

**Department of Labor, Licensing and Regulation
Business Regulation Group**



**Fiscal Year 2013
Budget Hearing**

**SENATE COMMITTEE ON BUDGET AND TAXATION
SUBCOMMITTEE ON EDUCATION, BUSINESS, AND ADMINISTRATION**

Chairman Richard S. Madaleno, Jr.

FEBRUARY 10, 2012

**HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON EDUCATION AND ECONOMIC DEVELOPMENT**

Chairman John L. Bohanan, Jr.

FEBRUARY 16, 2012

STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING & REGULATION
FISCAL YEAR 2013 BUDGET HEARING

We come before you today to present the Fiscal Year 2013 budget of the Department of Labor, Licensing and Regulation (DLLR) for the Business Regulation Group and to respond to the requests and recommendations of the Department of Legislative Services (DLS). The Department of Labor, Licensing and Regulation's Business Regulation Group is comprised of four divisions:

- ◆ Division of Financial Regulation
- ◆ Division of Labor and Industry
- ◆ Division of Racing
- ◆ Division of Occupational and Professional Licensing

The Division of Financial Regulation is responsible for supervising the activities of banks, trust companies, savings banks, credit unions, money transmitters, debt collection and management companies, mortgage lenders, servicers and originators, check cashers, and many other financial institutions and transactions. The division is responsible for licensing or chartering institutions and individuals, conducting examinations, responding to consumer complaints, undertaking investigations and implementing enforcement actions. The division is also responsible for regulations implementing key elements of the recent reforms to the foreclosure process and mediation.

The Division of Labor and Industry's mission is to protect and promote the health, safety and employment rights of the citizens of Maryland through the administration of seven budgeted programs: General Administration; Employment Standards, which includes the Workplace Fraud Unit; Railroad Safety and Health; Safety Inspections; Apprenticeship and Training; Prevailing Wage and Occupational Safety and Health Administration. The division provides a wide range of services. They include, but are not limited to, assisting workers in collecting wages due to them, monitoring the safety practices of the State's railroad operations and inspecting amusement rides, elevators and escalators, and boilers and pressure vessels to ensure the units are operating according to state law and regulations. The division's workplace protection activities include the determination of wage rates and fringe benefits through jurisdictional surveys and evaluations. In addition, the division is dedicated to promoting and assuring workplace safety and health by reducing workplace fatalities, injuries, and illness through its occupational safety and health programs.

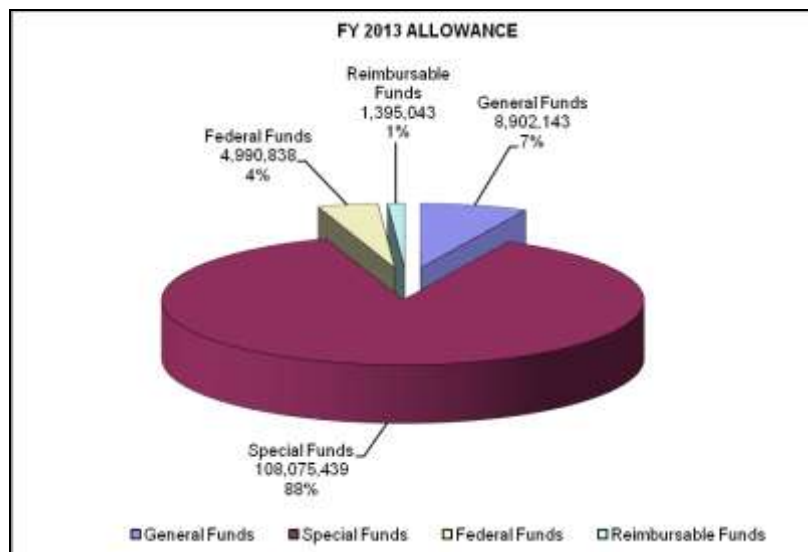
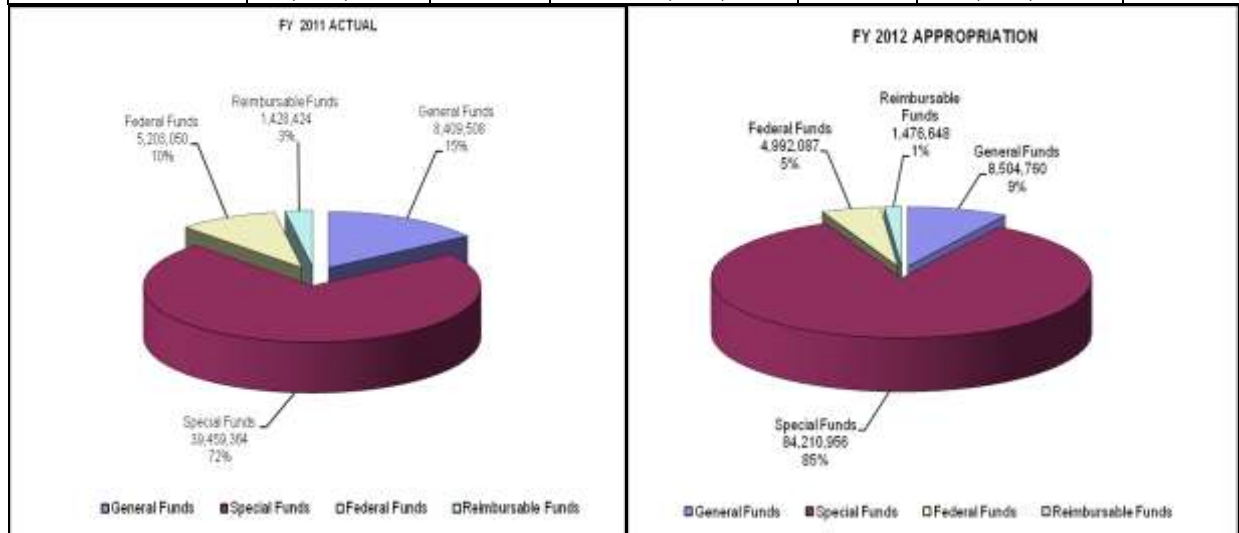
The Division of Racing is dedicated to regulating the pari-mutuel betting in Maryland through implementation and enforcement of policies, and safeguarding participants and the betting public in racing. In addition, the Division of Racing receives and distributes racing and video slots revenues to local subdivisions in the form of impact aid grants to those counties and municipalities containing or located near thoroughbred tracks, or those jurisdictions where video slot facilities are located.

The Division of Occupational and Professional Licensing administers regulatory programs governing the practice of 24 occupations and professions in Maryland. The activities of the division are primarily conducted through licensing boards and commissions, established by statute and empowered to regulate the occupations and professions. The boards and commissions oversee the licensing systems by qualifying and testing individuals for licensing; issuing and renewing licenses; establishing ethical and other standards of practice for the occupation or profession; and enforcing compliance of licensees with practice standards and Maryland law.

The services of the DLLR's Business Regulation Group are provided in a high-quality, customer-focused environment for the citizens and businesses of Maryland. Specific program highlights are provided starting on page 8.

The Business Regulation Group is supported by a combination of general, special, federal, and reimbursable funding as shown on the next page.

BUSINESS REGULATION						
	FY 2011		FY 2012		FY 2013	
	ACTUAL		APPROPRIATION		ALLOWANCE	
General Funds	8,409,508	15.43%	8,504,760	8.57%	8,902,143	7.22%
Special Funds	39,459,364	72.40%	84,210,956	84.90%	108,075,439	87.61%
Federal Funds	5,203,050	9.55%	4,992,087	5.04%	4,990,838	4.04%
Reimbursable Funds	1,428,424	2.620%	1,476,648	1.49%	1,395,043	1.13%
Total	54,500,346	100%	99,184,451	100%	123,363,463	100%



***FY 2013 Allowance does not include Contingent and Back of Budget Bill Reductions**

Responses to Issues Identified by the Legislative Analyst

Issues

1. The Department of Legislative Services (DLS) recommends that the department brief the budget committees on the status of the horse racing industry and the use of VLT revenues to subsidize operations of racetracks in 2012.

Agency Response:

During the 2011 session of the General Assembly a provision of HB 1039 re-directed up to \$3.6 million dollars of the Racing Facility Redevelopment Fund to be used by the Maryland Jockey Club to off-set certain qualified expenses as outlined in Chapter 412 of 2011 (HB 1039).

In May 2011, the Secretary of Labor, Licensing and Regulation received a request from the Maryland Jockey Club for \$3,450,000. Consequently, a Certified Public Accountant reviewed all the expenses submitted by the Maryland Jockey Club and concluded they met the qualifications as in Chapter 412. The funds were used to guarantee 146 days of live racing in 2011 and the money was spent on allowable expenses associated with the operation of the track. In December 2011, the Maryland Jockey Club applied for the balance of \$150,000. Currently the Certified Public Accountant is reviewing the request.

2. DLS recommends that the department comment on the progress of the newly created Workplace Fraud Unit, especially in light of the fact that no wages were collected in fiscal 2011. DLS also recommend that the department adopt standard performance measures to gauge the success of the unit.

Agency Response:

The Maryland General Assembly passed the Maryland Workplace Fraud Act of 2009 with bipartisan support with a goal to protect workers and level the playing field for law-abiding business owners. The Maryland Department of Labor, Licensing and Regulation (DLLR) was charged with implementing the law and established the Workplace Fraud Unit – an investigative unit in DLLR’s Division of Labor and Industry.

Under the Act, the Division of Unemployment Insurance and the Division of Labor and Industry protect workers by finding employers who are misclassifying employees. The Division of Labor & Industry conducts audits to determine whether a worker is an employee or a true independent contractor. While the Act empowers the Workplace Fraud Unit to impose fines, the Unit’s primary goal is to ensure that all employers are complying with the law. The goal of the unit, in line with the legislation when it was enacted, is to ensure compliance.

During this challenging economy, state, local and federal governments must support creative initiatives to bolster job creation and improve the skills of our workforce. Government agencies also have an obligation to protect a safety net for workers and maintain a level playing field for business owners that compete within the law. Although no fines were collected in FY 11, the Act has been successful. More than 98 percent of companies audited by the Unit have been in compliance allowing the Unit to close 468 cases.

The WFU does not report on wage theft issues. Once a misclassification is identified, the Unit transfers the case to the appropriate unit (i.e. Prevailing Wage, Employment Standards Service, etc.) for further investigation. That unit then activates a complaint investigation on its own merits. The main focus of the WFU is to move violators into compliance once they are identified, not to assess and collect penalties. DLI works closely with the Workplace Fraud Task Force, which is comprised of representative agencies to best combat employee misclassification by sharing information. DLI staff is currently developing new database software for internal joint application with an anticipated completion date of December 31, 2012.

As the success of the Workplace Fraud Task Force is in part influenced by communication and data sharing, DLI staff believes the requested \$50,000 in special funds to procure information technology services would expedite the process of building the database, and would therefore eliminate such confusion in the future.

With regard to the varying data that has been reported, the Division of Labor and Industry (DLI) is required to provide data for several reports, both internal and external. We attempt to characterize the data and qualify the source, across different time periods such as Fiscal Year and Calendar Year. There are also times where the data will change over time. For example, the number of misclassified workers may be those included in a citation; those counted after an informal conference, if an employer provides additional information; or those used for the purpose of settlement. DLI recognizes the confusion in reporting and has worked diligently to clarify performance reporting. The Unit confirms the accuracy of the data reported in the MFR.

Response to Recommendations by the Legislative Analyst

- | | <u>Amount
Reduction</u> | |
|--|------------------------------------|----|
| 1. Reduce funds for horse racing purse enhancements. These funds derive from proceeds of the video lottery terminal (VLT) program. Estimates for VLT revenues have been revised downward for fiscal 2013, and as such, funds for purse enhancements are overstated in the allowance. This action will bring the budget in line with current projections. | \$ 3,791,600 | SF |

Agency Response:

We concur with the Analyst's recommendation. The \$3,791,600 reduction in the purse dedication account appropriation aligns with the projected revenues that will be generated during the next fiscal year.

2. Strike the following language to the special fund appropriation:

~~, provided that this appropriation shall be reduced by \$720,800 contingent upon enactment of the Budget Reconciliation and Financing Act.~~

Explanation: The fiscal 2013 budget bill as introduced includes a \$720,800 reduction to the Share of Racing Revenue to Local Subdivisions (local impact aid) contingent upon the enactment of a provision in the Budget Reconciliation and Financing Act that allows the Governor to fund mandates at or above the fiscal 2012 level. This action strikes that contingent reduction so that the reduction, in a different amount, may be taken directly.

- | | <u>Amount
Reduction</u> | |
|---|------------------------------------|----|
| 3. Reduce the Share of Racing Revenue to Local Subdivisions (local impact aid). Racing revenues have been dramatically lower in recent years and are not generating enough funds to fully provide for the mandate for local impact aid. | \$900,800 | SF |

Agency Response:

We concur with the Analyst's recommendation, as contained in number 2 and 3.

The reduction in impact aid paid to local municipalities is the same as the reduction in fiscal year 2012. The revenue being generated for the racing special fund continues to be depressed because of less wagering. It is estimated the local impact aid generated from the video slot facilities will begin to be transferred to certain local municipalities in the beginning of fiscal year 2013. Those amounts are anticipated to exceed the amounts generated and paid through the racing impact aid program.

Program Updates

The activities of the Business Regulation Programs – Financial Regulation, Labor and Industry, Racing, and Occupational and Professional Licensing – are highlighted below.

Financial Regulation

During FY 2011, DLLR's Office of the Commissioner of Financial Regulation ("the Commissioner" or "OCFR") continued to protect Maryland consumers and to play a central role in Maryland's effort to combat the financial and foreclosure crises on multiple fronts.

- With the passage of the Federal SAFE Mortgage Licensing Act and complementary state legislation in 2009, the OCFR completed the transition to the Nationwide Mortgage Licensing System ("NMLS"). NMLS is a web-based licensing system and database used by all 50 states. This national system is far more efficient for the industry in Maryland as 70% of Maryland companies are licensed in three or more states. All Maryland originators and lenders transitioned to the NMLS by December 2010 and renewals were completed in early 2011.
- The Commissioner also conducted extensive outreach. Pursuant to the 2008 foreclosure reforms, the OCFR receives copies of Notices of Intent to Foreclose sent to delinquent Maryland borrowers. In FY 2011, the Office implemented an automated system for electronic submission of these copies allowing the Office to respond by rapidly mailing outreach packages that reached over 155,000 delinquent borrowers containing foreclosure prevention information and warnings regarding scams.
- Nationally, the OCFR played a leadership role in addressing mortgage servicing issues. The Commissioner testified before the U.S. House Committee on Government Oversight in a hearing focused on servicing practices and was active in the multi-state investigation of robo-signing abuses. The Commissioner serves on the Executive Committee of the national attorney generals' investigation of the five largest servicers in the United States. The OCFR coordinated the multi-state examination of the only one of those five servicers under state (versus federal) jurisdiction.
- The OCFR continued its efforts to aid consumers, responding to approximately 2,300 complaints within the Consumer Services unit this year. The Enforcement staff completed approximately 300 investigations resulting in recoveries of over one million dollars for Marylanders in FY 2011. Additionally, more than three million dollars in adjudicated recoveries were forwarded to the Maryland Central Collections Unit in an effort to collect for consumers.
- Of particular note, the OCFR was one of the first in the nation to recognize and move to address the growing foreclosure-related problem of "loan modification consulting" scams. In these cases, consumers are charged illegal up-front fees in exchange for the promise of

assistance in obtaining a loan modification. Following investigations by the Enforcement unit, the Commissioner took scores of actions yielding 88 cease and desist orders, more than double the prior year. The OCFR also works with law enforcement to combat these abuses. In a case investigated and referred by the OCFR, the Prince George's County State's Attorney secured a criminal indictment for theft against a defendant who defrauded hundreds of Maryland residents.

- The Collection Agency Licensing Board, chaired by the Commissioner, proceeded in addressing abuses in litigation-related collections. Tens of thousands of Marylanders had collections actions filed against them in Maryland courts by purchasers of consumer debt seeking judgments by affidavit. The Board's investigation, along with investigations by the FTC and others, revealed deficiencies in court filings including failure to properly document the debt, inadequate itemization of amounts owed, failure to obtain a license for collections and other such elements. In addition to taking enforcement actions resulting in almost two million dollars in fines to date, the Commissioner and the Board assisted the Chief Judge of the Maryland District Court in developing new court rules to govern future action and address the problems uncovered. The new rules are effective January 1, 2012.

Division of Labor and Industry

The Division of Labor and Industry (DLI) is one of seven divisions within the Department of Labor, Licensing and Regulation. The mission of DLI is to protect and promote the health, safety, and employment rights of Maryland's citizens. Specifically, DLI administers State laws dealing with employment issues, safety and health issues, prevailing wages, as well as safety inspections of amusement rides, boilers and pressure vessels, elevators and escalators, and railroads.

- The Employment Standards Service unit (ESS) processed 1,339 complaints regarding unpaid wages during FY 2011. Complainants are required to provide specific information to support their claims. This information has resulted in 1,306 investigations. As the clearing house for over 25 labor laws in Maryland, the ESS unit also handled more than 43,000 telephone calls from citizens with questions on a host of labor law issues. At the end of FY 2011, the Division logged approximately 177 claims of unpaid wages. The Division collected \$884,189 in owed wages on behalf of Marylanders.
- The Prevailing Wage Unit conducted 470 investigations to ensure employers complied with the prevailing wage law and workers were paid the prevailing wage rates for the work performed on state projects. In the execution of this duty, \$458,538 was collected in restitution for 620 employees in FY 2011. The Unit also conducted 64 pre-construction seminars for public works projects worth over two billion dollars.
- Under Maryland's Living Wage law, State vendors on certain state service contracts are required to pay a tiered wage to workers when the value of the services exceeds \$100,000. The living wage law is now applied to 346 vendor projects valued at over six billion dollars. The unit conducts random compliance reviews, audits payroll records of

employers, interviews employees, responds to complaints, visits sites, and conducts education seminars for state procurement officials.

- The Workplace Fraud Unit investigates employee misclassification in the Landscaping and Construction industries. In calendar year 2011, the unit processed 626 cases comprised of written complaints and referrals from enforcement partners. These cases led to 173 site visits conducted by the unit's investigative staff. Of these 626 cases, a total of 468 were completed as of December 31, 2011, and four citations were issued as a result.
- The Division's elevator safety inspection team continues to implement the recently authorized third-party elevator inspection law with success. Innovative inspection measures and processes accounted for a 71.5% decrease in "past due" units in 2011, helping to streamline customer service and achieving high levels of safety in cooperation with elevator industry and third party inspections. The elevator safety inspection unit was involved in a number of outreach efforts, and hopes to continue to grow these opportunities to reach stakeholders in the future.
- Recent changes to the law allowed owners of boilers and pressure vessels operating in Maryland to contract with authorized special insurance inspectors to perform required inspections. During FY 2011, 35,285 inspections were performed on boiler and pressure vessels operating in the State by a combination of State and special insurance inspectors. This collaboration of public and private services resulted in a 59% reduction in past due boiler or pressure vessel inspections.
- The Division continues to ensure the safety of the public at fairs, carnivals, and amusement parks by conducting amusement ride safety inspections. During FY 2011, 182 amusement ride owners made 1,162 requests for inspections of their amusement rides. State inspectors performed 5,200 inspections on 1,628 different attractions and issued 4,827 inspection certificates for operation.
- An in-house training program was established to help Amusement Ride (AR) inspectors stay up to date with ongoing industry rides and information. The AR unit will continue to grow its in-house safety program. The AR unit was able to completely fill all vacant positions in the unit, successfully hiring, training and starting five new Elevator Inspectors. The AR unit is on pace for certification of all inspectors by the end of March 2012. The AR unit is in the process of establishing a specialized unit that can be dispatched for any emergency, such as an accident, incident, or complaint. In response to two natural disasters in 2011, the AR unit is starting a unit trained to respond rapidly to ensure public safety. The unit also developed an online scheduling and data entry system.
- The Division's Occupational Safety and Health program (MOSH) was able to offer 88 educational seminars covering 37 topics to employees and employers in Maryland. The seminars were delivered without registration fees. The majority of these seminars were taught by MOSH compliance officers and offered at locations throughout the state. Topics included Construction Site Safety, Lock Out Tag Out, and an OSHA 10-hour course; some

courses were offered in Spanish. A total of 5,107 employees, supervisors, and other employer representatives participated in the seminars.

- MOSH compliance operations completed 1,481 inspections in FY 2011 and issued 6,443 citations for violations of federal and state occupational safety and health regulations. \$3,286,871 was sanctioned in penalties for violations.
- Through extensive proactive involvement in many aspects of workplace safety, MOSH saw a reduction of the number of fatalities from 23 in calendar year 2010 to 16 in 2011.
- During FY 2011, State railroad safety inspectors surveyed 3,665 miles of railroad track and inspected 1,504 miles of track. Most inspection resources were focused in the high-volume areas between Washington, Baltimore and the Pennsylvania line. State inspectors also performed 709 operating practice inspections, as recorded on 108 reports.
- At the end of FY 2011, there were 438 program sponsors registered with the Maryland Apprenticeship and Training Program, of which 135 were actively providing on-the-job training and related technical instruction to one or more registered apprentices. In spite of current economic conditions there were 8,065 registered apprentices in Maryland at the close of the State Fiscal Year, with 1,922 new apprentices registered during the course of the fiscal year and 1,457 apprentice completions (graduations). In spite of reductions in apprenticeship staff at both the federal and state levels, Maryland Apprenticeship and Training Program staff was able to continue to work with Maryland's businesses and labor organizations in the development of new apprenticeship program sponsors and provide ongoing services to existing program sponsors. Better scheduling of apprenticeship program reviews resulted in a reduction in the number of overdue program reviews with further reductions anticipated in State FY 2012.

Racing

As one of the few agency programs supported entirely by State General Funds, the Racing Commission experienced cuts required by recent cost containment actions. In FY 2013, the number of live racing days is expected to remain at approximately 248 days because of the resumption of live racing at Rosecroft Raceway. During fiscal years 2011 and 2012, the following events occurred regarding the status of the racetracks:

- The 2011 General Assembly passed HB 1039 which redirected up to 3.6 million dollars of the Race Track Facility Redevelopment Fund to assist in offsetting qualified expenditures of the Maryland Jockey Club and to guarantee the holding of 146 days of live racing. In May 2011, 3.45 million dollars was provided to the Maryland Jockey Club as directed by the legislation. In December 2011 the Maryland Jockey Club applied for the remaining balance of \$150,000 that will be used to offset certain qualified expenses. HB 1039 also required the thoroughbred and standardbred industries to agree to a process resolving the simulcasting issues between the Maryland Jockey Club and Rosecroft Raceway. That process continues to proceed as outlined in HB 1039.

- Penn National Gaming, Inc. sold its 49% ownership interest in the Maryland Jockey Club to the Stronach Group in the summer of 2011. As a result of that transaction, Frank Stronach has sole control over the operations of the Laurel and Pimlico Racetracks and the Bowie Training Center. These tracks are scheduled to hold 146 days of live racing, similar to the racing schedule for calendar year 2010 and 2011. Members of the Racing Commission are leading discussions between the thoroughbred interests in developing a long term racing strategy beyond calendar year 2012. It is anticipated a plan will be developed by July 1, 2012.
- Rosecroft Raceway, the standardbred track in Prince George's County, owned by Penn National Gaming, Inc. reopened and began simulcasting out of state standardbred signals in August 2011. Rosecroft also held 20 days of live racing between October and December 2011 and is scheduled to hold 54 days of live racing during calendar year 2012.
- Ocean Downs Raceway, located in Berlin, opened its video slots facility on January 4, 2011, and resumed a schedule of 40 days of live racing during the summer of 2011 and is scheduled to operate the same number of days during calendar year 2012.

With the opening of two video slot facilities during FY 2011 (Perryville and Ocean Downs) and the proposed opening of the slot facility at Arundel Mills at the end of FY 2012, the revenues from video gaming will continue to subsidize the racing industry in fiscal years 2012 and 2013. These revenues are expected to increase once the Arundel Mills site opens and will continue to provide revenues to stabilize the projected live racing schedules.

Occupational and Professional Licensing

The Division of Occupational and Professional Licensing continues to regulate over 200,000 individuals and businesses. The Division administered approximately 17,500 licensing examinations and processed over 3,200 consumer complaints. Specific highlights include:

- Working on behalf of Maryland homeowners, the Maryland Home Improvement Commission (MHIC) returned \$1,697,184 in Guaranty Fund payouts to Marylanders who had substandard work done on their homes. In addition, efforts by MHIC investigators achieved \$224,491 in monetary settlements on behalf of homeowners. Finally, the Commission initiated legal action against unlicensed contractors, resulting in \$1,565,822 of court ordered restitution for complainants. Total recoveries were nearly \$3,500,000 in FY 2011. The Commission protected the Guaranty Fund by obtaining over \$150,000 in surety bond reimbursements through aggressive collection efforts and with the assistance of the State Attorney's Office for Prince George's County, a former licensed contractor was ordered to reimburse \$60,000 to the Guaranty Fund.
- The MHIC continues to build its mediation program as part of a larger effort to resolve complaints and claims without the necessity of holding a formal hearing. The Commission advertises mediation through its webpage, on the back of complaint forms, and as part of each notice of complaint that a contractor receives when responding to a complaint. MHIC continues to receive free mediation services through Community Mediation Maryland and

the University of Maryland School of Law Conflict Resolution Clinic. Through the mediation program, homeowners were able to obtain remedies not available through a formal hearing; this includes the contractor agreeing to return to the home to correct or complete the work, as well as money for consequential damages. The Commissioners were so impressed with the program they voted to formalize the mediation program by proposing legislation to include mediation and pre-hearing settlement conferences in the statute. The Division's overall alternative dispute resolution strategy, including mediation, informal settlement by investigators or staff, consent agreements and settlement conferences allowed the agency to make substantial progress in meeting its case closure benchmarks.

- The Maryland Home Improvement Commission significantly augmented its outreach and communication efforts. The MHIC website now includes an array of Frequently Asked Questions (FAQs). Topics include, Licensing for Applicants; How to File a Complaint; and the Guaranty Fund. The site also includes informational flyers on the following subjects: What is Home Improvement?; Maryland Home Improvement Contracts; Don't Be an Unlicensed Contractor's Next Victim!; Maryland Door-to-Door Sales Act - Basic Facts about the Maryland Service Contracts and Consumer Products Guaranty Act; Understanding Arbitration; Maryland Home Improvement Mediation Works for You!; and How to Go Green without Getting the Blues - Understanding Maryland's Licensing Requirements for Green Technology. MHIC started offering a periodic Guaranty Fund workshop to explain the Fund process to both contractors and homeowners.
- During FY 2011, the Real Estate Commission of Maryland eliminated a long-standing backlog of consumer complaints. The availability of special funds allowed for the application of investigatory, legal and administrative hearing resources, permitting the Commission to achieve this primary goal. Seeking additional protection, the Commission implemented new laws and rules providing for heightened regulation of "teams and groups" that are increasingly used to deliver real estate brokerage services. In FY 2013, the Commission expects to complete implementation of an electronic Continuing Education (CE) licensee filing system. CE providers will directly download course completion data to the Commission, eliminating the need for paper records. Since license renewals will only be enabled when a licensee's CE file indicates the requisite hours were completed, time consuming random audits of licensee records will be discontinued.
- With funding in place to move forward, the Division implemented the 2008 statute providing for the licensing and regulation of individual income tax preparers and reactivated the Elevator Safety Review Board to complete the implementation of the regulatory program for elevator mechanics and elevator companies. The Division will also issue the first licenses to locksmith businesses before the end of FY 2012, pursuant to the Maryland Locksmiths Act which seeks to provide consumer protection and recourse against scam artists and fly-by-night practitioners.

The Business Regulation Group of the Department of Labor, Licensing and Regulation continues to protect and assist Marylanders.