

S.F. No. 1662 (as amended by the A-1 amendment) – Nonbank mortgage services regulation

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Overview

S.F. 1662 creates corporate compliance requirements for covered institutions, which are defined as mortgage servicers that service or subservice for others “at least 2,000 or more residential mortgage loans in the United States, excluding whole loans owned, and loans being interim serviced prior to sale as of the most recent calendar year end, reported on the NMLS mortgage call report.” The requirements are focused on internal procedural safeguards to maintain sufficient liquidity and financial stability while minimizing and managing risk. Such safeguards include internal and external audits, a mandated board of directors, and an annual risk assessment.

Summary

Section 1. [Minn. Stat. § 58.20] Definitions. Defines key terms for the purposes of this new section of law, including “allowable assets for liquidity,” “board of directors,” “corporate governance,” “covered institutions,” “external audit,” “government-sponsored enterprises,” “interim serviced prior to sale,” “internal audit,” “mortgage-backed security,” “mortgage call report,” “mortgage servicing rights,” “mortgage servicing rights investor,” “nationwide multistate licensing system,” “operating liquidity,” “residential mortgage loans serviced,” “reverse mortgage,” “risk management assessment,” “risk management program,” “servicer,” “servicing liquidity,” “subservicer,” “subservicing for others,” “tangible net worth,” an “whole loans.”

Section 2. [Minn. Stat. § 58.21] Applicability; Exclusions.

Subdivision 1. Applicability. Provides that new sections of law 58.20 to 58.23 apply to covered institutions, which are defined as mortgage servicers that service or subservice for others “at least 2,000 or more residential mortgage loans in the United States, excluding whole loans owned, and loans being interim serviced prior to sale as of the most recent calendar year end, reported on the NMLS mortgage call report.” Clarifies that the sections apply at the covered institution level for entities within a holding company or for affiliates.

Subdivision 2. Exclusions. Excludes persons exempt from licensing under sections 58.04 and 58.05 (generally, financial institutions, federal government agencies, manufactured home dealers, and employee or employer pension plans making loans only to the plan participants) from the application of new sections of law 58.20 to 58.23. Provides that section 58.22 does not apply to (1) servicers that solely own or conduct reverse mortgage servicing; (2) the reverse mortgage portfolio administered by a covered institution; and (3) farm credit lenders established and authorized in accordance with federal law.

Section 3. [Minn. Stat. § 58.22] Financial Condition.

Subdivision 1. Compliance required. Requires covered institutions to maintain capital and liquidity in compliance with this new section of law.

Subdivision 2. Generally accepted accounting principles. Requires financial data to be determined in accordance with GAAP.

Subdivision 3. Federal Housing Finance Agency eligibility requirements; policies and procedures. Provides that a covered institution that meets the FHFA eligibility requirements for enterprise single-family sellers and servicers with respect to capital, net worth ratio, and liquidity also meets the requirements of subdivisions 1 and 2. Requires covered institutions to maintain written policies that implement the capital and servicing liquidity requirements of this new section of law, including a sustainable written methodology, and which must be made available to the commissioner upon request.

Subdivision 4. Operating liquidity. Requires covered institutions to maintain sufficient allowable assets for liquidity to cover normal business operations. Provides that management must develop and implement plans to maintain operating liquidity sufficient for the ongoing needs of the covered institution, which must contain sustainable, written methodologies to maintain sufficient operating liquidity and must be made available to the commissioner upon request.

Section 4. [Minn. Stat. § 58.23] Corporate Governance.

Subdivision 1. Board of directors required. Requires covered institutions to establish and maintain a board of directors that is responsible for oversight of the covered institution.

Subdivision 2. Board of directors; alternative. Provides that, if a covered institution has not received approval to service loans by a government-sponsored enterprise or the Government National Mortgage Association, or if one of these third-parties has granted approval for a board of directors alternative, the covered institution may establish a similar body constituted to exercise oversight and fulfill the responsibilities specified under subdivision 3.

Subdivision 3. Board of directors; responsibilities. Requires the board of directors to (1) establish a written corporate governance framework, which must be made available to the commissioner upon request, and which must include appropriate internal controls to monitor compliance; (2) monitor and ensure the covered institution complies with the corporate governance framework and the new sections of law 58.20 to 58.23; and (3) perform accurate and timely regulatory reporting, including filing the mortgage call report.

Subdivision 4. Internal audit. Requires the board of directors to establish internal audit requirements appropriate for the size, complexity, and risk profile of the servicer and that ensure appropriate independence to provide a reliable evaluation of the servicer's internal control structure, risk management, and governance. The audit requirements and results must be made available to the commissioner upon request.

Subdivision 5. External audit. Requires covered institutions to receive annual external audits by an independent public accountant, which must be made available to the commissioner upon request. Establishes minimum requirements for the external audit, including (1) annual financial statements; (2) an assessment of the internal control structure; (3) a computation of tangible net worth; (4) validation of mortgage servicing rights valuation and reserve methodology, if applicable; (5) verification of adequate fidelity and errors and omissions insurance; and (6) testing of controls related to risk management activities, including compliance and stress testing, if applicable.

Subdivision 6. Risk management. Requires covered institutions to establish a risk management program that identifies, measures, monitors, and controls risk commensurate with the covered institution's size and complexity. Specifies that the program must have appropriate processes and models in place to measure, monitor, and mitigate financial risks and changes to the servicer's risk profile and assets being serviced.

Subdivision 7. Risk management assessment. Requires covered institutions to conduct an annual risk management assessment. Specifies that the assessment must conclude with a formal report to the board of directors and must be made available to the commissioner upon request. Requires covered institutions to maintain evidence of risk management activities throughout the year and include the evidence of such activities as part of the report. Provides that the assessment must include issue findings and the response or action taken to address the issue findings.