Office), the Banking Board, and the State Collection Agency Licensing Board (Collection Agency Board) as required by the Maryland Program Evaluation Act. This evaluation process is more commonly known as "sunset review" because the agencies subject to evaluation are usually subject to termination; typically, legislative action must be taken to reauthorize them. This report was prepared to assist the committees designated to review the board – the Senate Finance Committee and the House Economic Matters Committee – in making their recommendations to the full General Assembly. The Commissioner's Office, the Banking Board, and the Collection Agency Board are each scheduled to terminate on July 1, 2012.

DLS finds that there is a continued need for the Commissioner's Office and the Collection Agency Board to protect Maryland consumers from rapidly evolving financial and economic crimes. Despite fewer resources at its disposal given the precipitous decline in mortgage-related licensees and corresponding special fund revenue, the Commissioner's Office has successfully transitioned the office to a nationwide mortgage licensing system and increased mortgage-related investigations with fewer enforcement unit personnel. Likewise, DLS also recognizes the proactive measures taken by the Collection Agency Board to anticipate, and respond to, constantly evolving industry issues, such as the licensure of consumer debt purchasers who attempt to collect on consumer claims through civil litigation.

However, DLS finds that the Banking Board, which is charged with advising the commissioner on matters relating to Maryland's banking industry and the regulation of State-chartered banks, no longer functions as an effective advisory body. The commissioner did not convene the board for advice during one of the greatest banking crises in recent history. In fact, the board has not met in nearly four years, and four of the nine seats on the board are vacant. Based on these factors and others discussed in detail throughout the report, DLS recommends that the General Assembly repeal the Banking Board.

This evaluation also identified specific regulatory areas that could benefit from enhanced supervision. Consequently, we recommend that the Commissioner's Office implement a risk-based mortgage lender examination schedule given the enhanced licensing and enforcementinformation now at its disposal due to the nationwide system transition. Likewise, given nationwide trends regarding the growing use of civil litigation in consumer debt collection cases, we recommend that the Collection Agency Board work with the Judiciary and the Attorney General to combat these practices.

In total, DLS offers five recommendations, including recommending the repeal of the Banking Board and the 10-year extensions of the Commissioner's Office and the Collection Agency Board to July 1, 2022. Draft legislation to implement the recommended statutory changes is included as an appendix to the report.

We would like to acknowledge the cooperation and assistance provided by the Department of Labor, Licensing, and Regulation throughout the review process. The department was provided a draft copy of the report for factual review and comment prior to its publication; its written comments are included as an appendix to this report.

Sincerely,

Warren G. Deschenaux
Director

WGD/JFW/mlm

Contents

Executive Summary

Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) has evaluated the Office of the Commissioner of Financial Regulation (Commissioner's Office), the State Collection Agency Licensing Board (Collection Agency Board), and the Banking Board. All three entities are scheduled to terminate July 1, 2012. DLS finds that there is a continued need for the Commissioner's Office and the Collection Agency Board, but finds that the Banking Board no longer serves as an effective advisory board and, thus, should be repealed.

The Commissioner's Office, which is housed within the Department of Labor, Licensing, and Regulation, is responsible for licensing and regulating State-chartered financial institutions (*e.g.*, banks and credit unions) and various nondepository institutions (*e.g.*, mortgage lenders, brokers, servicers, and originators). The Banking Board, an advisory body to the Commissioner of Financial Regulation, is intended to provide advice to the commissioner on certain bank applications and on matters relating to the regulation of Maryland's banking institutions. The Collection Agency Board is located within the Commissioner's Office and is responsible for licensing and regulating consumer debt collection companies.

DLS' evaluation found that, during the most recent economic downturn and with fewer resources at its disposal, the Commissioner's Office has admirably confronted many challenges and increased regulatory responsibilities while continuing to protect Maryland consumers. Despite a precipitous decline in the number of mortgage-related licensees and corresponding special fund revenue, the Commissioner's Office has successfully transitioned to a nationwide mortgage licensing system and increased mortgage-related investigations with fewer enforcement unit personnel.

Likewise, the Collection Agency Board has taken proactive measures to ensure that licensing fees will offset current expenditures required for industry regulation and is addressing evolving industry issues.

Though the Commissioner's Office and the Collection Agency Board have been proactive and efficient, DLS identified several areas where licensees and State consumers could benefit from enhanced regulation and additional interagency cooperation. The findings and five recommendations of this evaluation are summarized below.

Recommendation 1: With the reduction of the mortgage lender examination backlog and the transition to the Nationwide Mortgage Licensing System and Registry (NMLSR) nearly completed, the Commissioner's Office should use its existing authority to implement a risk-based examination schedule to supplement the existing calendar-based statutory framework by January 1, 2012, and report to the Senate Finance Committee and the House Economic Matters Committee on the status of implementation by October 1, 2012.

Chapter 4 of 2009 brought Maryland into compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) and mandated that the Commissioner's Office transition to NMLSR, a web-based interface that utilizes a single set of applications and allows state-licensed mortgage lenders, brokers, and loan officers to apply for, update, and renew their licenses online. By the end of 2010, it is expected that all states and U.S. territories will be using NMLSR. The office's compliance and licensing units will soon complete an 18-month transition to NMLSR from the existing State licensing system.

Coinciding with the transition to NMLSR, the office will eliminate a long-standing backlog of overdue mortgage lender examinations by the end of 2010. Pursuant to statute, the Commissioner's Office must examine each mortgage lender licensee at least once every 36 months and each new mortgage lender licensee within 18 months of initial licensure.

Chapters 7 and 8 of 2008, which made a number of substantive changes to State law governing mortgage lending, required the commissioner to study the feasibility of scheduling mortgage lender examinations using a risk-based approach – one that categorizes licensees by the degree of risk that they pose to consumers and subjects those licensees to more frequent compliance examinations – rather than the calendar-based schedule currently required under law. As noted in its 2009 Report to the General Assembly, the opportunity for the Commissioner's Office to implement risk-based scheduling has been systematically enhanced through NMLSR.

Recommendation 2: The Office of the Commissioner of Financial Regulation should be continued, and legislation should be enacted to extend its termination date to July 1, 2022.

The Commissioner's Office is necessary and beneficial to protecting Maryland citizens. In the midst of the recent economic downturn and the residential foreclosure crisis, the office increased nondepository compliance and enforcement activity despite budget constraints, a fluctuating licensee base, and an increased mortgage-related complaint workload. The office has worked hard to reduce mortgage lender examination backlogs and continues to return millions of dollars per year to aggrieved consumers. In addition, the overall financial soundness of State depository charters and nondepository licensees – especially when compared to their federal and other-state counterparts – can be directly attributed to the efforts of the Commissioner's Office.

Recommendation 3: The General Assembly should repeal the Banking Board.

The Banking Board operates as an advisory body to the Commissioner of Financial Regulation on matters relating to the regulation of Maryland banking institutions. The board consists of nine members, including the Comptroller and eight members appointed by the Governor. The appointed members include three representatives of the Maryland Bankers Association, an economist, a certified public accountant, a consumer representative, and two public members. Members serve six-year staggered terms until the Governor appoints their successors. Currently, four of the nine seats on the board are vacant.

Originally established during the banking crises of the 1930s, the board's current function is to give the commissioner "sound and impartial advice" on (1) the approval or disapproval of certain bank applications submitted to the commissioner; (2) protecting the interests of the public, depositors, and bank stockholders; and (3) any other matter concerning the business of banking in the State. The Banking Board operates as an advisory body, meeting at the discretion of the commissioner, who is not required to follow board recommendations.

Although State law requires the board to provide the commissioner with advice on the approval or disapproval of certain bank applications, board members rarely respond to the commissioner's requests for advice. During the past 10 years, the depository corporate applications unit, which handles all official correspondence sent to members of the Banking Board, has mailed approximately 270 bank-related applications to board members. The unit has received only 16 responses.

Many of the applications for which the commissioner must seek the board's advice are lengthy and complex, such as applications involving a proposed merger or a transfer of assets. However, it appears unlikely that individual board members have the experience that is required to evaluate such applications. It is also questionable whether the requirement that the commissioner seek the board's advice provides any benefit to the application process. Moreover, although the board's advice must be sought on certain matters, the board has no authority to approve or deny applications. In fact, the commissioner is free to disregard the board's advice.

DLS finds that the Banking Board no longer plays a role in advising the commissioner on issues concerning banking in the State. The commissioner did not call on the board for advice during one of the most significant banking crises in the nation's history – the very purpose for which the board was established. In fact, the board has not convened in nearly four years.

Recommendation 4: The State Collection Agency Licensing Board, the Attorney General's Office, and the Judiciary should examine whether changes to the Maryland Rules of Procedure, including reforms contained in the July 2010 Federal Trade Commission report titled *Repairing a Broken System*, are necessary to sufficiently protect Maryland consumers in debt collection cases. The Collection Agency Board, Attorney General's Office, and Judiciary should report on their findings and recommendations to the Senate Finance Committee, the Senate Judicial Proceedings Committee, the House Economic Matters Committee, and the House Judiciary Committee by October 1, 2011.

The sale of consumer debt (primarily credit card debt) is an increasingly common industry practice, and it is not uncommon for a consumer's debt to be resold repeatedly over time. Debt buyers typically purchase unpaid consumer debts for cents on the dollar and pursue multiple collection tactics in the hopes of collecting enough unpaid debts to recoup their costs and ultimately turn a profit. As the unpaid consumer debt is typically purchased at a substantially reduced rate, it is highly unlikely, from a business perspective, that debt buyers receive detailed information about the original debts and underlying contracts when these purchases are made.

Typically, debt buyers receive spreadsheets or electronic databases with basic information about the underlying consumer debt, such as the individual's name, home address, outstanding balance, and the date of default. However, an industry that once relied on phone calls and collection notices has discovered that collecting on unpaid consumer debts by filing a massive number of lawsuits is a financially sound business model.

Collection law firms have recently turned to specialized computer software that automatically produces collection letters, summonses, and lawsuits using the information contained in the electronic databases.

Although debt collection lawsuits are legal when conducted in accordance with State and federal law, the huge volume of lawsuits filed that are based on limited details of the alleged debts can ultimately lead to mistakes and abuses of the court system. The Collection Agency Board recently issued cease and desist orders against entities that had filed over 10,000 debt collection actions in State courts for engaging in collection agency activities, including civil litigation, without a collection agency license. The board also suspended the license of one of the largest debt collection firms nationwide operating in Maryland, which precipitated the district court's dismissal of 20,000 to 25,000 debt collection lawsuits.

In a comprehensive July 2010 report, the Federal Trade Commission (FTC) found that certain "debt collection litigation and arbitration practices appear to raise substantial consumer protection concerns." FTC reports that 65% to 95% of consumers who are sued for unpaid debts do not defend themselves in debt collection lawsuits. FTC found that complaints and attachments filed in debt collection cases often do not provide adequate information for consumers to answer complaints or for judges to rule on motions for default judgment.

FTC recommends that "courts more rigorously apply existing rules to require that collectors provide adequate information and that jurisdictions consider adopting rules mandating the information which must be included or attached to the complaint." Other than specifying activities in which a debt collector may not engage, Maryland law is mostly silent on the particulars of debt collection litigation. However, the Maryland Rules of Civil Procedure contain provisions that form the framework by which a debt collection lawsuit is filed and handled in court.

The Attorney General's Office and the Judiciary have engaged in preliminary discussions regarding potential changes to the Maryland Rules to address problems associated with consumer debt collection lawsuits in Maryland and should continue examining whether changes to the Maryland Rules are necessary to protect State consumers in debt collection lawsuits.

Recommendation 5: The State Collection Agency Licensing Board should be continued, and legislation should be enacted to extend its termination date to July 1, 2022.

Given the most recent economic downturn, there is a continued need for regulation of collection agencies in the State to protect the public from harassment and illegal conduct. The Collection Agency Board has taken proactive measures to ensure that licensing fees will offset current expenditures required for industry regulation. The board should also be commended for its recent enforcement activities and its ability to both anticipate and respond to constantly evolving industry issues, such as the licensure of consumer debt purchasers who attempt to collect on consumer claims through civil litigation. However, the Collection Agency Board should continue working with the Judiciary and the Attorney General to establish rules and procedures that meet the needs of licensees and State consumers.

Chapter 1. Introduction

Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as "sunset review" because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The Office of the Commissioner of Financial Regulation (Commissioner's Office) and the Banking Board last underwent a full evaluation as part of sunset review in 2000. Ensuing legislation, Chapter 226 of 2001, extended the termination date of the Commissioner's Office and the Banking Board from July 1, 2002, to the current termination date of July 1, 2012. Chapter 226 also required the commissioner to submit annual reports to both the Governor and the General Assembly. The State Collection Agency Licensing Board (Collection Agency Board) last underwent an evaluation as part of sunset review in 1999, after which Chapter 79 of 2000 extended the board's termination date to July 1, 2012.

In advance of the July 1, 2012 termination dates, DLS conducted preliminary evaluations to assist LPC in deciding whether to waive the Commissioner's Office, the Banking Board, and the Collection Agency Board from a full evaluation. The 2009 preliminary evaluation of the Commissioner's Office and the Banking Board recognized the efforts of the Commissioner's Office in preserving the overall financial soundness of State depository institutions and nondepository licensees but identified certain issues (discussed below) requiring further evaluation. As a result, DLS recommended that a full sunset evaluation be conducted before extending the authority of the Commissioner's Office and the Banking Board.

Likewise, the 2009 preliminary evaluation of the Collection Agency Board recognized a continued need for regulation of collection agencies in the State to protect the public from harassment and illegal conduct but identified issues (discussed below) requiring further evaluation. Because of the board's placement within the Commissioner's Office, DLS recommended that a full sunset evaluation of the Collection Agency Board be combined with the full evaluation of the Commissioner's Office and the Banking Board.

Overview of the Commissioner's Office, the Banking Board, and the Collection Agency Board

The Commissioner's Office is housed within the Department of Labor, Licensing, and Regulation (DLLR). The Commissioner of Financial Regulation, who oversees the office, is appointed by the Secretary of Labor, Licensing, and Regulation with the approval of the Governor and the advice and consent of the Senate. The office is responsible for licensing and regulating State-chartered financial institutions (banks, credit unions, and trust companies), as well as various nondepository institutions (mortgage lenders, brokers, servicers and originators, sales finance companies, consumer loan companies, money transmitters, check cashers, installment loan lenders, credit services businesses, credit reporting agencies, consumer debt collection agencies, and debt management service providers).

The Banking Board serves as an advisory body to the Commissioner of Financial Regulation. The role of the board is to provide advice to the commissioner on certain bank applications and on matters relating to the regulation of Maryland's banking institutions.

The Collection Agency Board is located within the Commissioner's Office and is responsible for licensing and regulating consumer debt collection companies operating in the State. The Commissioner of Financial Regulation serves as chair of the board.

2010 Sunset Review

Section 8-408 of the State Government Article sets out the requirements of a sunset evaluation report including issues to be addressed such as the study of the accountability, efficiency, and effectiveness of agency operations and finances. This report fulfills DLS' obligation to provide a comprehensive review of the Commissioner's Office, the Banking Board, and the Collection Agency Board to assist the General Assembly in determining an appropriate termination date for the office and boards.

Issues

As noted in the 2009 preliminary evaluation, the Commissioner's Office is necessary and beneficial to protecting Maryland citizens. In the midst of the recent economic downturn and the residential foreclosure crisis, the office increased nondepository compliance and enforcement activity despite budget constraints, a fluctuating licensee base, and an increased mortgage-related complaint workload. There is also a continued need for regulation of collection agencies in the State to protect the public from harassment and illegal conduct. However, the preliminary evaluation of the office and the boards identified several issues for further study. The specific issues addressed in this report include:

- the impact of federal banking reforms on the depository corporate applications unit and the depository supervision unit;
- the implementation of a risk-based mortgage lender examination schedule to supplement the calendar-based schedule;
- the ability of the complaint unit to close mortgage-related complaints in a timely fashion;
- the ability of the office to effectively respond to constantly evolving threats to State consumers;
- the structural integrity of the Mortgage Lender-Originator Fund;
- the role of the Banking Board going forward and whether its purpose meets the identified needs of the Commissioner of Financial Regulation; and
- the expanding use of litigation-based debt collection practices and its impact on State consumers.

The preliminary evaluation also raised questions about the reporting of general and special fund revenues by the Commissioner's Office, the funding of the Collection Agency Board, the placement of the Collection Agency Board within the Commissioner's Office, and the scope of the board's regulatory authority. However, upon further examination, DLS has determined that initial concerns have already been addressed or do not require further action.

Research Activities

DLS utilized several standard research activities to complete the full evaluation of the Commissioner's Office, the Banking Board, and the Collection Agency Board.

- **Literature and Document Reviews –** DLS reviewed several sources of literature on financial regulation, including but not limited to the National Conference of State Legislatures and the Conference of State Bank Supervisors' information on regulation in other states; literature from pertinent State and national professional associations such as the Maryland Bankers Association; the Annotated Code of Maryland; the Code of Maryland Regulations (COMAR); internal office and board documents such as annual reports and board minutes; other evaluations of the organization and management of the office and the boards, including legislative audits; and financial, licensing, complaint, and investigation records.

- **Structured Interviews –** Numerous structured interviews were conducted to supplement the literature and data review. DLS interviewed the Commissioner of Financial Regulation, the deputy commissioner, all assistant commissioners, as well as agency directors. Interviews were also conducted with members of the Collection Agency Board, staff, and industry representatives from the Maryland Bankers Association. These interviews focused on staff responsibilities; workload; licensure, examination, and complaint processes; disciplinary procedures; customer service; resources available on the office's website; the relationship between the Commissioner's Office, the Banking Board, and the Collection Agency Board; and their respective relationships with professional associations. DLS also sent a survey to members of the Banking Board. The survey focused on the role of the Banking Board and the ability of the board to effectively advise the commissioner. Responses are not quoted or included as an appendix to this report but were used to examine office and board operations, administrative processes, organizational structures, and statutory authority.

- **Site Visits/Observation –** Multiple visits to the Commissioner's Office allowed DLS to gain a better understanding of the issues facing the office and the Collection Agency Board, such as the transition to a multistate electronic mortgage licensing system and registry.

Report Organization

Chapter 1 of this report includes a review of the sunset evaluation process and a brief overview of the Commissioner's Office, the Banking Board, and the Collection Agency Board. **Chapter 2** evaluates of the Commissioner's Office. The chapter explains the office's role in licensing and regulating State-chartered financial institutions and assorted nondepository institutions, recent legislative changes impacting the office, and how the office is funded. The chapter also examines various issues concerning the operation of the office, including the examination of mortgage lenders, the operation of the enforcement and consumer services unit, and the status of special funds administered by the office. **Chapter 3** examines the role of the Banking Board as an advisory body to the Commissioner of Financial Regulation. Finally, **Chapter 4** reviews the Collection Agency Board and the debt collection industry.

As supplements to the report, six appendices are included. **Appendix 1** shows the organizational structure of the Commissioner's Office. **Appendix 2** lists the application and licensing fee schedules for all licensees that are licensed by the Commissioner's Office and the Collection Agency Board. **Appendix 3** contains descriptions of major legislative changes affecting the Commissioner's Office and the Banking Board since the last sunset evaluation in 2000. **Appendix 4** shows the current membership of the Banking Board. **Appendix 5** contains draft legislation to implement the statutory recommendations contained in this report. The Office of the Commissioner of Financial Regulation, the Banking Board, and the State Collection Agency Licensing Board reviewed a draft of this report and provided the written comments included as **Appendix 6**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect this published version of the report.

Chapter 2. Office of the Commissioner of Financial Regulation

Overview

The Office of the Commissioner of Financial Regulation (Commissioner's Office) is responsible for licensing and regulating mortgage lenders, brokers, servicers and originators, sales finance companies, consumer loan companies, money transmitters, check cashers, installment loan lenders, credit services businesses, credit reporting agencies, consumer debt collection agencies, and debt management service providers (nondepository activities). The office also regulates and supervises State-chartered financial institutions including State-chartered banks, credit unions, and trust companies (depository activities). Supervision includes periodic on-site evaluations as well as off-site monitoring programs. The office analyzes financial institutions' corporate applications for new banks, charter conversions, mergers and acquisitions, affiliates, new activities, and new branches. The office also oversees retail credit accounts, retail installment contracts, and credit grantor contracts.

Chapter 326 of 1996 established the Commissioner's Office as a budgetary unit of the Department of Labor, Licensing, and Regulation (DLLR). The office assumed the duties, responsibilities, authority, and functions of the Commissioner of Consumer Credit and the State Bank Commissioner, which were abolished by the aforementioned law. The office is divided into six units: depository corporate activities; depository supervision; nondepository licensing; nondepository supervision and compliance; enforcement and consumer services; and internal policy (*see* **Appendix 1**). The commissioner is appointed by the Secretary of Labor, Licensing, and Regulation with the approval of the Governor and the advice and consent of the Senate. The deputy commissioner is appointed by the commissioner, with the approval of the Secretary.

For purposes of this evaluation, the depository and nondepository functions of the office are discussed separately. The complete application and licensing fee schedule for all depository and nondepository licensees can be found in **Appendix 2**.

Impact of State Legislation on the Office of the Commissioner of Financial Regulation

As shown in **Appendix 3**, the office's regulatory and supervisory responsibilities have greatly expanded since the 2000 full sunset evaluation. Prior to the most recent economic downturn, the General Assembly passed legislation which required the Commissioner's Office to license and regulate money transmitters, debt management service providers, and mortgage loan originators. Substantive mortgage-related reforms have also impacted the office's licensing, compliance, complaint, and enforcement divisions.

Emergency legislation in the 2008 session revised the residential foreclosure process in the State. Chapters 1 and 2 of 2008 required a secured party to send a notice of intent to foreclose to a homeowner at least 45 days before filing an action to foreclose a residential mortgage. The notice must contain the names and telephone numbers of the secured party, the mortgage servicer, the mortgage broker or loan originator, and any agent of the secured party who is authorized to modify the terms of the mortgage loan. A copy of the notice must also be sent to the Commissioner's Office. In fiscal 2010, the office received over 120,000 copies of notices of intent to foreclose.

Chapters 7 and 8 of 2008 made a number of substantive changes to State law governing mortgage lending. For various types of mortgage loans, due regard must now be given to the borrower's ability to repay a loan in accordance with its terms. The Acts also prohibited lenders from imposing penalties or fees in the event certain mortgages are prepaid by the mortgagor. Chapters 7 and 8 authorized the commissioner to participate in the establishment and implementation of a multistate automated licensing system for mortgage lenders and loan originators.

Other significant reforms include Chapters 3 and 4 of 2008, which created a comprehensive mortgage fraud statute and established criminal penalties. In Maryland, prior to 2008, mortgage fraud was not a crime specifically defined in statute. Although mortgage fraud previously was prosecuted as theft by deception, the Maryland Homeownership Preservation Task Force found that prosecuting these cases under the general theft statute was cumbersome and difficult to explain to juries. Chapters 3 and 4 authorized the commissioner, the Attorney General, and State's Attorneys to take action to enforce the comprehensive mortgage fraud statute.

Chapters 5 and 6 of 2008, the Protection of Homeowners in Foreclosure Act (PHIFA) prohibited foreclosure rescue transactions and expanded consumer protections. Foreclosure rescue transactions typically involve a residence in default that is conveyed by a homeowner to a third party to prevent or delay foreclosure proceedings. Under PHIFA, foreclosure consultants are prohibited from engaging in, arranging, promoting, participating in, assisting with, or carrying out foreclosure rescue transactions. PHIFA granted the commissioner concurrent jurisdiction, along with the Attorney General, to investigate, enforce, and enjoin persons involved in foreclosure rescue schemes.

Chapter 4 of 2009 overhauled the State's mortgage lender and loan originator laws to conform to the requirements of the federal Secure and Fair Enforcement Mortgage Licensing Act of 2008. Chapter 4 altered the licensing requirements, initial license terms, and renewal terms for mortgage lenders and loan originators. The Act required applicants and licensees to submit certain information and fees to the Nationwide Mortgage Licensing System and Registry (NMLSR). The Act also increased civil penalties for violations of State mortgage lender and loan originator laws.

Other major legislative changes noted in Appendix 3 modified the funding structure of the Commissioner's Office. Since the last full sunset evaluation in 2000, several regulatory areas under the purview of the Commissioner's Office have become special-funded operations. **Exhibit 2.1** provides details on each of the special funds created.

Exhibit 2.1
Office of the Commissioner of Financial Regulation
Special Funded Operations

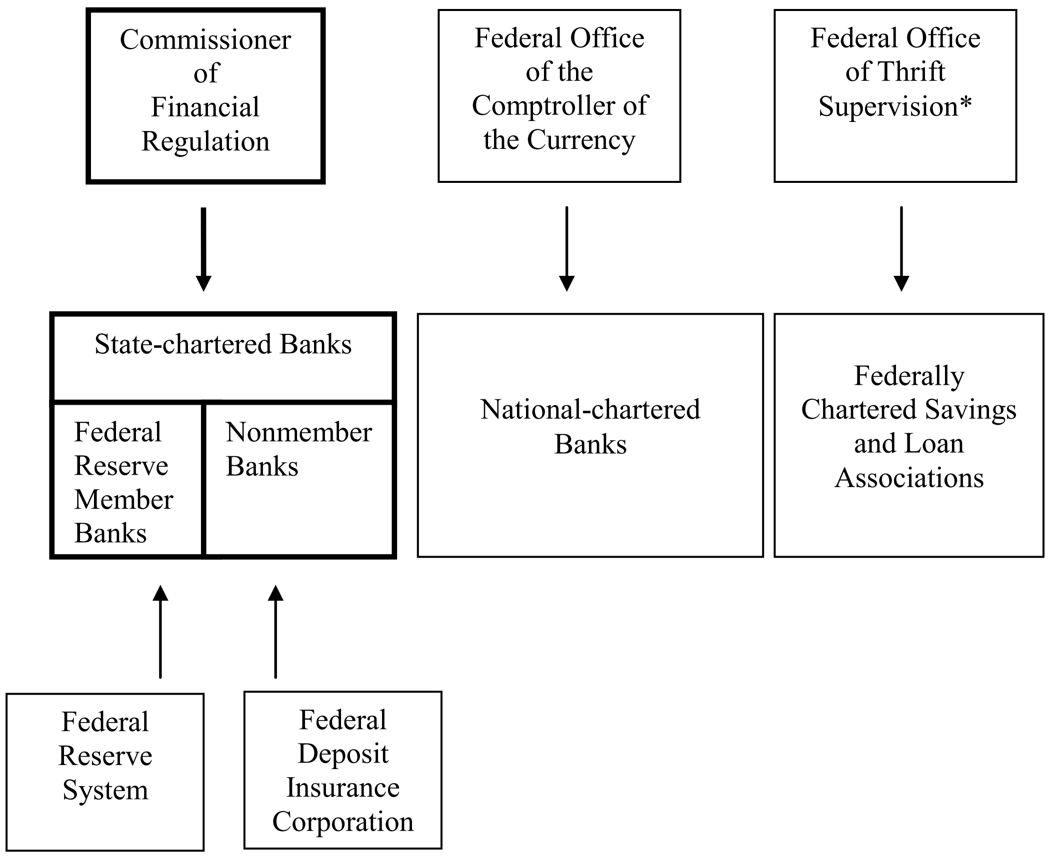
Fund Name	Created by	Revenue Sources
Money Transmission Fund	Ch. 539 of 2002	Initial and renewal licensing fees; investigation fees
Debt Management Services Fund	Chs. 374 and 375 of 2003	Debt management company initial and renewal licensing fees; investigation fees
Mortgage Lender-Originator Fund	Ch. 590 of 2005	Licensing fees (initial and renewal); examination and investigation fees; license amendment fees
Banking Institution and Credit Union Regulation Fund	Ch. 293 of 2008	Bank and credit union assessments; corporate application fees

Source: Laws of Maryland

Oversight and Regulation of Depository Institutions

The Maryland banking industry comprises Maryland State-chartered banks, banks chartered by other states that operate in Maryland, and federally chartered national banks and savings banks. The Commissioner's Office is the primary regulator of Maryland State-chartered banks. National banks are regulated by the federal Office of the Comptroller of the Currency (OCC), and federal savings banks are regulated by the federal Office of Thrift Supervision (OTS). As shown in **Exhibit 2.2**, State-chartered banks are secondarily regulated by either the Federal Reserve Bank of Richmond or the Federal Deposit Insurance Corporation (FDIC).

Exhibit 2.2
Dual Regulatory System for Depository Institutions



*Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Office of Thrift Supervision is scheduled to cease operations in July 2011, and most of its regulatory authority will be transferred to the Office of the Comptroller of the Currency.

Source: Department of Legislative Services

Banks that choose membership in the Federal Reserve fall under the regulatory purview of that federal agency. FDIC regulates the remaining banks, also known as nonmember banks. Sandy Spring Bank, for example, operates under a State charter and is a Federal Reserve member bank. Therefore, the Commissioner of Financial Regulation and the Federal Reserve both regulate Sandy Spring Bank.

From January 2008 through September 2010, 292 banks, savings banks, and savings and loans have failed nationwide as a result of mounting residential and commercial loan defaults and overall economic weakness. As of September 30, 2010, 127 closings have occurred in calendar 2010, well outpacing the 140 failures in 2009 and the 25 that occurred in 2008. To resolve the continuing bank failures, the FDIC expects the cost to approach $60 billion from 2010 through 2014. As shown in **Exhibit 2.3**, of the 292 institutions nationwide that have failed since January 2008, only 5 were headquartered in Maryland and all were primarily regulated by the federal Office of Thrift Supervision.

Exhibit 2.3

Nationally Chartered Bank Failures in Maryland

January 2008 – September 2010

Failure Date	Bank Name	Headquartered	Year Established	Federal Regulator	Cost to FDIC Insurance Fund
1/30/2009	Suburban Federal Savings Bank	Crofton	1954	OTS	$126,000,000
8/28/2009	Bradford Bank	Baltimore	1903	OTS	$96,000,000
3/5/2010	Waterfield Bank	Germantown	2000	OTS	$51,000,000
7/9/2010	Ideal Federal Savings Bank	Baltimore	1986	OTS	$2,100,000
7/9/2010	Bay National Bank	Baltimore	2000	OTS	$17,400,000

OTS = Office of Thrift Supervision

Source: *Wall Street Journal*, SNL Financial, FDIC

Prior to the failure of Suburban Federal Savings Bank, the last bank in Maryland to fail was Second National Federal Savings Bank in 1992; that bank was also a federally chartered institution. As of October 1, 2010, no State-chartered financial institutions have failed during the most recent economic downturn.

By offering a State charter, Maryland plays an important role in shaping the State's banking industry. The General Assembly identifies banking policies beneficial to the State and adopts laws to mandate or encourage these practices. In addition, State-chartered banks are said to be more committed to investing in the State. For example, they tend to use local deposits to provide the loan services needed by area residents and businesses. Banks with many out-of-state locations could use the funds deposited by Maryland residents to provide more profitable loan services in other parts of the country.

Number of State-chartered Depository Institutions Declining

The Commissioner's Office monitors and evaluates State-chartered banks, including examining and evaluating their capital, asset quality, management, earnings and liquidity position, sensitivity to market risk, as well as their internal controls and risk management systems. As of June 30 2010, the office oversaw the condition of 47 State-chartered banks with assets exceeding $23.2 billion, down from 62 State-chartered banks as of June 30, 2004. The office also examines and regulates six State-chartered trust companies, nine State-chartered credit unions, the Anne Arundel Economic Development Corporation, and the American Share Insurance Corporation. The total assets of State-chartered banks are shown in **Exhibit 2.4**.

Exhibit 2.4
Consolidated Financial Statement of State-chartered Banks
As of June 30 of Each Year
Fiscal 2004-2010
($ in Thousands)

Fiscal Year	State Banks	Total Assets	Total Loans	Securities	Total Deposits	Total Capital
2004	62	$33,337,923	$22,129,584	$7,918,866	$25,046,174	$3,002,066
2005	56	37,159,487	25,497,448	7,660,557	27,542,622	3,711,691
2006	56	39,619,518	27,115,636	7,627,391	29,262,128	4,147,295
2007	56	42,139,079	29,403,517	7,216,069	30,421,947	4,469,387
2008	51	29,381,521	21,881,597	4,415,664	21,813,397	2,728,926
2009	48	21,792,246	16,059,416	3,200,633	17,135,262	2,113,331
2010	47	23,223,680	16,503,280	3,372,087	18,710,253	2,257,096

Note: As of July 1, 2010, the office assumed responsibility for monitoring an additional State-chartered bank, bringing the total back to 48.

Source: Annual Reports, Office of the Commissioner of Financial Regulation

Over the past decade, the number of State-chartered banks headquartered in Maryland has steadily declined as pillars of the local financial community have been acquired by out-of-state institutions: M&T Bank acquired Provident Bank for $401 million in 2008; Capital One acquired Chevy Chase Bank for $520 million in 2008; and PNC Bank acquired Mercantile Bank for $6 billion in 2006. To the extent additional mergers and consolidations take place among State-chartered institutions, special fund revenues may decrease, as annual assessment revenues received by the Commissioner's Office are calculated as a percentage of the total assets held by State-chartered institutions.

Impact of Federal Financial Reform Expected to Have Minimal Impact on Office's Workload

The 2009 preliminary evaluation of the Commissioner's Office and the Banking Board noted that proposed reforms to the federal financial regulatory system could impact the workload of the depository corporate applications unit and the depository supervision unit within the Commissioner's Office. As the report noted, certain federal regulatory reforms could result in a significant number of federally chartered financial institutions electing to convert to a State charter, which would lead to an increased workload for the office's depository units. At this time, however, the Commissioner's Office does not anticipate a substantial increase in the number of institutions seeking a State charter.

Since the 2009 preliminary evaluation report was published, the U.S. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which effects sweeping changes to the federal financial regulatory system. As anticipated, the Act calls for the elimination of OTS. Specifically, Title III of the Act specifies that OTS cease operations in July 2011, with most of its regulatory authority being transferred to OCC. However, unlike some of the proposals considered by Congress, the Act did not eliminate the federal thrift charter. Because Congress retained the federal thrift charter, federal thrifts headquartered in Maryland will not have to convert to a State charter or a federal bank charter.

Nonetheless, as federally chartered thrifts undergo the regulatory transition from OTS to OCC, some thrifts may find it more desirable to convert to a State charter. In January 2010, Madison Bank of Maryland converted from a federally chartered savings bank to a State-chartered savings bank. In April 2010, Sykesville Federal Savings Association converted from a federally chartered savings bank to a State-chartered bank and changed its name to Carroll Community Bank. Given that the regulatory environment for federal thrifts is still evolving, it is difficult to predict how federal regulatory reforms will impact the workload of the depository corporate applications unit.

In anticipation of the elimination of OTS and the possibility that federally chartered institutions headquartered in Maryland might elect to convert to a State charter, the General Assembly passed Chapter 457 of 2010. Among other things, Chapter 457 established an expedited process for the conversion of federally chartered savings banks to State-chartered savings banks. In the event the Commissioner's Office receives a number of applications from federal savings banks seeking to convert to State-chartered savings banks, Chapter 457 should help alleviate potential bottlenecks in the conversion process.

Depository Examinations Are Conducted in a Timely Fashion

The Commissioner's Office supervises the safety and soundness of State-chartered banks through regular on-site examinations and a quarterly off-site monitoring program. The office also conducts joint examinations with FDIC, and some examinations are conducted with the Federal Reserve Bank of Richmond. As illustrated in **Exhibit 2.5**, between fiscal 2004 and 2010, the office performed 38 to 63 examinations per year.

Exhibit 2.5
Depository Examinations
Fiscal 2004-2010

Fiscal Year	Independent Bank Exams	Joint Exams with the FDIC	Joint Exams with the Federal Reserve	Special Bank Exams	Independent Credit Union Exams	Total Exams
2004	18	10	2	6	12	48
2005	18	7	7	9	11	52
2006	20	9	6	5	10	50
2007	15	7	3	3	10	38
2008	15	8	4	5	10	42
2009	15	21	6	11	10	63
2010	24	12	5	7	10	58

Notes: Special bank exams include visitations, target exams, interagency exams, and the Anne Arundel Economic Development Corporation. Independent credit union examination totals include the American Share Insurance Corporation.

Source: Office of the Commissioner of Financial Regulation, 2010

The Commissioner's Office currently has 13 full-time bank and credit union examiners and 2 contractual examiners. The depository supervision unit conducts joint examinations with either FDIC or the Federal Reserve Bank of Richmond if a depository institution has at least $1 billion in assets, or if an institution receives a composite CAMELS soundness rating of 3, 4, or 5. CAMELS is an acronym for capital, asset quality, management, earnings, liquidity, and sensitivity to market risk. A rating of 1 indicates a financially sound institution, while a bank with an extensive portfolio of nonperforming loans and delinquencies may receive a rating of

4 or 5. Banks and credit unions with a CAMELS rating of 1 or 2 are examined at least every 18 months, and institutions with ratings of 3, 4, or 5 are examined at least every 12 months.

When necessary, the commissioner has brought enforcement actions against institutions, either independently or jointly with FDIC or the Federal Reserve Bank of Richmond. Enforcement actions include formal cease and desist orders, written agreements, and memoranda of understanding. Institutions subject to enforcement actions are subject to heightened supervision and provide the office with plans on meeting certain requirements (such as capital plans) and regular progress reports.

If a bank's capitalization levels are deemed insufficient, the Commissioner of Financial Regulation may require the bank to cease and desist from any unsafe or unsound banking practices. A cease and desist order may require a bank to take affirmative actions regarding management policies, suspend certain dividends and distributions, and fix any capital deficiencies, as determined by the commissioner. Based on objective ratios of capital to assets prescribed by federal law, the Commissioner of Financial Regulation considers 44 State-chartered banks and all 9 State-chartered credit unions to be "well-capitalized" as of July 1, 2010. Based on the same objective capital ratios, three State-chartered banks are "adequately capitalized" and one State-chartered bank is "significantly under-capitalized."

Oversight and Regulation of Nondepository Licensees

In addition to licensing and regulating State-chartered financial institutions, the Commissioner's Office is responsible for licensing and regulating:

- mortgage lenders, brokers, servicers, and originators;
- sales finance companies;
- consumer loan companies;
- money transmitters and check cashers;
- installment loan lenders;
- credit services businesses;
- debt collection agencies; and
- debt management service providers.

As of June 2010, the office monitors the business activities of more than 9,300 nondepository licensees to ensure their compliance with both State and federal laws and regulations. The number of licensees in each nondepository category is shown in **Exhibit 2.6**.

Exhibit 2.6
Nondepository Licensee Totals
Fiscal 2005-2010

License Type	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Check Casher	493	412	470	531	493	517
Collection Agency	1,288	1,204	1,346	1,449	1,457	1,442
Consumer Lender	259	279	282	232	171	129
Credit Services Businesses	0	0	0	0	0	5
Debt Management	41	44	43	36	35	33
Installment Lender	235	240	293	249	122	112
Money Transmitter	74	80	87	76	75	70
Mortgage Lender	4,990	5,193	6,174	3,714	2,437	1,478
Mortgage Originator	0	0	9,663	11,171	5,900	5,007
AIP-MLO	0	0	0	0	0	35
Sales Finance Company	676	726	777	676	588	545
Total Licenses	**8,056**	**8,178**	**19,135**	**18,134**	**11,278**	**9,373**

Note: Figures reflect the total number of licenses held in each fiscal year not the number issued. Mortgage loan originator licensing started on January 1, 2007, and affiliated insurance producer-mortgage loan originator licensing began in 2010. Also in 2010, a separate licensing category was established for credit services businesses. Previously, credit services businesses were included in the installment lender licensing category.

AIP-MLO = Affiliated Insurance Producer-Mortgage Loan Originator

Source: Office of the Commissioner of Financial Regulation

The sharp increase in the total number of nondepository licensees from fiscal 2006 (8,178 licensees) to 2007 (19,135 licensees) is largely due to the licensing of mortgage loan originators, which started on January 1, 2007. In fiscal 2007, the first year in which the office licensed mortgage loan originators, there were almost 9,700 licensees in that category. The total number of nondepository licensees then dropped sharply from fiscal 2008 (18,134 licensees) to 2010 (9,373 licensees). The drop in licensees is attributable to the significant decline in the number of mortgage-related licensees, which is discussed in greater detail later in this report.

Office Has Reorganized to Strengthen Nondepository Oversight and Address Mortgage-related Activities

The preliminary evaluation of the Commissioner's Office recommended that the full evaluation examine the "needs of the enforcement unit to effectively respond to constantly evolving threats to State consumers, as predatory lending activities shift to loan modification and other schemes." Since the preliminary evaluation, the Commissioner's Office has implemented two significant changes aimed at strengthening the office's oversight of nonbank institutions and enhancing mortgage fraud initiatives. The office has added a new assistant commissioner for nondepository institutions as well as a staff attorney and paralegal to handle mortgage fraud matters. The office also is seeking grant funding that would cover the costs of additional personnel and fund efforts to coordinate and assist mortgage fraud prosecutions throughout the State.

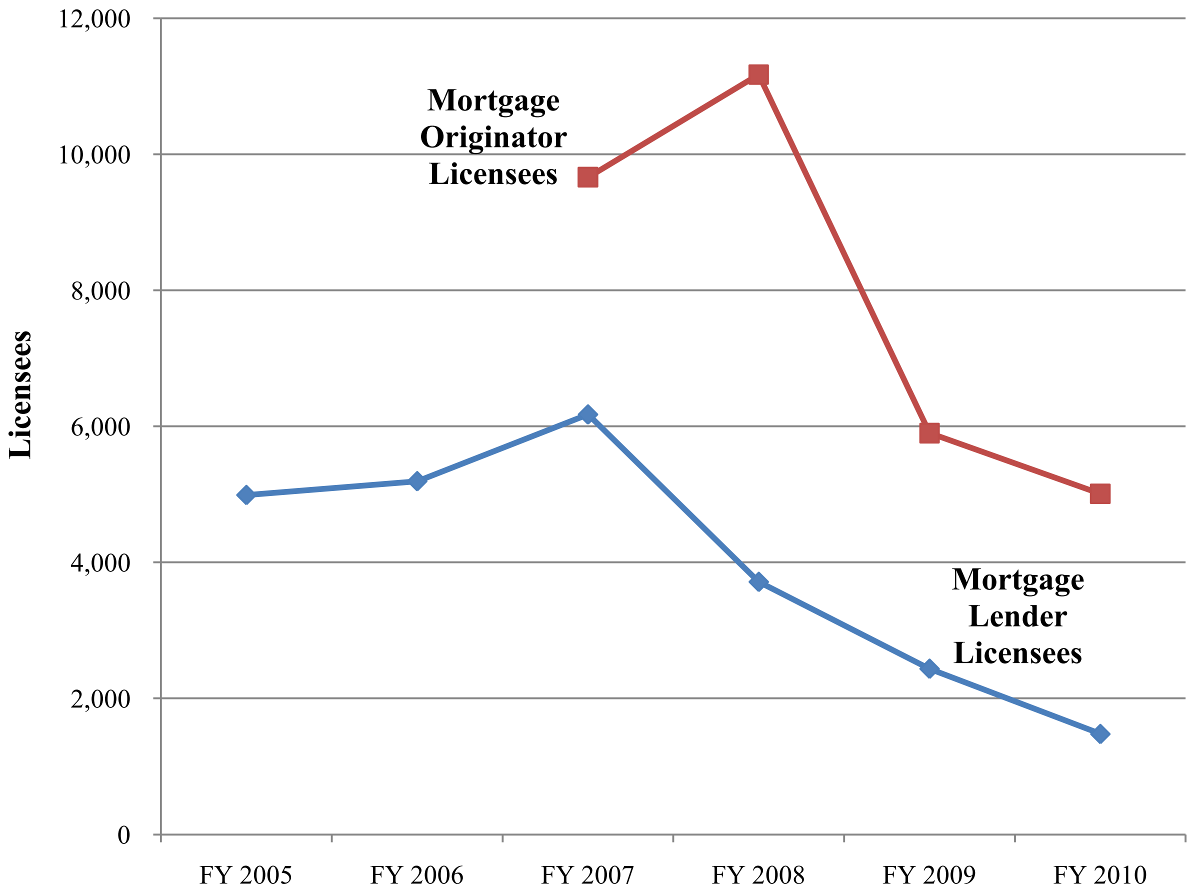
In June 2010, the Secretary of Labor, Licensing, and Regulation appointed an assistant commissioner for nondepository institutions in the Commissioner's Office. The newly created position will oversee the supervision and licensing of various nonbank financial institutions, including mortgage brokers and lenders, check cashers, and debt management companies. (*See* **Appendix 1**.) One of the primary benefits of the new position is that it should lead to more effective coordination between the office's nondepository licensing unit and nondepository compliance unit. The nondepository licensing unit is responsible for the licensing of nondepository licensees, whereas the compliance unit monitors the business activities of such licensees to ensure their compliance with State and federal laws and regulations. The Commissioner's Office expects that the new position will improve the office's capacity to respond to changes and address issues within the regulated industries, particularly within the mortgage industry.

The office also has added a staff attorney and paralegal to handle mortgage fraud matters. These positions are funded by a grant from the Governor's Office of Crime Control and Prevention (GOCCP). The grant runs from January 1, 2010, through December 31, 2010. In addition to the GOCCP grant, the office has applied for a U.S. Department of Justice grant that would fund a mortgage fraud director, an assistant Attorney General, a paralegal, and a mortgage fraud investigator. The funding would allow the office to coordinate with local State's Attorneys on mortgage fraud initiatives and provide State's Attorneys with guidance in prosecuting mortgage fraud actions.

Number of Mortgage-related Licensees Has Declined

The office is responsible for licensing mortgage lenders and loan originators that are not employed by, or affiliated with, banking institutions (which are exempt). As seen in **Exhibit 2.7**, the total number of licensed mortgage lenders has declined 60% from fiscal 2008 to 2010, while the total number of licensed mortgage originators has declined 55% over the same period.

Exhibit 2.7
Mortgage Lender and Mortgage Originator Licensee Totals
Fiscal 2005-2010



Source: Office of the Commissioner of Financial Regulation

The office attributes the drop in mortgage-related licensees to a combination of the deteriorating residential real estate market and a tightening of banks' lending standards in the wake of the credit crunch in 2008 and 2009. Broadly, the residential mortgage industry has contracted significantly, and the impact on market participants licensed by the Commissioner's Office has been disproportionately large. In addition, several national bank and thrift affiliates with multiple locations in Maryland, such as Citi Mortgage and Wells Fargo Home Mortgage, have restructured operations into their respective banks and are no longer subject to the jurisdiction of the Commissioner of Financial Regulation. Other national bank and thrift affiliates, such as HSBC, have simply exited the mortgage industry in the wake of the credit crisis. Elevated licensing standards and costs have also reduced the number of licensees.

While the decline in the total number of licensees is primarily driven by the failure of licensees to renew, there has also been a significant decline in new applications for mortgage lender licenses. The licensing unit issued 1,371 new mortgage lender licenses in fiscal 2007, compared with 707 in fiscal 2008, 357 in fiscal 2009, and 406 in fiscal 2010.

Transition to the Nationwide Mortgage Licensing System and Registry Is Nearly Complete

Title V of the federal Housing and Economic Recovery Act of 2008, known as the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), mandated that all mortgage loan originators must be federally registered or state-licensed through a nationwide system jointly developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The resultant Nationwide Mortgage Licensing System and Registry (NMLSR) is a web-based interface that utilizes a single set of applications and allows state-licensed mortgage lenders, brokers, and loan officers to apply for, update, and renew their licenses online. NMLSR streamlines the licensing process and allows state regulators to track violations of law and actions taken by regulators across the country. NMLSR allows complaints to be processed through a centralized web-based database. As of June 2010, 48 states including Maryland and the District of Columbia are participating in NMLSR. By the end of calendar 2010, it is expected that all states and U.S. territories will be using NMLSR.

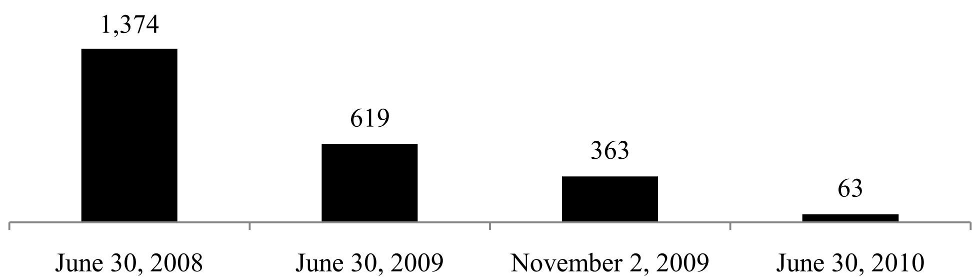
Chapter 4 of 2009 brought Maryland into compliance with the SAFE Act and mandated that the Commissioner's Office transition to NMLSR for mortgage originator licensure. Among other things, Chapter 4 set minimum loan originator licensing standards and modified lender and loan originator license terms from two-year terms to one-year terms. The office's compliance and licensing units will soon complete an 18-month transitional period to NMLSR from the existing State licensing system. The nondepository compliance unit is heavily involved in all aspects of the NMLSR transition including the State component of the SAFE Mortgage Loan Originator Test and prelicensing and continuing education requirements.

Commissioner's Office Should Implement a Risk-based Mortgage Lender Examination Schedule to Supplement the Existing Calendar-based Examination Schedule

Pursuant to statute, the Commissioner's Office must examine each mortgage lender licensee at least once every 36 months and each new mortgage lender licensee within 18 months of initial licensure. The commissioner may also conduct examinations at any other time deemed necessary and must take into account prior violations of mortgage lending laws or regulations, the nature and number of complaints against a licensee, the length of time the licensee has been conducting business, and the results of any prior examination.

Although the office has attempted to examine each mortgage lender licensee within the statutory 36/18-month schedule, the office struggled to meet this objective in every year from 1996 through 2007. Committed to addressing the matter, the office completed 2,671 total mortgage lender examinations during fiscal 2008 and 2009, a 58% increase over the prior two-year period. As shown in **Exhibit 2.8**, the backlog of overdue examinations has been greatly reduced from 1,374 as of June 30, 2008, to 63 as of June 30, 2010. The Commissioner's Office anticipates the backlog will be effectively eliminated by the end of calendar 2010.

Exhibit 2.8
Number of Overdue Mortgage Lender Examinations
Fiscal 2008-2010



Source: Commissioner of Financial Regulation, Response to Legislative Audit Report, July 2010

Chapters 7 and 8 of 2008 required the commissioner to study the feasibility of scheduling mortgage lender examinations using a risk-based approach rather than the statutory calendar-based schedule currently required under law. In its January 2009 Report to the General Assembly, the commissioner defined a risk-based examination approach as one that "utilizes a series of designated risk assessment factors to categorize licensees by the degree of risk to consumers that they pose, thereby warranting differing compliance examination frequency." Relevant factors that could be used to evaluate a licensee's risk to consumers include:

- the licensee's loan volume, business model, and types of mortgage products offered;
- consumer complaints relative to the licensee's annual loan volume;
- the number of residential notices of intent to foreclose filings that are linked to the licensee;
- enforcement actions, administrative actions, and consent agreements;
- instances of noncompliance identified through self-reporting or industry stakeholders;
- prior examination results and the licensee's fiscal soundness;
- the age or date of the licensee; and
- news reports, tips, and other investigations related to the licensee.

The office had employed these additional risk assessments only on an *ad hoc* basis, as limited resources prohibited the office from examining licensees according to the current 36/18-month statutory framework. The report also notes that the "successful implementation of a risk-based scheduling system will largely depend on the availability of risk-based element data." However, with the 18-month transition to NMLSR nearly completed, the real-time information available to the office for potential risk assessments has significantly expanded.

Using NMLSR, the Commissioner's Office receives real-time updates of disciplinary actions taken in any state against any licensee and can review the types of activity undertaken, such as lending, brokering, and/or the servicing of loans. In the near future, the office will be able to utilize NMLSR to review mortgage lenders' annual call reports, which will include detailed financial statements and production activity volumes on a state-by-state basis. As noted in its Report to the General Assembly, the opportunity for the Commissioner's Office to implement risk-based scheduling has been systematically enhanced through NMLSR.

Recommendation 1: With the reduction of the mortgage lender examination backlog and the transition to NMLSR nearly completed, the Commissioner's Office should use its existing authority to implement a risk-based examination schedule to supplement the existing calendar-based statutory framework by January 1, 2012, and report to the Senate Finance Committee and the House Economic Matters Committee on the status of implementation by October 1, 2012.

Time to Close Mortgage-related Complaints Has Steadily Increased as the Complaint Workload Becomes More Complex

The consumer services unit consists of nine examiners and is responsible for the investigation and resolution of consumer inquiries. These inquiries involve banks, mortgage lenders, mortgage servicers, collection agencies, other regulated parties, and complaints regarding nonlicensed entities, such as debt settlement companies. In addition, the consumer services unit receives complaints about institutions outside of the office's jurisdiction. Most mortgages, for example, are serviced by national banks such as Bank of America or Wells Fargo, and the unit redirects these complaints to the appropriate regulator.

Written consumer complaints against nondepository licensees are logged into a computer database and assigned to an examiner upon receipt. An acknowledgment letter is sent to the complainant within three days of assignment to an examiner. If the complaint is within the office's jurisdiction, a letter is sent to the applicable licensee requesting information. Upon receipt of the requested information, the financial examiner reviews the licensee's written response. A licensee's books and records are subject to review during the complaint investigation. If the examiner is satisfied, a closeout letter is generated and forwarded to the complainant with a summary of findings; otherwise, additional information may be requested.

If the second communication from the licensee fails to resolve the complaint, the examiner documents his or her findings and contacts a supervisor. Alternatively, the enforcement unit or the compliance unit may conduct an on-site investigation or consult the Office of the Attorney General regarding consumer claims against the licensee's bond. The complaint unit retains closed files on-site for a minimum of 25 months.

As shown in **Exhibit 2.9**, the office received approximately 2,600 complaints per year from fiscal 2006 through 2010. These totals consist of written consumer complaints (including those received by facsimile and email) and include complaints forwarded by legislative or executive offices. General consumer complaints include installment lender complaints, automobile repossessions, and other related credit contracts. Credit reporting agency complaints typically refer to entries on individuals' consumer reports kept by three major credit reporting companies: TransUnion, Equifax, and Experian.

Exhibit 2.9
Written Consumer Complaints by Type
Fiscal 2006-2010

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Mortgage Complaints	451	419	602	653	593
Collection Agency Complaints	491	596	589	590	563
Maryland Bank & Credit Union	78	66	76	88	47
Nonjurisdictional Bank	771	649	559	637	748
Credit Reporting Agency	604	632	483	407	321
General Consumer Complaints	208	188	255	283	302
Miscellaneous	79	47	34	18	29
Total	**2,682**	**2,597**	**2,598**	**2,676**	**2,603**

Source: Office of the Commissioner of Financial Regulation

The unit also fields a significant number of phone calls from homeowners seeking to avoid foreclosure and typically refers those individuals to the Department of Housing and Community Development's Home Owners Preserving Equity (HOPE) Foreclosure Prevention and Assistance Program for counseling. Foreclosure-related complaints handled by the office include those involving loss mitigation, foreclosure rescue consultants, and persons promising to negotiate with lenders or servicers to modify the terms of delinquent loans.

Total mortgage complaints have increased from 419 complaints in 2007 (16% of all complaints) to 653 complaints in 2009 (24% of all complaints). The number of mortgage complaints dropped slightly to 593 complaints in 2010, which accounted for approximately 23% of all complaints received by the office. The number of mortgage-related complaints received by the consumer services unit has remained elevated since the beginning of the residential foreclosure crisis in 2008, and **Exhibit 2.10** shows that the average time required to close a mortgage complaint has steadily increased.

Exhibit 2.10

Average Time to Close a Mortgage-related Complaint (in Days)

Fiscal 2007-2010

	FY 2007	FY 2008	FY 2009	FY 2010
Mortgage complaints received	419	602	653	593
Average days to close	59	77	93	130

Source: Office of the Commissioner of Financial Regulation.

The Commissioner's Office notes that it is taking longer to resolve mortgage complaints given the increased workload and the complexity of the complaints, which typically involve multiple parties including lenders, servicers, brokers, and settlement agents. To the extent mortgage-related complaints intensify in fiscal 2011 and the average time to close continues to rise, additional personnel from other divisions may be needed to assist with the consumer complaint workload.

Investigations Continue to Increase as Enforcement Unit Personnel Decreases

The enforcement unit is the investigative branch of the Office of the Commissioner of Financial Regulation and consists of six investigators and an assistant commissioner. Two investigators are fluent in Spanish to serve an increasingly targeted population. The unit investigates fraud, predatory lending, financial misappropriation, and any other violations of law applicable to depository and nondepository financial institutions whose activities fall under the regulatory oversight of the Commissioner's Office.

The regulatory authority of the office includes broad investigative and subpoena powers, which allow for expeditious access to files, email, financial records, and any other documentation appropriate to the investigation at hand. If a person engages in a practice over which the commissioner has jurisdiction and is violating State law, the commissioner may issue a cease and desist order or suspend or revoke the person's license. The commissioner may also assess civil penalties for initial and subsequent violations of the law or bring an action in circuit court for a temporary restraining order or permanent injunction. Finally, in order to take legal action, the commissioner must refer charges to the assistant Attorney General assigned to litigate the office's enforcement actions.

The enforcement unit works in partnership with the complaint, compliance, licensing, and depository supervision units, as well as with its federal and other-state counterparts. The number of investigations initiated by the enforcement unit between fiscal 2006 and 2010 is shown in **Exhibit 2.11**.

Exhibit 2.11

Investigations Initiated by the Enforcement Unit

Fiscal 2006-2010

Fiscal Year	Total Investigations	% Increase Over Prior Year	Investigators
2006	123	17.5%	5
2007	142	14.5%	7*
2008	247	75.0%	8
2009	316	23.5%	7
2010	373	20.1%	6

*Two contractual investigators were hired in fiscal 2007.

Source: Office of the Commissioner of Financial Regulation, Enforcement Unit

As shown in Exhibit 2.11, the unit's workload has tripled over the last five fiscal years while the number of investigators has fluctuated between five and eight. The significant increase in investigations initiated between fiscal 2008 and 2010 is attributable to the mortgage foreclosure crisis and the comprehensive mortgage reform laws passed in the 2008 and 2009 sessions, which enhanced the office's jurisdiction (*See* **Appendix 3**). Investigators within the enforcement unit note that approximately 75% of investigations in fiscal 2009 and 2010 were mortgage-related.

The enforcement unit has played a significant role in State-federal joint mortgage fraud investigations, several of which originated from complaints filed with the Commissioner's Office. For example, in late 2006, the enforcement unit launched a mortgage fraud investigation that lasted for three years and involved over 100 homeowners who lost $10 million worth of net equity in their homes. This mortgage fraud investigation by the enforcement unit was the largest in State history.

More recently, until the enforcement unit conducted an investigation, payday lenders had illegally been using confessed judgments to collect on loan defaults. In certain contracts or promissory notes, a confessed judgment clause typically waives a person's rights to defend against a legal action. Maryland law specifically prohibits consumer loan contracts, including payday lending agreements, from containing confessed judgment clauses.

Upon the conclusion of the enforcement unit's investigation, the Commissioner's Office issued a 30-page cease and desist order outlining 1,500 judgments in Maryland courts that violated the Maryland Consumer Loan Law and the Maryland Mortgage Lender Law. As a result of this action, Maryland courts vacated several hundred actions pending against Maryland consumers.

Fines and Consumer Recoveries Result from Heightened Compliance and Enforcement Activities

Fines and penalties assessed by the office are paid to the State general fund. They are generated by the office's licensing, compliance, and enforcement units. Consumer recoveries, which are paid directly to harmed individuals, are generated by the compliance, consumer services, and enforcement units. Monetary recoveries for consumers, along with fines and penalties collected for the general fund, are shown in **Exhibit 2.12**.

Exhibit 2.12
Fines and Consumer Recoveries
Fiscal 2007-2010

	FY 2007	FY 2008	FY 2009	FY 2010
Fines and Penalties (General Fund revenue)	$415,651	$392,239	$1,121,539	$1,622,895
Consumer Recoveries	$1,997,632	$1,318,938	$2,906,241	$2,463,899

Note: The fines for fiscal 2009 include a $642,000 fine imposed on a licensee per a consent agreement signed in June 2009 and paid in July 2009 (fiscal 2010).

Source: StateStat; Office of the Commissioner of Financial Regulation

The increase in fines and penalties in fiscal 2009 and 2010 is a function of the growing volume of consumer complaint activities and the increase in examinations and investigations completed. In addition, consumer recoveries include mortgage loan modifications that were achieved by the consumer services unit. It should be noted that, since fiscal 2006, the workload has tripled, investigative staffing levels have increased by one, and total fines and consumer recoveries collected have increased by more than $1.67 million.

Funding of the Office

The Commissioner's Office is now primarily funded by the supervision, examination, application, and licensing fees assessed upon individuals and institutions regulated by the office. As discussed in further detail below, four dedicated special funds are intended to pay the costs associated with regulating their respective licensees: banking institutions; mortgage lenders and originators; debt management service providers; and money transmitters. Revenues collected from the regulation of check cashers, sales finance companies, installment lenders, credit services businesses, consumer lenders, and collection agencies are deposited in the general fund along with fines and penalties collected by the office. General fund revenues and expenditures for fiscal 2006 through 2010 are shown in **Exhibit 2.13**.

Exhibit 2.13

General Fund Revenues and Expenditures

Fiscal 2006-2010

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010*	Est. FY 2011
Revenues	$5,096,870	$4,422,200	$4,503,059	$2,370,384	$2,809,755	--
Expenditures	3,485,894	3,055,637	3,061,866	793,493	871,862	$1,997,998
Net Revenues	1,610,886	1,366,563	1,441,193	1,576,891	1,937,893	--

Note: Fiscal 2010 expenditures include a $300,000 deficiency appropriation. The increase in expenditures from fiscal 2010 to 2011 is attributable to reallocation of mortgage-related personnel to general fund functions and additional general fund appropriations to support them.

Source: Office of the Commissioner of Financial Regulation, 2005-2009 Annual Reports; Department of Legislative Services

Prior to the creation of the Banking Institution and Credit Union Regulation Fund in fiscal 2009, depository assessments and filing fees also went to the general fund. General fund banking fees and assessments collected in fiscal 2008 shifted to the special banking fund in fiscal 2009, which accounts for the year-over-year drop in general fund revenues and expenditures. However, fines and penalties collected from licensing and compliance violations, which increased by $501,356 from fiscal 2009 to 2010, remain general funds.

As noted earlier, four dedicated special funds are intended to pay the costs associated with regulating their respective licensees: the Debt Management Fund, the Money Transmission Fund, the Banking Institution and Credit Union Regulation Fund, and the Mortgage Lender-Originator Fund. Special fund balances as of June 30, 2010, are shown in **Exhibit 2.14**.

Exhibit 2.14
Financial Regulation Special Fund Balances
Fiscal 2009-2010

	Debt Management	Money Transmission	Mortgage Lender-Originator	Banking and Credit Union Regulation
Fiscal 2009				
Beginning Balance	$7,657	$459,725	$3,732,089	N/A (new fund)
Revenues	54,401	49,705	3,325,137	$3,877,631
Expenditures	38,832	282,427	5,400,041	3,201,653
Ending Balance	**$23,226**	**$227,003**	**$1,633,185**	**$666,978**
Fiscal 2010				
Beginning Balance	$23,226	$227,003	$1,633,185	$666,978
Revenues	130,369	403,273	3,919,346	3,214,286
Expenditures	95,878	266,145	4,930,13	3,036,528
Ending Balance	**$57,717**	**$364,131**	**$622,397**	**$844,736**

Notes: Fiscal 2009 totals have been modified since inclusion in the preliminary evaluation. Fiscal 2009 Mortgage Lender-Originator Fund expenditures do not include a $24,000 encumbrance. Revenue totals exclude fines and penalties, which are directed to the general fund, and refunds, which are directed to consumers.

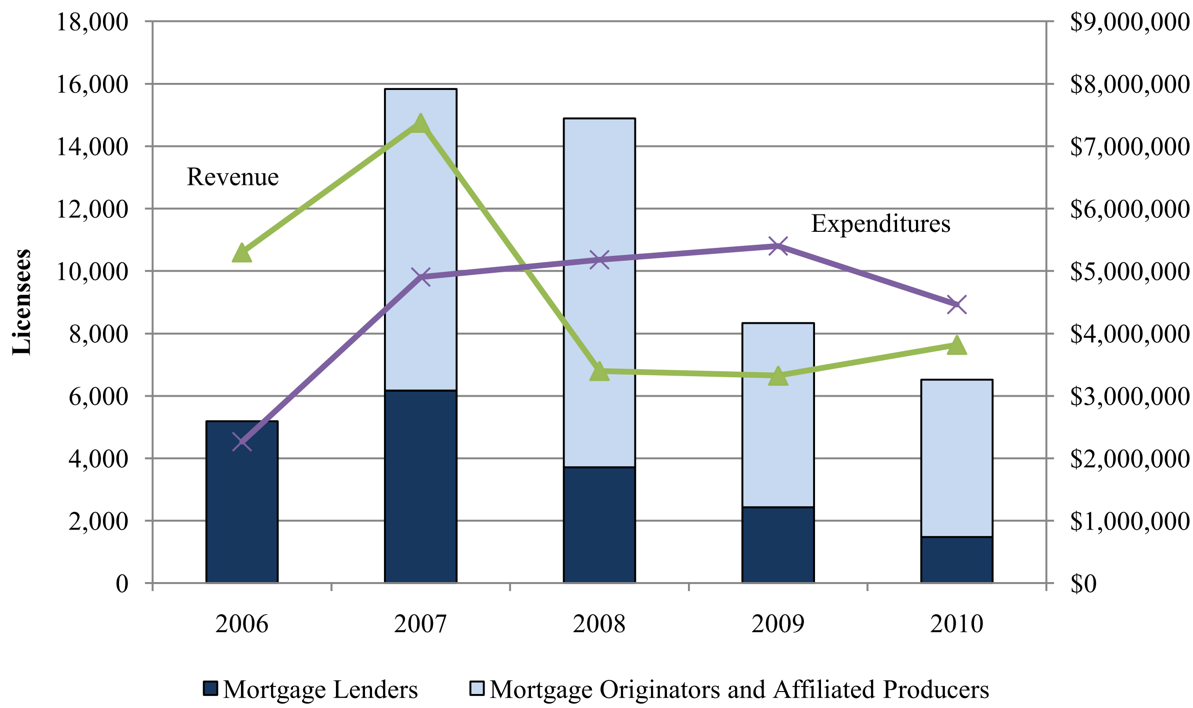
Source: Office of the Commissioner of Financial Regulation

Reallocation of Personnel-related Expenditures Should Stabilize the Mortgage Lender-Originator Fund

Prior to fiscal 2006, mortgage lender licensing fees were general fund revenue. However, with the establishment of the Mortgage Lender-Originator Fund in the 2005 session, mortgage lender licensing revenue shifted to the special fund. These funds included a $100 investigation fee for new applicants, a $1,000 fee for a new mortgage lender license, and a $1,000 biennial license renewal fee. With the licensing of mortgage originators, which began January 1, 2007, mortgage originator licensing revenue was added to the fund. Mortgage loan originator licensees paid a one-time $100 investigation fee, a $300 initial licensing fee, and a $300 biennial renewal fee. Effective January 1, 2009, licensing fees for mortgage lenders increased to $1,000 per year from $1,000 every two years. Fees for mortgage originators increased to $225 per year from $300 every two years.

As the office's regulatory and enforcement activity has increased, the number of licensed mortgage lenders and originators supporting that regulation has fallen significantly in response to the recent economic downturn. In fiscal 2008, the office licensed approximately 11,000 mortgage originators and 3,700 lenders. In fiscal 2010, the licensee base declined to approximately 5,900 and 2,000, respectively. However, special fund revenues remained fairly stable from fiscal 2008 to 2010, as the decline in mortgage lender and loan originator licensees was largely offset by the doubling of lender licensing fees in fiscal 2009 and a 60% increase in loan originator licensing fees. **Exhibit 2.15** shows the number of mortgage-related licensees, as well as special fund revenues and expenditures from fiscal 2006 through 2010.

Exhibit 2.15
Mortgage Lender-Originator Fund and Mortgage-related Licensees
Fiscal 2006-2010



Source: Office of the Commissioner of Financial Regulation

As shown in **Exhibit 2.16**, the Mortgage Lender-Originator Fund's estimated fiscal 2011 expenditures decrease by $1.48 million from fiscal 2010 levels. This decrease is due to the reallocation of mortgage-related personnel to general fund functions and additional general fund appropriations to support them. For example, in fiscal 2010, funding for personnel in the consumer services unit came from the office's general fund budget (25%) and the Mortgage Lender-Originator Fund (75%). Beginning in fiscal 2011, 60% of the funding for personnel in the consumer services unit is from the general fund budget, while only 40% is from the special fund. This reallocation of personnel is intended to more accurately represent the time spent by the Commissioner's Office licensing and regulating mortgage-related licensees. The fiscal 2011 operating budget also includes a fiscal 2010 general fund deficiency appropriation of $300,000 to supplant lost Mortgage Lender-Originator Fund revenue.

Exhibit 2.16

Mortgage Lender-Originator Fund Revenue and Expenditures

Fiscal 2006-2011

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	Est. FY 2011
Beginning Balance	$0	$3,036,084	$5,510,927	$3,732,089	$1,633,185	$622,397
Revenue	5,302,290	7,379,653	3,400,769	3,325,137	3,919,346	3,300,000
Expenditures	2,266,206	4,904,811	5,179,607	5,400,041	4,930,134	3,441,984
Encumbrance				24,000		
Net Revenue	3,036,084	2,474,842	(1,778,837)	(2,098,904)	(1,010,788)	(141,984)
Ending Balance	3,036,084	5,510,927	3,732,089	1,633,185	622,397	480,413

Notes: Revenue totals exclude fines and penalties, which are directed to the general fund, and refunds, which are directed to consumers. Fiscal 2009 totals have been modified since inclusion in the preliminary evaluation. Numbers may not sum to total due to rounding.

Source: Office of the Commissioner of Financial Regulation

Although projected fiscal 2011 special fund expenditures exceed revenues by approximately $142,000, the office anticipates sufficient fund balance in the Mortgage Lender-Originator Fund as the number of mortgage-related licensees stabilizes and personnel associated with the one-time transition to the Nationwide Mortgage Licensing System and Registry are reallocated to other functions within the office.

Conclusion

During the most recent economic downturn and with fewer resources at its disposal, the Commissioner's Office has admirably confronted many challenges and increased regulatory responsibilities while continuing to protect Maryland consumers. As discussed in detail throughout the report, the number of mortgage-related licensees has declined precipitously along with corresponding special fund revenue. Nonetheless, the office has successfully transitioned to a nationwide mortgage licensing system and increased mortgage-related investigations with fewer enforcement unit personnel. The office has worked hard to reduce mortgage lender examination backlogs and continues to return millions of dollars per year to aggrieved consumers. In addition, the overall financial soundness of State depository charters and nondepository licensees – especially when compared to their federal and other-state counterparts – can be directly attributed to the efforts of the Commissioner's Office.

Recommendation 2: The Office of the Commissioner of Financial Regulation should be continued, and legislation should be enacted to extend its termination date to July 1, 2022.

Chapter 3. The Banking Board

Overview

The Banking Board operates as an advisory body to the Commissioner of Financial Regulation on matters relating to the regulation of Maryland banking institutions. The board consists of nine members, including the Comptroller and eight members appointed by the Governor. The appointed members include three representatives of the Maryland Bankers Association, an economist, a certified public accountant, a consumer representative, and two public members. (*See* **Appendix 4**). Members serve six-year staggered terms until the Governor appoints their successors. Currently, four of the nine seats on the board are vacant.

The function of the board is to give the commissioner "sound and impartial advice" on (1) the approval or disapproval of certain bank applications submitted to the commissioner; (2) protecting the interests of the public, depositors, and bank stockholders; and (3) any other matter concerning the business of banking in the State. Because the Banking Board operates as an advisory body, the commissioner is not required to follow the board's recommendations. The board meets at the discretion of the commissioner.

History of the Banking Board

The Banking Board was originally established during the national banking crises of the 1930s to serve as an advisory body to Maryland's Bank Commissioner, the predecessor to the Commissioner of Financial Regulation. The board was to "confer and consult with the [Bank] Commissioner in any matter concerning the business of banking or banking institutions in the State of Maryland." Originally, the board comprised the Comptroller and three appointed members.[1]

In 1981, the General Assembly merged the former Bank Regulation Board into the Banking Board. The Bank Regulation Board was established in the 1960s and, unlike the Banking Board, exercised regulatory authority. Specifically, the Bank Regulation Board had the authority to (1) allow Maryland banks to engage in banking activities not explicitly authorized under Maryland law but in which federal banks could engage; and (2) approve or disapprove requests by Maryland banks to have affiliates. The Bank Regulation Board consisted of six members: the three appointed members of the Banking Board, an economist, a certified public accountant, and a member of the public.

[1] Of the three appointed members on the Banking Board, one represented the Baltimore Clearing House, one represented the Associated Mutual Savings Banks of Baltimore, and one represented the Maryland State Bankers Association. References to the Baltimore Clearing House and the Associated Mutual Savings Banks of Baltimore were eliminated in 1997 (Chapter 136 of 1997) because those entities no longer existed.

The General Assembly merged the two boards following recommendations made by the then Department of Fiscal Services in its 1980 evaluation report on the Office of the Bank Commissioner, the Bank Regulation Board, and the Banking Board. In its report, the department recommended that the General Assembly consider merging the boards in light of the significant overlap in their memberships and the fact that the boards tended to meet together anyway.

The Department of Fiscal Services also recommended that the General Assembly consider establishing greater consistency in the bank application process by eliminating "different decision-making procedures for similar types of applications." For example, the commissioner had full discretion to approve bank charters and mergers; however, transactions involving the formation or expansion of a bank holding company (affiliate transactions) were subject to the approval of the Bank Regulation Board. The report found "no obvious reason why it should make a difference in the way an application is approved if a bank seeks to acquire another through merger [rather than] affiliation." The report also found it "unclear" as to why only bank branch applications were required to be brought to a board for advice; whereas other applications, such as charter applications, requests for a consolidation, merger, or transfer of assets, did not require the commissioner to seek board advice.

To establish some uniformity in the bank application process, Chapter 753 of 1981 gave the commissioner the authority to approve affiliate transactions after receiving the advice of the Banking Board. Previously, the Bank Regulation Board had approved such transactions. Chapter 753 also gave the commissioner the authority to allow Maryland banks to engage in banking activities that were not explicitly authorized under Maryland law but in which federal banks could engage. Finally, Chapter 753 broadened the advisory role of the newly merged board by requiring the commissioner to seek the advice of the board in connection with the approval or disapproval of articles of incorporation; agreements of consolidation, merger, or transfer of assets; applications to operate automated teller machines; and permits authorizing a foreign bank to have an office in the State.

The role of the Banking Board in the bank application process has continued to evolve since 1981. For example, Chapter 89 of 2008 repealed the requirements that the commissioner seek the advice of the board with respect to the approval or disapproval of affiliate transactions and permits authorizing foreign bank offices in the State. Similarly, the commissioner is no longer required to seek the advice of the board on branch applications and applications to operate automated teller machines.

Benefit of Requiring the Commissioner to Seek the Banking Board's Advice on Bank Applications Is Questionable

Statute requires that the commissioner seek the advice of the board regarding the approval or disapproval of articles of incorporation; agreements of consolidation, merger, or transfer of assets; applications for bank service corporations; and applications for the reorganization of savings banks. The commissioner also is required to seek the advice of the board in connection with changes to demand deposit and time deposit reserve requirements, as well as the removal of a bank director or officer for engaging in unsafe or unsound banking practices.

Although State law requires the board to provide the commissioner with advice on the approval or disapproval of certain bank applications, board members rarely respond to the commissioner's requests for advice. The commissioner does not convene the board to seek advice on bank applications. Instead, applications are forwarded to the individual board members for their review and comment. During the past 10 years, the depository corporate applications unit, which handles all official correspondence sent to members of the Banking Board, has mailed approximately 270 bank-related applications to board members. The unit received only 16 responses. Fifteen of the 16 responses received stated that the members simply had no comment. The other response stated that the member was not familiar with the subject in the application; therefore, if the commissioner wanted to approve the application, the board member would agree.

Many of the applications for which the commissioner must seek the board's advice are lengthy and complex, such as applications involving a proposed merger or a transfer of assets. However, it appears unlikely that individual board members have the experience that is required to evaluate such applications and advise the commissioner.

Moreover, it is unclear why the commissioner must seek the advice on some bank applications but not others. For example, the commissioner no longer is required to seek the advice of the board with respect to the approval or disapproval of affiliate transactions, permits authorizing foreign bank offices in the State, branch applications, or applications to operate automated teller machines.

Finally, it is questionable whether the requirement that the commissioner seek the board's advice provides any benefit to the application process. Although the board's advice must be sought on certain matters, the board has no authority to approve or deny applications. In fact, the commissioner is free to disregard the board's advice. Under § 2-203(c) of the Financial Institutions Article, the only consequence of not following the board's advice is that the commissioner must then send to the board "a written statement of the reason for the action."

Board No Longer Plays a Role in Advising the Commissioner on Issues Concerning Banking in the State

The Banking Board is charged with advising the commissioner on matters relating to Maryland's banking industry and the regulation of State-chartered banks. However, during one of the most significant banking crises in the nation's history, the commissioner did not call on the board for advice. In fact, the board has not met in nearly four years. Given the complexities of the banking industry, the constantly evolving regulatory environment, and the fact that the board no longer meets, the Banking Board does not appear to have the expertise to provide the commissioner with meaningful advice.

The Banking Board last met on February 27, 2007. Before that meeting, the board had not met since 2005. According to the minutes of the board's 2007 meeting, eight board members and five representatives of the Commissioner's office attended the meeting. Issues discussed at the meeting included the Office of the Comptroller of the Currency preemption of State law, major depository corporate application activity during the prior year, and problems associated with the retention of qualified bank examiners. In addition to not meeting in almost four years, a number of seats on the board have remained unfilled. Currently, four of the nine seats on the board are vacant. It may be more effective and efficient for the commissioner to consult with banking experts on an as-needed basis rather than convene a meeting of the board.

Conclusion

The Banking Board's primary role is to advise the commissioner on matters relating to Maryland's banking industry. However, the fact that the commissioner did not convene the board for advice during one of the greatest banking crises in recent history – which is the very purpose for which the board was established – indicates that the board does not function effectively as an advisory body. As noted above, the board has not met in almost four years. Moreover, board members rarely respond to the commissioner's requests for advice on the approval or disapproval of bank applications. Because the board does not function effectively as an advisory body to the commissioner, maintaining the board provides little, if any, utility to the commissioner.

Recommendation 3: The General Assembly should repeal the Banking Board.

Although the Department of Legislative Services (DLS) recommends that the Banking Board be repealed, if the board is to continue to serve in an advisory capacity to the commissioner, some effort should be made to educate board members, particularly those who do not have any ties to the banking industry. Of the eight appointed seats on the board, only the three representatives of the Maryland Bankers Association have any ties to the banking industry. The economist, the certified public accountant, the consumer interest representative, and the two public members are not required to have any connection with the banking industry. Because of the complex nature of the banking industry and the regulatory environment, it is particularly important that members of the board meet periodically to discuss current industry and regulatory issues. The lack of any regular board meetings may negatively impact the board's ability to provide the commissioner with advice. In fact, in responding to a DLS survey, one board member noted that regular meetings of the board would improve the board's effectiveness. Likewise, if the board is retained as an advisory body to the commissioner, it should not play a role in the approval or disapproval of bank applications.

Chapter 4. State Collection Agency Licensing Board

The Debt Collection Industry

The federal Fair Debt Collection Practices Act (FDCPA), enforced by the Federal Trade Commission (FTC), prohibits a debt collector from using abusive, unfair, or deceptive practices to collect debt. Enacted in 1977, the federal Act specifically prohibits a debt collector from:

- contacting third parties other than a debtor's attorney for any reason other than to locate the debtor. In contacting third parties, collection agents must state their name but may not reveal that they are calling about a debt or state the agency's name unless asked;
- contacting a debtor directly who is represented by an attorney unless the debtor gives the agent permission to contact the debtor directly. Collection agents may not call debtors before 8 a.m. or after 9 p.m., and may not contact them at work if the employer specifically prohibits collection calls;
- using threats or actual violence against a debtor or another person. Collection agents may not publish a debtor's name on a "blacklist" or other public posting;
- lying about the debt, their identity, the amount owed, or the consequences of not paying the debt. Collection agents may not send documents that resemble legal documents or offer incentives to disclose information; and
- engaging in unfair or shocking methods to collect debt, including adding interest or fees to the debt, threatening criminal prosecution, or threatening to seize property to which the agent has no right.

The federal Act also exempts specific federal benefits from garnishment, including Social Security and other federal retirement payments and student assistance.

For decades, Maryland residents have relied upon the Maryland Consumer Debt Collection Act (MCDCA) for protection against creditors and collection entities that resort to abusive or harassing debt collection practices. Under MCDCA, a consumer debt collector may not:

- use or threaten force or violence;
- threaten criminal prosecution, unless the transaction involve a criminal violation;
- disclose or threaten to disclose information about the debtor's reputation for creditworthiness under specified circumstances;
- except as otherwise permitted, contact a person's employer about a debt before obtaining a final judgment;

- except as otherwise permitted, disclose or threaten to disclose information that affects the debtor's reputation under specified circumstances;
- communicate with the debtor or a person related to the debtor with the frequency, at the unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor;
- use obscene or grossly abusive language;
- claim, attempt, or threaten to enforce a right with knowledge that the right does not exist; or
- use a communication that simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, government agency, or lawyer when it is not.

State statute defines a collection agency as a third party that collects or attempts to collect consumer debt or sells a system used to collect a consumer debt. Most entities that collect their own debt are not considered collection agencies and, therefore, are not regulated by the State Collection Agency Licensing Board (Collection Agency Board). However, a third-party purchaser of a consumer debt must be licensed by the board if the purchaser attempts to collect a consumer debt through civil litigation.

State Collection Agency Licensing Board

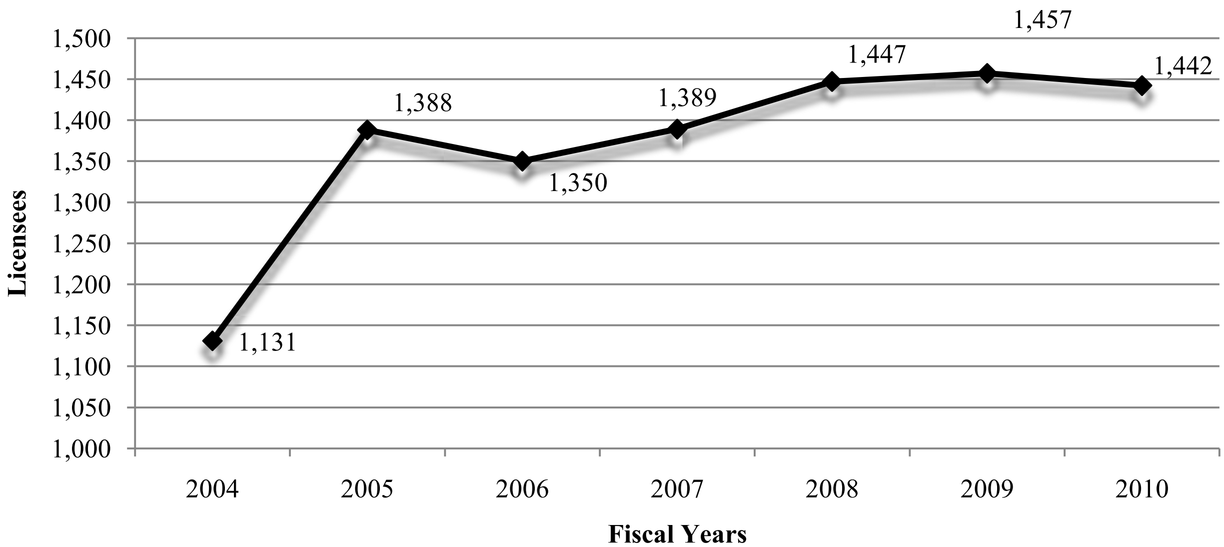
The Collection Agency Board is located within the Department of Labor, Licensing, and Regulation's (DLLR) Office of the Commissioner of Financial Regulation (Commissioner's Office). Board membership consists of the Commissioner of Financial Regulation, two collection agency industry representatives, and two consumer members. The commissioner serves as chair of the board *ex officio* while industry and consumer members are appointed by the Governor with the Senate's advice and consent for four-year terms. Consumer members must be either board officers or members of a Maryland consumer group or employees of one of Maryland's legal consumer protection units. In addition, consumer members cannot serve as board members if they are subject to board regulation. Thus, these individuals cannot have financial interests with or be paid by someone regulated by the board.

The board is served by two administrative officers from the Commissioner's Office and by the office's legal counsel. Additional support comes from the office's executive, complaint, licensing, investigative, legal enforcement, and other support staff. The board regulates debt collection agencies; issues, suspends, and revokes licenses; reprimands licensees; receives and investigates written consumer complaints; and holds hearings on alleged violations of MCDCA. As of June 30, 2010, there were 1,442 collection agency licensees, but only 1,036 active collection agency firms operating in Maryland, not including all branch offices.

Number of Licensed Collection Agencies Has Steadily Grown

Exhibit 4.1 shows that the number of collection agencies licensed by the board has steadily increased from 1,131 licensees in fiscal 2004 to 1,442 in fiscal 2010. The growth in the licensee base cannot necessarily be attributed to the recent economic downturn, as the number of collection agencies regulated by the board in fiscal 2010 has increased approximately 4% from 2007 licensing totals. The collection agency licensee base has gradually increased since September 1999 when the board regulated 993 collection agencies.

Exhibit 4.1
Growth in Collection Agency Licensees
Fiscal 2004-2010



Source: State Collection Agency Licensing Board

An applicant for a collection agency license must submit an application to the board, pay a $400 nonrefundable application fee, and post a $5,000 surety bond. If the applicant wants to operate as a collection agency in more than one location, separate applications and respective fees must be submitted. Licenses are issued for two-year terms, subject to the submission of a renewal application and $400 renewal fee. Renewal applicants must also file a bond or bond continuation certificate with the board.

Despite Some Changes, Licensing Remains Similar

The board must process collection agency licenses within 60 days. The board currently processes licenses within 14 to 60 days. Although the board implemented an electronic licensing mechanism that was expected to significantly reduce processing time, the length of time necessary to process an initial application has remained the same. While e-licensing has streamlined the application and payment processes, staff must still collect all pertinent documents and review and decide on the merits of each applicant. Renewing licenses electronically is now easier, however, because most documentation is already on file.

Operating a collection agency without a license is a misdemeanor under State law, subject to a $1,000 fine and imprisonment for up to six months. Even if an agency is licensed, the board may reprimand a collection agency, or suspend or revoke its license, if the agency or any owner, director, officer, member, partner, or agent of the collection agency commits certain acts. These include making a material misstatement in an application for a license, being convicted under U.S. or State law of a felony or a misdemeanor directly related to engaging in the collection agency business, committing fraud or engaging in illegal or dishonest activity in connection with the collection of a consumer claim, knowingly or negligently violating MCDCA, and failing to comply with a lawful order the board passes under the Maryland Collection Agency Licensing Act. The board may also impose a fine of up to $500 for violating a board order. The board may deny an application if an applicant fails to meet licensure requirements, or if the applicant has committed any act that would be a ground for reprimand, suspension, or revocation of a license. If the board denies a license application, or takes action against a licensee, the licensee or license applicant is entitled to a hearing and a judicial appeal.

Statutory and Other Changes Affecting the Board Since 1999 Sunset Review

Since the preliminary evaluation of the Collection Agency Board in 1999, a few statutory changes have affected board operations. As shown in **Exhibit 4.2**, in 2000 the General Assembly extended the board's operations until 2012. The following year, the General Assembly added a tenth exemption from the Maryland Collection Agency Licensing Act and added other exclusions.

Chapter 149 of 2010, effective October 1, repeals existing $400 statutory fees for new and renewal collection agency licensees and requires the Collection Agency Board to establish fees by regulation. The Act authorizes a new fee for the investigation of prospective collection agency licensees and establishes a $900 fee limit per biennial licensure term. Any fees established by the board must (1) reasonably cover the actual direct and indirect costs of regulating collection agencies; and (2) be published by the board. Moreover, the Act specifies that the existing statutory fees remain in place until the fees set by regulation take effect. While an increase in licensing revenue has corresponded with a steadily growing licensee base, the current $400 biennial license fee has remained the same since 1996.

Exhibit 4.2

Major Legislative Changes Since 1999 Sunset Review

Year	Chapter	Change
2000	79	Extends board's termination date by 10 years to July 1, 2012.
2001	558	Subject to registration requirements, exempts a person that is collecting a debt for another person from the scope of the Maryland Collection Agency Licensing Act if both persons are related by "common ownership," the person who is collecting a debt does so only for those persons to whom the person is related by "common ownership," and the "principal business" of the person who is collecting a debt is not the collection of debts.
2007	472	Extends regulation by the board to debt purchasers that collect a consumer claim acquired when the claim was in default.
		Sets qualifications for licensure, clarifies the grounds for denial of an application, and establishes the right to a hearing before the board for persons that are denied a license.
		Expands the board's authority to reprimand a licensee or suspend or revoke a license.
2010	149	Repeals existing $400 statutory fees for new and renewal collection agency licensees and requires the board to establish fees by regulation.
		Authorizes a new fee for the investigation of prospective collection agency licensees and establishes a $900 fee limit per biennial licensure term.

Source: Laws of Maryland

Licensing Fee Increase Should Offset Expenditures for Industry Regulation

The Collection Agency Board is budgeted within the Commissioner's Office, which prepares five budgets: four special fund budgets for activities paid for by special funds and one small general fund budget for all other office activities and expenses. The Collection Agency Board is general funded, and a separate budget for the board is not available. For the preliminary evaluation of the board, the Commissioner's Office estimated that, for fiscal 2009, it received $270,000 in general fund revenues from licensing fees. As shown in **Exhibit 4.3**, the office estimated $474,142 in fiscal 2009 general fund expenditures attributable to the board, resulting in $204,142 which may not be recouped through licensing fees.

Exhibit 4.3

Collection Agency Licensing Board Revenues and Expenditures

Fiscal 2009-2010

	FY 2009	FY 2010
Licensing Revenue	$270,000	$297,200
Estimated Expenditures		
Administrative/legal staff	55,853	57,973
Complaint unit	150,600	150,600
Licensing unit	61,880	61,880
Executive staff time	28,000	28,000
Human resources and DLLR support	47,413	--
Investigative staff	45,938	48,808
Legal enforcement	10,375	30,000
Materials, rent, information technology costs	74,083	98,536
Total Estimated Expenditures	474,142	475,797
Gap	**($204,142)**	**($178,597)**

Source: Office of the Commissioner of Financial Regulation

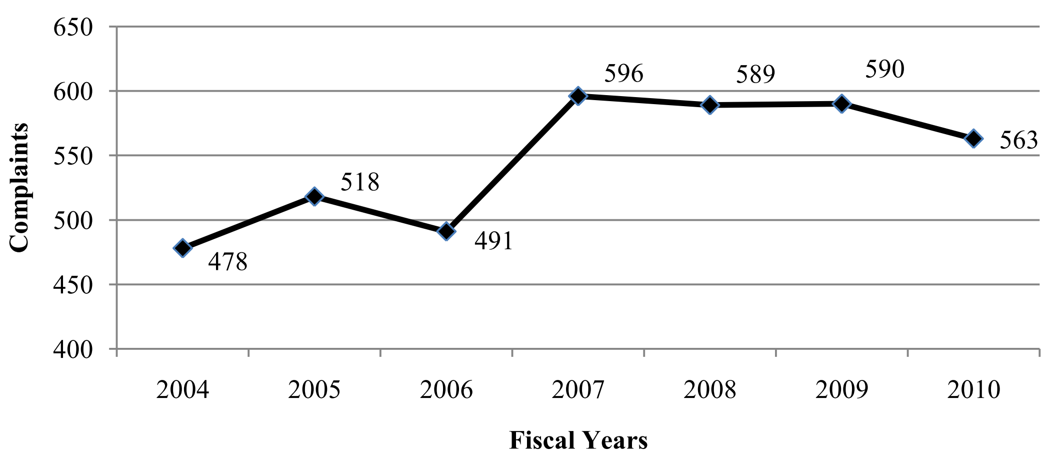
Fiscal 2010 general fund expenditures associated with regulating Maryland collection agencies exceeded licensing revenues by $178,597. The preliminary sunset evaluation raised the discrepancy between board revenues and expenditures as a specific area of concern and questioned whether the board has enough resources to effectively regulate State collection agencies. In response, DLLR introduced departmental legislation to resolve the funding imbalance. Thus, Chapter 149 of 2010 establishes a $900 fee limit per biennial licensure term, which should provide sufficient revenue to offset the costs of regulating collection agency licensees.

Complaints Have Increased Over the Past Five Years

Collection agencies typically begin collecting debt by finding a consumer's mailing address and phone number and notifying the consumer of the alleged debt. The collection agency can request that the consumer pay the debt once the consumer has been notified. The consumer can dispute the alleged debt or ask the collection agency to verify the debt. If a consumer writes to the collection agency to dispute the debt, refuses to pay the alleged debt, or asks the collection agency to stop its communications, the federal FDCPA requires an agency to either stop contacting the debtor and/or to try to recover the debt through a specified remedy, including a civil lawsuit.

Upon receiving a collection agency complaint, Collection Agency Board staff logs the complaint in a complaint database, and the complaint is assigned to an investigator within the Commissioner's Office. The board administrator may also investigate complaints, particularly those that relate to collection agency practices. If investigative staff determines that enough evidence exists to charge a collection agency, then the board members review the charges. **Exhibit 4.4** illustrates a gradual increase in complaint activity from fiscal 2004 to 2010. Although the Collection Agency Board experienced an approximate 20% increase in complaint activity from fiscal 2004 to 2009, the increased volume is consistent with licensing trends and the increased number of collection agency licensees.

Exhibit 4.4
Collection Agency Complaint History
Fiscal 2004-2010



Source: State Collection Agency Licensing Board

The majority of consumer complaints have been filed against collection agencies, while others have been made against law firms and debt purchasers, the latter of which have been licensed since 2007. On May 5, 2010, the board issued an advisory notice clarifying that a consumer debt purchaser that collects on consumer debt through civil litigation is a collection agency, and as such, must be licensed as a collection agency in the State.

Litigation-based Debt Collection Practices and Recent Enforcement Activity

According to a September 2009 report by the U.S. Government Accountability Office, approximately 50% of all retail credit accounts purchased directly from original creditors are eventually resold. The sale of consumer debt (primarily credit card debt) is an increasingly common industry practice, and it is not uncommon for a consumer's debt to be resold repeatedly over time. Debt buyers typically purchase unpaid consumer debts for cents on the dollar and pursue multiple collection tactics in the hopes of collecting enough unpaid debts to recoup their costs and ultimately turn a profit.

As the unpaid consumer debt is typically purchased at a substantially reduced rate, it is highly unlikely, from a business perspective, that debt buyers receive detailed information about the original debts and underlying contracts when these purchases are made. This is primarily because the amount of work needed for a debt seller or creditor to review individual files and provide such information would prohibit the sale at such low prices.

Typically, debt buyers receive spreadsheets or electronic databases with basic information about the underlying consumer debt, such as the individual's name, home address, outstanding balance, and the date of default. Collection law firms have recently turned to specialized computer software that automatically produces collection letters, summonses, and lawsuits using the information contained in the electronic databases. Once a lawsuit has been filed and a debt collector receives a judgment in litigation, the party can utilize wage and property garnishment mechanisms to collect on the judgment. A July 2010 article in the *New York Times* highlighted a New York debt collection law firm of 14 attorneys that filed 80,878 debt collection lawsuits in 2008 using automated computer software (more than 5,700 cases per lawyer).

An industry that once relied on phone calls and collection notices has discovered that collecting on unpaid consumer debts by filing a massive number of lawsuits is a financially sound business model. In a 2009 investor presentation, Encore Capital Group (Encore), one of the nation's largest debt collection companies, reported that litigation-based collections comprised $232.6 million of its $487.7 million in gross collection revenue, making it the largest recovery method of consumer debt collections for the company.

Although debt collection lawsuits are legal when conducted in accordance with State and federal law, the huge volume of lawsuits filed that are based on limited details of the alleged debts can ultimately lead to mistakes and abuses of the court system. In September 2009, the Collection Agency Board issued a cease and desist order against Encore, Midland Funding (Midland), and associated entities for engaging in collection agency activities, including civil litigation, without a collection agency license. Furthermore, the companies failed to validate certain debts when challenged by consumers, a violation of both State and federal law. In December 2009, the board reached a settlement with Encore and Midland whereby the companies agreed to pay $1 million in civil penalties, alter their business practices, and become licensed collectors in the State. According to the Commissioner's Office, Encore and Midland filed over 10,000 collection-related actions in Maryland courts from 2007 through 2009.

In January 2010, the board also suspended the collection agency licenses and issued a cease and desist order against Mann Bracken, which is headquartered in Maryland and is one of the largest debt collection firms in the nation. This action, combined with the board's previous action against Midland and other issues related to Mann Bracken's solvency, precipitated the District Court's dismissal of approximately 20,000 to 25,000 lawsuits filed by Mann Bracken on behalf of Midland in the State. The board subsequently revoked the collection agency licenses of Mann Bracken pursuant to a Consent Order issued on August 10, 2010.

Federal Trade Commission: Significant Reforms Are Needed to Repair a "Broken" System

In a comprehensive July 2010 report, the Federal Trade Commission found that certain "debt collection litigation and arbitration practices appear to raise substantial consumer protection concerns." FTC's concerns regarding litigation-based debt collection practices include:

- the high prevalence of default judgments;
- the filing of lawsuits based on insufficient evidence;
- the failure of debt collectors to provide proper notice of lawsuits to consumers;
- the improper garnishment of exempt funds from consumers' bank accounts; and
- the attempt to collect on time-barred debts.

To formulate its recommendations, FTC convened public workgroups across the country comprising industry representatives, consumer advocates, attorneys, members of academia, government officials, judges, and others to discuss consumer protection issues surrounding debt collection litigation. Panelists from the FTC workgroups noted that "**sixty to ninety-five percent of consumer debt collection lawsuits result in defaults**, with most panelists indicating that the rate in their jurisdictions was close to **ninety percent**" (emphasis added). FTC reports that 65% to 95% of consumers who are sued for unpaid debts do not defend themselves in debt collection lawsuits.

As the majority of debt collection lawsuits are filed in state courts, FTC recommends state and local governments consider adopting changes to service of process, pleading, and court rules and practices to increase consumer participation in debt collection lawsuits. FTC found that complaints and attachments filed in debt collection cases often do not provide adequate information for consumers to answer complaints or for judges to rule on motions for default judgment.

FTC recommends that "courts more rigorously apply existing rules to require that collectors provide adequate information and that jurisdictions consider adopting rules mandating the information which must be included or attached to the complaint." FTC notes that a debt collection complaint filed against a consumer debtor should contain sufficient information to allow (1) a consumer defendant to determine whether to admit or deny the charges and assert any affirmative defenses in his or her answer; and (2) a judge to determine whether to grant a motion for default judgment or a motion for a more definitive statement. FTC recommends that states require collectors to include more information about the disputed debt in their complaints (either in the pleadings or as an attachment) so that consumers have sufficient information to answer complaints and judges have the necessary information to rule on motions for default judgment. FTC recommends that complaints include:

- the name of the original creditor and last four digits of the original account number;
- the date of default or charge-off and the amount due at that time;
- the name of the current owner of the debt;
- the total amount currently owed on the debt;
- the total amount broken down by principal, interest, and fees; and
- the relevant terms of the underlying credit contract, if the contract itself is not attached to the complaint.

Several jurisdictions including Connecticut, Massachusetts, Michigan, and Fairfax County, Virginia currently require all debt collection complaints to include the aforementioned specific information FTC believes is appropriate. In a debt collection lawsuit involving credit card debt, Arkansas law requires extensive attachments to the original complaint. In Arkansas, a plaintiff in a debt collection lawsuit must attach to the complaint the "actual documents, involving evidence that the consumer was the one who signed the account application, a copy of the account agreement, and a copy of billing statements."

Alternatively, to encourage the consistent application of existing legal standards and court rules in debt collection lawsuits, Massachusetts and North Carolina have developed checklists for judges that set forth the elements that must be shown to grant a default judgment in a debt collection case.

Existing Maryland Rules of Civil Procedure

Other than specifying activities in which a debt collector may not engage, the Maryland Annotated Code is mostly silent on the particulars of debt collection litigation. While the Code is mostly silent on the procedural aspects of debt collection lawsuits, the Maryland Rules of Civil Procedure contain provisions that form the framework by which a debt collection lawsuit is filed and handled in court. A civil action begins by filing a complaint with the court. Under Maryland Rule 3-305, a claim for relief must contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for relief sought.

Under Maryland Rule 3-306(a), in an action for money damages a plaintiff may file a demand for judgment on affidavit at the time of filing the complaint. The complaint must be supported by an affidavit showing that the plaintiff is entitled to judgment as a matter of law. The affidavit must:

- be made on personal knowledge;
- set forth facts that would be admissible in evidence; and
- show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

In general, the affidavit must be accompanied by:

- supporting documents or statements containing sufficient detail as to liability and damages, including the precise amount of the claim and any interest claimed; and
- if relevant, a note, security agreement, or other instrument, unless the absence of the original document or a copy of the document is explained in the affidavit.

Recent Developments

The District Court system has taken initial steps to ensure that consumer debt purchasers meet the threshold requirements for a judgment on affidavit under Maryland Rule 3-306(a). In September 2010, the Chief Judge of the District Court of Maryland disseminated a detailed memorandum prepared by the Office of the Attorney General to District Court judges and District Court administrative clerks.

The memorandum included an overview of consumer debt purchasers and common issues related to debt collection actions including the failure to be licensed, the naming of the wrong party, problems related to judgments on affidavit, and issues pertaining to the federal FDCPA. The Attorney General's letter noted that one of the largest deficiencies in debt-collection complaints involves the plaintiff attesting to personal knowledge of the debt at issue, when in fact the affiant has no such knowledge. The memorandum distributed to District Court judges and personnel also included a debt collection affidavit judgment checklist to assist with the adjudication of cases involving debt purchasers, as well as a separate checklist for repossession deficiency cases.

As of the publication of this report, the Attorney General's Office and the Judiciary have engaged in preliminary discussions regarding potential changes to the Maryland Rules to address problems associated with consumer debt collection lawsuits in Maryland. DLS recommends that the Collection Agency Board and the General Assembly continue to monitor this issue.

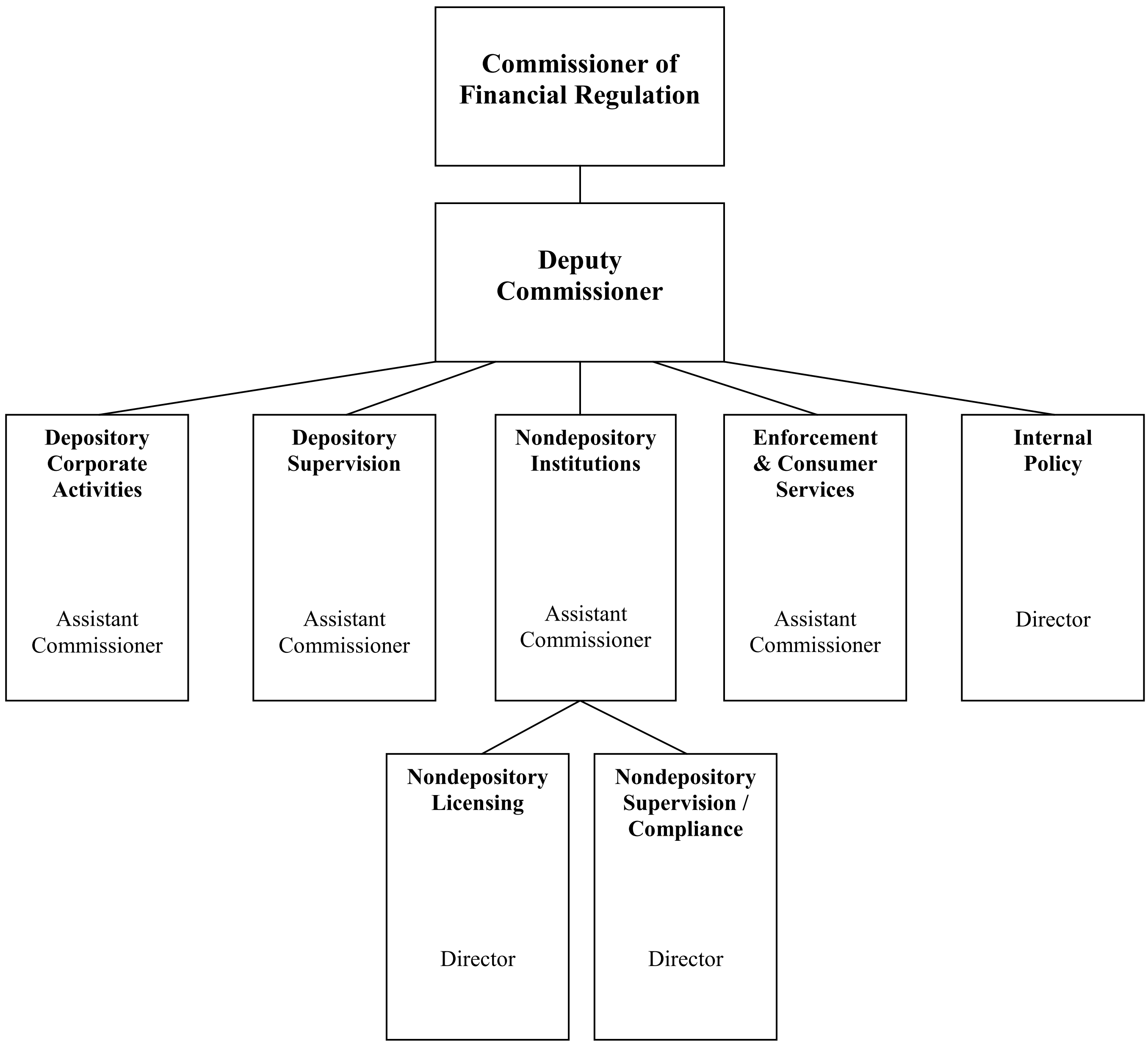
Recommendation 4: The State Collection Agency Licensing Board, the Attorney General's Office, and the Judiciary should examine whether changes to the Maryland Rules of Procedure, including reforms contained in the July 2010 FTC report titled *Repairing a Broken System*, are necessary to sufficiently protect Maryland consumers in debt collection cases. The Collection Agency Board, Attorney General's Office, and Judiciary should report on their findings and recommendations to the Senate Finance Committee, the Senate Judicial Proceedings Committee, the House Economic Matters Committee, and the House Judiciary Committee by October 1, 2011.

Conclusion

Given the most recent economic downturn, there is a continued need for regulation of collection agencies in the State to protect the public from harassment and illegal conduct. The Collection Agency Board has taken proactive measures to ensure that licensing fees will offset current expenditures required for industry regulation. The board should also be commended for its recent enforcement activities and its ability to both anticipate, and respond to, constantly evolving industry issues, such as the licensure of consumer debt purchasers who attempt to collect on consumer claims through civil litigation. However, the Collection Agency Board should continue working with the Judiciary and the Attorney General to establish rules and procedures that meet the needs of licensees and State consumers.

Recommendation 5: The State Collection Agency Licensing Board should be continued, and legislation should be enacted to extend its termination date to July 1, 2022.

Appendix 1. Organizational Structure of the Office of the Commissioner of Financial Regulation



Source: Department of Legislative Services

Appendix 2. Application and Licensing Fee Schedule

<u>Affiliated Insurance Producers – Mortgage Loan Originators</u>

Initial license fee: $700
Investigation fee (nonrefundable/not applicable to renewals): $100
NMLS processing fee: $30
Amendments:
- Change of employer: $75
- Change of name: $75
- Request for placement on nonactive status: $0
- Request for return to active status (without change of employer): $0

<u>Banks & Credit Unions</u>

Affiliate: $750
Articles of amendment: $20
Bank holding Company: $1,500
Branch: $600
Certified copies of documents: $50
Conversion to State charter: $7,000
Credit union branch: $100
Foreign bank representative office permit: $500
Mergers/acquisitions –
- among 2 banks: $3,000
- among 3 or more banks: $5,000

New bank charters: $15,000
New credit union charters: $500
New nondepository trust company: $15,000
Miscellaneous Fees
Certificate of valid charter requested by bank or on behalf of: $25
Certificate of valid charter requested by a person other than a bank: $50

<u>Check Cashers</u>

Initial License – Original Office: $1,000
Initial License – Branch Office: $1,000
Investigation Fee: $100
License Renewal: $1,000

Collection Agencies

Initial License – Original Office: $400
Initial License – Branch Office: $400
License Renewal: $400
Surety Bonding Requirement: $5,000

Consumer Lenders

Initial License – Original Office: $1,700
Initial License – Branch Office: $1,700
Investigation Fee: $100
License Renewal: $1,700
Surety Bonding Requirement: $12,000

Credit Services Businesses

Initial License – Original Office: $1,700
Initial License – Branch Office: $1,700
Investigation Fee: $100
License Renewal: $1,700
Surety Bonding Requirement: $12,000

Debt Management Companies

Initial License – Original Office: Ranges from $1,000 to $8,000 (if license is issued in an odd-numbered-year, license fee is half of stated amount).
Initial License – Branch Office: $100
Investigation Fee: $100
License Renewal: Ranges from $1,000 to $8,000
Surety Bonding Requirement: $10,000 to $1,000,000 depending on annual volume of State transactions.

Installment Lenders

Initial License – Original Office: $1,700
Initial License – Branch Office: $1,700
Investigation Fee: $100
License Renewal: $1,700
Surety Bonding Requirement: $12,000

Money Transmitters

Initial License (application submitted in even-numbered year): $4,000
Initial License (application submitted in odd-numbered year): $2,000
Investigation Fee: $1,000
License Renewal: $4,000
Surety Bonding Requirement: $150,000 to $1,000,000, determined by the commissioner

Mortgage Lenders/Brokers/Services

Initial License – Principal Office or Individual: $1,000
Initial License – Branch Office: $1,000
Investigation Fee: $100
License Renewal: $1,000
NMLS Processing Fee (Company): $100
NMLS Processing Fee (Branch): $20
Surety Bonding Requirement: $50,000 to $750,000, depending upon aggregate lending activity

Mortgage Loan Originators

Initial License: $225
Investigation Fee: $100
License Renewal: $225
NMLS Processing Fee: $30
Amendments:
- Change of Employer: $75
- Change of Name: $75
- Request for placement on nonactive status: $0
- Request for return to active status (without change of employer): $0
- Request for return to active status (with change of employer: $75

Sales Finance Companies (Two-year License)

Initial License – Original Office: $250
Initial License – Branch Office: $250
Investigation Fee: $100
- Three or more applications submitted at once: $300

License Renewal: $250 (There is no statutory provision for a renewal license. Consequently, every application for a license must be accompanied by the $100 investigation fee.)

Source: Office of the Commissioner of Financial Regulation

Appendix 3. Major Legislative Changes Since the 2000 Session
Banking Board and Commissioner of Financial Regulation

Year	Chapter	Change
2001	226	Extended the termination date for the Office of the Commissioner of Financial Regulation and the Banking Board by 10 years to July 1, 2012, in accordance with the provisions of the Maryland Program Evaluation Act and required the office to submit annual reports to the Governor and the General Assembly.
2001	147, 148	Made substantial changes to State credit union law by revising the membership, powers, and duties of boards of directors; the default and mandatory rules for credit union officers; the powers and duties of supervisory committees; the criteria for merger of more than one credit union; deposit insurance criteria; the tax-exempt status of credit unions; and the requirements and formalities of dissolution and liquidation.
2002	540	Required credit union share guaranty corporations to be certified by the Office of the Commissioner of Financial Regulation and arranged for the dissolution of the Credit Union Insurance Corporation.
2002	539	Required the licensure of persons engaged in the money transmission business by the Office of the Commissioner of Financial Regulation and established the Money Transmission Special Fund.
2003	374, 375	Required the licensure of debt management service providers by the Office of the Commissioner of Financial Regulation and established the Debt Management Services Special Fund.
2004	473	Authorized the commissioner to issue a mortgage lender license to a sole proprietor who lacks the required three years' experience under specified conditions.
2004	342	Authorized a savings bank to have any State banking institution, other bank in the State, or a federal or State savings and loan association merge into the savings bank with the written consent of the Commissioner of Financial Regulation.

Year	Chapter	Change
2005	590	Required mortgage originators to become licensed by the Office of the Commissioner of Financial Regulation effective January 1, 2007; created the Mortgage Lender-Originator Fund; and allowed persons aggrieved by the conduct of a licensed mortgage originator to file a complaint with the Office of the Commissioner of Financial Regulation.
2005	574	Established fees for a debt management service license based on annual gross revenue; required debt management service providers to be licensed regardless of whether the provider maintained an office in the State; and modified the application requirements and surety bond requirements for licensure.
2005	132	Repealed an exemption from State licensing for mortgage lenders that are federally approved seller-servicers.
2006	84	Authorized the Office of the Commissioner of Financial Regulation to determine whether a consumer credit licensee may produce certain documents at a location within the State rather than submit to an on-site examination.
2007	307, 308	Authorized an individual to place a security freeze on the individual's consumer credit report.
2008	605, 606	Repealed the requirement that a licensed debt management service provider be a nonprofit entity; modified the licensing requirements for debt management service applicants; and altered the requirements for consumer education programs.
2008	499	Authorized the Commissioner of Financial Regulation to enter into cooperative and information-sharing agreements with any federal or state regulatory agency that has authority over financial institutions, provided the agreements prohibit the agency from disclosing certain information without the prior written consent of the commissioner.
2008	293	Created the Banking Institution and Credit Union Regulation Fund to receive all bank and credit union assessments and pay all associated regulatory expenses incurred by the Office of the Commissioner of Financial Regulation and established new assessments and fees for State-chartered depository institutions.

Year	Chapter	Change
2008	89	Eased requirements for banks to install ATMs and instituted new requirements regarding fingerprinting, criminal background checks, capital requirements, and bank affiliate formation in order to conform State law with existing federal law.
2008	7, 8	Prohibited lenders from charging prepayment penalties for mortgages and required lenders to verify a borrower's ability to repay a mortgage loan; authorized the commissioner to set mortgage lender licensing fees, examination requirements, and participate in the implementation of a multistate licensing system for mortgage lenders and loan originators; and expanded the licensing requirements for mortgage lenders and loan originators.
2008	5, 6	Extended legal protections for homeowners in foreclosure or mortgage default; prohibited foreclosure rescue transactions; and granted the commissioner concurrent jurisdiction with the Attorney General to investigate, enforce, and enjoin action in cases involving violations of the Acts.
2008	3, 4	Created a comprehensive mortgage fraud statute with criminal penalties and authorized the Commissioner of Financial Regulation, among others, to take action to enforce the statute.
2008	1, 2	Modified laws governing the recordation and foreclosure of mortgages and deeds of trust; altered the requirements for recordation, notice, service of process, court filings, and cure of defaults; and required a secured party to send a copy of a notice of intent to foreclose to the Office of the Commissioner of Financial Regulation.
2009	741	Allowed an out-of-state bank to open a *de novo* branch in Maryland only if that bank's home state has reciprocal laws; created an expedited application process for the establishment of bank branches; and authorized the commissioner to issue civil penalties against banks and credit unions under specified circumstances.

Year	**Chapter**	**Change**
2009	4	Revised the State's mortgage lender and mortgage loan originator laws to conform to the requirements of the federal Secure and Fair Enforcement (SAFE) Mortgage Licensing Act; altered the licensing requirements, initial license terms, and renewal license terms for mortgage lenders and mortgage loan originators; required licensees to submit certain information to the Nationwide Mortgage Licensing System and Registry (NMLSR); increased civil penalties; and permitted the commissioner to issue interim mortgage loan originator licenses.
2010	167	Required the Commissioner of Financial Regulation to obtain a criminal history records check for a job applicant before extending an offer of employment, and authorized the Commissioner to obtain a criminal history records check for a current employee.
2010	457	Established a procedure for a federal mutual savings bank to convert to a Maryland-chartered savings bank; required a nondepository trust company to pledge securities or deliver a surety bond to the Commissioner of Financial Regulation to defray costs of a receivership; authorized the commissioner to take immediate possession of a nondepository trust company in the event of insolvency; and authorized the receiver of a nondepository trust company to appoint clerks, agents, counsel, employees, and assistants and further retain officers and employees of the nondepository trust company to carry out the receivership.

Source: Laws of Maryland

Appendix 4. Banking Board Membership

Ex Officio: The State Comptroller

The Honorable Peter V. R. Franchot
Comptroller of the Treasury

Three Representatives from the Maryland Bankers Association

John R. Lane, President and CEO
Congressional Bank

Vacant Position

Vacant Position

One Economist

Kamran A. Khan

One Certified Public Accountant

Vacant Position

One Consumer Interest Representative

Helen Won

Two Public Members

Rasheed T. Kerriem

Vacant Position

Note: Section 2-202 of the Financial Institutions Article designates the membership of the Banking Board as follows: (1) the State Comptroller and (2-9) appointed by the Governor with the advice of the Secretary of Labor, Licensing, and Regulation. Of the appointed members: three must represent the Maryland Bankers Association; one must be an economist; one must be a certified public accountant; one must represent consumer interests; and two must be public members. Chapter 136 of 1997 increased the board to nine members and added the representative of consumer interests.

Source: Department of Legislative Services

Appendix 5. Draft Legislation

C2 1lr0453
CF 1lr0454

Bill No.: ____________________

Requested: ____________________

Committee: ____________________

By: **Chair, Finance Committee**

Drafted by: Stamper
Typed by: Alan
Stored –
Proofread by ______________
Checked by ______________

A BILL ENTITLED

AN ACT concerning

Office of the Commissioner of Financial Regulation, the Banking Board, and the State Collection Agency Licensing Board – Sunset Extension and Program Evaluation

FOR the purpose of repealing the Banking Board in the Department of Labor, Licensing, and Regulation; continuing the Office of the Commissioner of Financial Regulation and the State Collection Agency Licensing Board in accordance with the provisions of the Maryland Program Evaluation Act (sunset law) by extending to a certain date the termination provisions relating to the statutory and regulatory authority of the Office of the Commissioner of Financial Regulation and the State Collection Agency Licensing Board; requiring that an evaluation of the Office of the Commissioner of Financial Regulation and the State Collection Licensing Board and the statutes and regulations that relate to them be performed on or before a certain date; repealing certain provisions requiring the Commissioner of Financial Regulation to seek the advice of the Banking Board on certain matters; providing that deposits of certain trust money in financial institutions located outside the State are subject to the approval of the Commissioner of Financial Regulation instead of the Banking Board; requiring the Commissioner to implement a risk–based mortgage lender licensee examination schedule on or before a certain date and report to certain committees of the General Assembly on the implementation of the examination schedule on or before a certain date;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

requiring the Maryland Judiciary, in consultation with the State Collection Agency Licensing Board and the Attorney General's Office, to study a certain issue and report its findings and recommendations to certain committees of the General Assembly on or before a certain date; and generally relating to the Office of the Commissioner of Financial Regulation, the State Collection Agency Licensing Board, and the Banking Board.

BY repealing
Article – Business Regulation
Section 2–108(a)(4)
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY renumbering
Article – Business Regulation
Section 2–108(a)(5) through (34), respectively
to be Section 2–108(a)(4) through (33), respectively
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY repealing
Article – Financial Institutions
Section 2–201 through 2–204 and the subtitle "Subtitle 2. Banking Board"; and 2–402
Annotated Code of Maryland
(2003 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 7–502
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Financial Institutions
Section 2–401, 3–203(d)(1), 3–607, 3–705, 4–203(d)(1), 4–701(b), 4–803(d)(1), 5–209(a), 5–405(b), and 5–801
Annotated Code of Maryland

(2003 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Financial Institutions
Section 3–203(a), 4–203(a), 4–701(a), 4–803(a), and 5–405(a)
Annotated Code of Maryland
(2003 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 22–103
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 8–403(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–403(b)(13) and (24)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY repealing
Article – State Government
Section 8–403(b)(8)
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

BY renumbering
Article – State Government
Section 8–403(b)(9) through (68), respectively
to be Section 8–403(b)(8) through (67), respectively
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 2–108(a)(4) of Article – Business Regulation of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 2–108(a)(5) through (34), respectively, of Article – Business Regulation of the Annotated Code of Maryland be renumbered to be Section(s) 2–108(a)(4) through (33), respectively.

SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 2–201 through 2–204 and the subtitle "Subtitle 2. Banking Board"; and 2–402 of Article – Financial Institutions of the Annotated Code of Maryland be repealed.

SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Business Regulation

7–502.

Subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act, this title and all regulations adopted under this title shall terminate on July 1, **[**2012**]** **2022**.

Article – Financial Institutions

2–401.

Subject to the evaluation and reestablishment provisions of the Program Evaluation Act, the provisions of this article that create the office of the Commissioner of Financial Regulation or relate to the powers and duties of the Commissioner and any regulations adopted under these provisions shall terminate and be of no effect after July 1, **[**2012**]** **2022**.

3–203.

(a) The incorporators shall file with the Commissioner for examination the two copies of the articles of incorporation.

(d) (1) Within 6 months after the articles are filed for examination, the Commissioner[, after receiving the advice of the Banking Board,] shall sign, date, and endorse each copy of the articles as "approved" or "refused".

3–607.

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

(2) "Demand deposit" means a deposit that is payable within 30 days.

(3) (i) "Time deposit" means a deposit that is payable after 30 days.

(ii) "Time deposit" includes a savings account or certificate of deposit that requires at least a 30–day notice before payment.

(b) This section does not apply to any deposit of public funds for which the commercial bank pledges collateral.

(c) (1) A commercial bank shall have at all times a reserve equal to at least 15 percent of its demand deposits.

(2) The board of directors of a commercial bank by resolution shall direct the commercial bank to keep the demand deposit reserve required by this section in:

(i) Cash on hand;

(ii) Demand deposits in a bank of good standing in any state; or

(iii) As to 5 percent of its demand deposits, on approval of the Commissioner:

1. Registered or coupon bonds; or

2. General obligations of or obligations guaranteed by the United States government, an agency of the United States government, this State, or any political subdivision.

(d) (1) A commercial bank shall have at all times a reserve equal to at least 3 percent of its time deposits.

(2) The board of directors of a commercial bank by resolution shall direct the commercial bank to keep the time deposit reserves required by this section in:

(i) Cash on hand;

(ii) Deposits in a bank of good standing in any state; or

(iii) Direct obligations of the United States government or of this State.

(e) (1) If the Commissioner**[**, with the advice of the Banking Board,**]** determines that a change in the demand deposit reserve or in the time deposit reserve requirements is advisable to maintain sound banking practices or to prevent injurious credit expansion or contraction, the Commissioner may change the requirements as provided in this subsection.

(2) Subject to paragraph (3) of this subsection, the Commissioner may adopt rules or regulations to change the requirements as to reserves for commercial banks.

(3) The rules and regulations may:

(i) Increase the demand deposit reserve to an amount equal to not more than 30 percent of those deposits;

(ii) Increase the time deposit reserve to an amount equal to not more than 6 percent of those deposits;

(iii) Decrease the demand deposit reserve to an amount equal to not less than 15 percent of those deposits;

(iv) Decrease the time deposit reserve to an amount equal to not less than 3 percent of those deposits; and

(v) Notwithstanding items (i) through (iv) of this paragraph, increase or decrease the demand deposit reserve or time deposit reserve to conform to the reserve requirements that apply to a member bank of the Federal Reserve System.

3–705.

Within 6 months after the papers specified in § 3–703(c) of this subtitle have been filed with the Commissioner, the Commissioner[, after receiving the advice of the Banking Board,] shall approve or disapprove the agreement.

4–203.

(a) The incorporators shall:

(1) File with the Commissioner for examination the two copies of the articles of incorporation; and

(2) Pay to the Commissioner an examination fee of $1,500.

(d) (1) Within 6 months after the articles are filed for examination, the Commissioner[, with the approval of the Banking Board,] shall sign, date, and endorse each copy as "approved" or "refused".

4–701.

(a) In this section, "transfer assets", "transfer its assets", or "transfer of assets" means to sell, lease, exchange, or otherwise transfer all or substantially all of the property and assets of a savings bank.

(b) (1) A savings bank may consolidate with, merge into, or transfer its assets to any banking institution in this State, any other bank in this State, or any State or federal savings and loan association in this State if the Commissioner[, after receiving the advice of the Banking Board,] gives written consent to the transaction.

(2) A savings bank may have any banking institution in this State, any other bank in this State, or any State or federal savings and loan association in

this State merge into the savings bank if the Commissioner[, after receiving the advice of the Banking Board,] gives written consent to the transaction.

4–803.

(a) The savings bank shall:

(1) File with the Commissioner for examination the application for approval of reorganization; and

(2) At the time of filing of an application for approval of reorganization, pay to the Commissioner a fee of $1,500.

(d) As to the proposed articles of incorporation of the subsidiary savings bank:

(1) Within 3 months after the application is filed for examination, the Commissioner[, after receiving the advice of the Banking Board,] shall sign, date, and endorse each copy of the articles of incorporation as "approved" or "refused".

5–209.

(a) Except as otherwise provided in this article, the Commissioner[,] AND the employees of and the attorney for the Commissioner's office[, and the members of the Banking Board] may not disclose:

(1) The name of any debtor of a banking institution;

(2) Any information about the private accounts with or transactions of a banking institution;

(3) Any information obtained in the course of examining a banking institution; or

(4) Any confidential information obtained from a federal banking authority.

5–405.

(a) Except as provided in this section, or otherwise expressly provided by State law, a banking institution may not have a bank service corporation.

(b) If the Commissioner[, after receiving the advice of the Banking Board,] approves, a banking institution may have a bank service corporation.

5–801.

(a) If the Commissioner believes that a director or officer of a banking institution has engaged in an unsafe or unsound banking practice, the Commissioner shall send a warning to the director or officer.

(b) (1) If the Commissioner finds that the director or officer has continued to engage in the unsafe or unsound practice, the Commissioner[, with the advice of the Banking Board,] may report the facts to the Secretary of Labor, Licensing, and Regulation and the Attorney General.

(2) A copy of the report shall be sent by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to each director of the banking institution.

(c) (1) After giving the officer or director an opportunity to be heard, if the Commissioner finds that the unsafe or unsound practice continued after the warning, the Commissioner with the approval of the Secretary of Labor, Licensing, and Regulation may remove the officer or director.

(2) A copy of the removal order shall be served on the individual removed and the banking institution.

Article – Insurance

22–103.

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

(2) "Beneficial owner" means a person, other than the buyer in a real estate transaction, for whose benefit a title insurer or its agent is entrusted to hold trust money.

(3) "Trust money" means a deposit, payment, or other money that a person entrusts to a title insurer or its agent to hold for the benefit of a buyer in a real estate transaction or for a beneficial owner, in connection with an escrow, settlement, closing, or title indemnification.

(b) A title insurer or its agent shall pool and commingle trust money received from clients or beneficial owners in connection with escrows, settlements, closings, or title indemnifications if, in the judgment of the title insurer or its agent, a separate deposit of the trust money would generate interest in an amount not greater than $50 or the cost of administering a separate account.

(c) At least quarterly, the financial institution in which a commingled account is maintained under this section shall pay the interest earned on the account, less any service charges of the financial institution, to the Maryland Affordable Housing Trust to enhance the availability of affordable housing throughout the State as provided in § 10–102 of the Housing and Community Development Article.

(d) Trust money required to be commingled under subsection (b) of this section in connection with a real estate transaction shall be deposited and maintained until disbursed in accordance with the transaction:

(1) in a financial institution located in the State; or

(2) subject to approval of the [Banking Board in the Department of Labor, Licensing, and Regulation] **COMMISSIONER OF FINANCIAL REGULATION**, in a financial institution outside the State that complies with the requirements of this subtitle.

(e) A title insurer or its agent does not violate, and may not be charged by the Commissioner with a violation of, any ethical or legal duties by placing trust money in an account under subsection (b) of this section with the interest paid to the Maryland Affordable Housing Trust under subsection (c) of this section.

(f) Except for trust money that a title insurer or its agent places in a commingled account under subsections (b) and (c) of this section, and subject to regulations of the Commissioner, trust money in the possession of the title insurer or its agent may be deposited in any other deposit or investment vehicle:

(1) specified by the client or beneficial owner; or

(2) as agreed on by the client or beneficial owner and the title insurer or its agent.

Article – State Government

8–403.

(a) On or before December 15 of the 2nd year before the evaluation date of a governmental activity or unit, the Legislative Policy Committee, based on a preliminary evaluation, may waive as unnecessary the evaluation required under this section.

(b) Except as otherwise provided in subsection (a) of this section, on or before the evaluation date for the following governmental activities or units, an evaluation shall be made of the following governmental activities or units and the statutes and regulations that relate to the governmental activities or units:

(13) Collection Agency Licensing Board, State (§ 7–201 of the Business Regulation Article: July 1, [2011] **2021**);

(24) Financial Regulation, Office of the Commissioner of (§ 2–101 of the Financial Institutions Article: July 1, [2011] **2021**);

SECTION 5. AND BE IT FURTHER ENACTED, That Section(s) 8–403(b)(8) of Article – State Government of the Annotated Code of Maryland be repealed.

SECTION 6. AND BE IT FURTHER ENACTED, That Section(s) 8–403(b)(9) through (68), respectively, of Article – State Government of the Annotated Code of Maryland be renumbered to be Section(s) 8–403(b)(8) through (67), respectively.

SECTION 7. AND BE IT FURTHER ENACTED, That the Commissioner of Financial Regulation shall:

(1) implement a risk–based mortgage lender licensee examination schedule to supplement the existing calendar–based examination schedule by January 1, 2012; and

(2) report to the Senate Finance Committee and the House Economic Matters Committee on or before October 1, 2012, in accordance with § 2–1246 of the State Government Article, on the implementation of the risk–based mortgage lender licensee examination schedule.

SECTION 8. AND BE IT FURTHER ENACTED, That the Maryland Judiciary, in consultation with the State Collection Agency Licensing Board and the Attorney General's Office, shall:

(1) examine whether the Maryland Rules should be amended to strengthen protections for defendants in consumer debt collection cases; and

(2) report to the Senate Finance Committee, the Senate Judicial Proceedings Committee, the House Economic Matters Committee, and the House Judiciary Committee on or before October 1, 2011, in accordance with § 2–1246 of the State Government Article, on its findings and recommendations.

SECTION 9. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Appendix 6. Written Comments of the Office of the Commissioner of Financial Regulation, the Banking Board, and the State Collection Agency Licensing Board

STATE OF MARYLAND
DLLR
DEPARTMENT OF LABOR, LICENSING AND REGULATION

OFFICE OF THE COMMISSIONER OF FINANCIAL REGULATION
500 North Calvert Street, Suite 402
Baltimore, MD 21201-3651

October 29, 2010

Mr. Warren G. Deschenaux, Director
Department of Legislative Services
Office of Policy Analysis
90 State Circle
Annapolis, Maryland 21401

Dear Mr. Deschenaux:

Pursuant to your request of October 13, 2010, I am enclosing for your review a written response from the Office of the Commissioner of Financial Regulation ("OCFR") regarding the draft sunset report forwarded to us. As you have requested, we have advised Jason Weintraub and David Stamper of any factual corrections to the draft. The Commissioner's comments are referenced by recommendation number.

The Commissioner appreciates the professional manner in which both Jason Weintraub and David Stamper conducted this review. Please feel free to contact me if you have any questions or concerns regarding this response.

Sincerely,

Mark Kaufman
Commissioner of Financial Regulation

CC: Alexander Sanchez, Secretary, DLLR
Enclosures

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Department of Labor, Licensing and Regulation
Commissioner of Financial Regulation

Sunset Committee Audit Response: Draft Report

Auditor's Recommendation #1

With the reduction of the mortgage lender examination backlog and the transition to NMLSR nearly completed, The Commissioner's Office should use its existing authority to implement a risk-based examination schedule to supplement the existing calendar-based statutory framework by January 1, 2012, and report to the general Assembly on the status if implementation by October 1, 2012

Agency Response #1

The Commissioner concurs with the recommendation and looks forward to implementing risk-based examination protocols. Such an approach will more efficiently utilize resources and protect consumers. At the same time, it is important to note that, by law, the Commissioner is required to examine mortgage lender licensees at least once every thirty-six months and to examine new licensees every eighteen months. As noted in the audit, the Office of the Commissioner failed to meet this objective historically. After several years of working to reduce the backlog, the Office expects to be fully caught up by January 1, 2011. The Office will complete the transitioning of all mortgage licensees to the Nationwide Mortgage Licensing System ("NMLS") by the same date. Once these two objectives are met, the Office will begin working to revise its examination protocols.

In 2009, the Commissioner completed a study (the "Study") of the feasibility of scheduling examinations on a risk-based schedule. The Study recognized the importance of maintaining the calendar minimums and leveraging the NMLS as new protocols were developed. Since that time, the Office has been working to develop a risk-based assessment to flag certain licensees and use technology to increase efficiency. This is a process that involves all the states on the NMLS as the system provides opportunities to gather data through call reports and other required elements. At the same time, the Office and the mortgage industry initiated a two year process to shift licensees to the NMLS. Legislation to enable the transition was adopted in 2009 and the transition will be completed on December 31, 2010.

In September 2009, the states, through the Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR") began implementing an electronic software tool from ComplianceEase. The states are using this tool in multi-state examinations and it is available to the states at no charge. This automated compliance review system allows for review of 100% of a licensee's loan portfolio, not otherwise achieved by manual and calendar-based reviews as currently in place. In addition to the review itself, the automated system provides the ability to pre-screen the portfolio for a more targeted file review selection and assists in determining the optimum resource needs and scope of examination. So, for example, the agency will be able to focus on lenders with a higher concentration of sub-prime origination or high debt to income ratios on offered loans.

Pennsylvania, Washington and North Carolina, which joined NMLS earlier than Maryland, began implementing this system in 2010. Maryland will begin implementation in 2011 once its transition to NMLS is complete. The Commissioner will operate the system in a pilot phase for at least twelve months. The specific timing for full utilization of ComplianceEase is difficult to estimate and depends partly on the licensees themselves and their software systems. However, with Pennsylvania operating on a more accelerated schedule, the Commissioner expects that a large number of lender licensees will be prepared to easily adopt this system for Maryland.

It is important to note that the Office will continue to follow the calendar-year review, using ComplianceEase as an enhancement making the process more efficient. The dual approach system provides for flexibility in the examination process, targeting licensees for examination using the specific factors flagged by the software (loan production volume, information reported on Call Reports to the Nationwide Mortgage Licensing System Registry (NMLS), loan products and product terms such as that called for in the Study) in addition to factors such as number of complaints received against a given licensee.

Auditor's Recommendation #2

The Office of the Commissioner of Financial Regulation should be continued and legislation should be enacted to extend its termination date to July 1, 2022.

Agency Response #2

The Commissioner concurs with this recommendation.

Auditor's Recommendation #3

The General Assembly should repeal the Banking Board.

Agency Response #3

The Commissioner has no objection to this recommendation. We believe that the agency has direct contact and extensive communications with the Maryland bankers and their boards of directors and the Maryland Bankers Association, as well as consumer representatives and other interested parties, regarding banking issues.

Maryland Banking Board Response #3

Of the three board members (out of five) that responded to the proposal, one has no objection to the discontinuation of the Banking Board, one is "disappointed," and one believes that it is important to continue the Banking Board so that the Commissioner has an "avenue to bankers in the field."

Auditor's Recommendation #4

The State Collection Agency Licensing Board, the Attorney General's Office and the Judiciary should examine whether additional measures are necessary to ensure the uniform application of Maryland Rule 3-306(a) pertaining to debt collection judgments on affidavit. The Collection Agency Licensing Board, the Attorney General's Office and the Judiciary should report on their findings and recommendations to the Senate Finance Committee, the House Economic Matters Committee, and the House Judiciary Committee by October 1, 2011.

Agency Response #4

The State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation, together with the Office of the Attorney General, are coordinating to submit a joint proposed revision to Maryland Rule 3-306 (and related Rule 3-509) to Chief Judge Clyburn of the District Court of Maryland. This proposal will impose several new requirements on a plaintiff seeking judgment on affidavit when the action involves consumer debt. The proposed revision will, among other things, require a plaintiff to prove ownership of the debt that the defendant is obligated on the debt, that the amount of the claim is correct, and that the statute of limitations on the debt has not run. We will cooperate with the District Court and the Rules Committee on the development of this proposed revision to the Rules as this process moves forward.

State Collection Agency Licensing Board Response #4

The Maryland Collection Agency Licensing Board concurs with this recommendation.

Auditor's Recommendation #5

The State Collection Agency Licensing Board should be continued, and legislation should be enacted to extend its termination date to July 1, 2022.

Agency Response #5

The Commissioner appreciates the favorable review and concurs with this recommendation.

State Collection Agency Licensing Board Response #5

The Maryland Collection Agency Licensing Board appreciates the favorable review provided and believes their contribution will continue to effectively regulate the collection industry to protect the public from harassment and illegal activities. The Board has been very proactive in ensuring current expenditures will be offset with appropriately measured licensing fees to properly regulate this growing industry. The Board fully concurs with the legislative decision to continue and extend the Board's termination to July 1, 2022.