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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2175

02/27/2023 Authored by Pfarr, Stephenson and O'Driscoll
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy
03/08/2023 Adoption of Report: Placed on the General Register
Read for the Second Time

1.1 A bill for an act
1.2 relating to financial institutions; regulating nonbank mortgage servicers; requiring
1.3 a report; proposing coding for new law in Minnesota Statutes, chapter 58.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. 58.20 DEFINITIONS.

1.6 Subdivision 1. Scope. For purposes of this section to section 58.23, the terms defined
1.7 in this section have the meanings given.

1.8 Subd. 2. Allowable assets for liquidity. "Allowable assets for liquidity" means assets
1.9 that may be used to satisfy the liquidity requirements under section 58.22, including:

1.10 (1) unrestricted cash and cash equivalents; and

1.11 (2) unencumbered investment grade assets held for sale or trade, including agency
1.12 mortgage-backed securities, obligations of government-sponsored enterprises, and United
1.13 States Treasury obligations.

1.14 Subd. 3. Board of directors. "Board of directors" means the formal body established
1.15 by a covered institution that is responsible for corporate governance and compliance with
1.16 sections 58.21 to 58.23.

1.17 Subd. 4. Corporate governance. "Corporate governance" means the structure of the
1.18 covered institution and how the covered institution is managed, including the corporate
1.19 rules, policies, processes, and practices used to oversee and manage the covered institution.

1.20 Subd. 5. Covered institution. "Covered institution" means a mortgage servicer that
1.21 services or subservices for others at least 2,000 or more residential mortgage loans in the

2.1 United States, excluding whole loans owned, and loans being interim serviced prior to sale
2.2 as of the most recent calendar year end, reported on the NMLS mortgage call report.

2.3 Subd. 6. **External audit.** "External audit" means the formal report, prepared by an
2.4 independent certified public accountant, expressing an opinion on whether the financial
2.5 statements are:

2.6 (1) presented fairly, in all material aspects, in accordance with the applicable financial
2.7 reporting framework; and

2.8 (2) inclusive of an evaluation of the adequacy of a company's internal control structure.

2.9 Subd. 7. **Government-sponsored enterprises.** "Government-sponsored enterprises"
2.10 means the Federal National Mortgage Association, and the Federal Home Loan Mortgage
2.11 Corporation.

2.12 Subd. 8. **Interim serviced prior to sale.** "Interim serviced prior to sale" means the
2.13 collection of a limited number of contractual mortgage payments immediately after
2.14 origination on loans held for sale but no longer than a period of ninety days prior to the
2.15 loans being sold into the secondary market.

2.16 Subd. 9. **Internal audit.** "Internal audit" means the internal activity of performing
2.17 independent and objective assurance and consulting to evaluate and improve the effectiveness
2.18 of company operations, risk management, internal controls, and governance processes.

2.19 Subd. 10. **Mortgage-backed security.** "Mortgage-backed security" means a financial
2.20 instrument, often debt securities, collateralized by residential mortgages.

2.21 Subd. 11. **Mortgage call report.** "Mortgage call report" means the quarterly or annual
2.22 report of residential real estate loan origination, servicing, and financial information
2.23 completed by companies licensed in NMLS.

2.24 Subd. 12. **Mortgage servicing rights.** "Mortgage servicing rights" means the contractual
2.25 right to service a residential mortgage loan on behalf of the owner of the associated mortgage
2.26 in exchange for compensation specified in the servicing contract.

2.27 Subd. 13. **Mortgage servicing rights investor.** "Mortgage servicing rights investor" or
2.28 "master servicer" means an entity that (1) invests in and owns mortgage servicing rights;
2.29 and (2) relies on subservicers to administer the loans on the mortgage servicing rights
2.30 investor's behalf.

2.31 Subd. 14. **Nationwide Multistate Licensing System.** "Nationwide Multistate Licensing
2.32 System" or "NMLS" has the meaning given in section 58A.02, subdivision 8.

3.1 Subd. 15. **Operating liquidity.** "Operating liquidity" means the money necessary for
3.2 an entity to perform normal business operations, including payment of rent, salaries, interest
3.3 expenses, and other typical expenses associated with operating the entity.

3.4 Subd. 16. **Residential mortgage loans serviced.** "Residential mortgage loans serviced"
3.5 means the specific portfolio or portfolios of residential mortgage loans for which a licensee
3.6 is contractually responsible to the owner or owners of the mortgage loans for the defined
3.7 servicing activities.

3.8 Subd. 17. **Reverse mortgage.** "Reverse mortgage" has the meaning given in section
3.9 47.58, subdivision 1, paragraph (a).

3.10 Subd. 18. **Risk management assessment.** "Risk management assessment" means the
3.11 functional evaluations performed under the risk management program and the reports
3.12 provided to the board of directors under the relevant governance protocol.

3.13 Subd. 19. **Risk management program.** "Risk management program" means the policies
3.14 and procedures designed to identify, measure, monitor, and mitigate risk commensurate
3.15 with the covered institution's size and complexity.

3.16 Subd. 20. **Servicer.** "Servicer" has the meaning given in section 58.02, subdivision 20.

3.17 Subd. 21. **Servicing liquidity.** "Servicing liquidity" or "liquidity" means the financial
3.18 resources necessary to manage liquidity risk arising from servicing functions required in
3.19 acquiring and financing mortgage servicing rights; hedging costs, including margin calls,
3.20 associated with the mortgage servicing rights asset and financing facilities; and advances
3.21 or costs of advance financing for principal, interest, taxes, insurance, and any other servicing
3.22 related advances.

3.23 Subd. 22. **Subservicer.** "Subservicer" means the entity performing routine administration
3.24 of residential mortgage loans as the agent of a servicer or mortgage servicing rights investor
3.25 under the terms of a subservicing contract.

3.26 Subd. 23. **Subservicing for others.** "Subservicing for others" means the contractual
3.27 activities performed by subservicers on behalf of a servicer or mortgage servicing rights
3.28 investor.

3.29 Subd. 24. **Tangible net worth.** "Tangible net worth" means total equity less receivables
3.30 due from related entities, less goodwill and other intangibles, less pledged assets.

3.31 Subd. 25. **Whole loans.** "Whole loans" means a loan where a mortgage and the underlying
3.32 credit risk is owned and held on a balance sheet of the entity possessing all ownership rights.

4.1 Sec. 2. **[58.21] APPLICABILITY; EXCLUSIONS.**

4.2 Subdivision 1. **Applicability.** Sections 58.20 to 58.23 apply to covered institutions. For
4.3 entities within a holding company or an affiliated group of companies, sections 58.20 to
4.4 58.23 apply at the covered institution level.

4.5 Subd. 2. **Exclusions.** (a) Sections 58.20 to 58.23 do not apply to persons exempt from
4.6 licensing under section 58.04 and 58.05.

4.7 (b) Section 58.22 does not apply to (1) servicers that solely own or conduct reverse
4.8 mortgage servicing; or (2) the reverse mortgage portfolio administered by a covered
4.9 institution.

4.10 Sec. 3. **[58.22] FINANCIAL CONDITION.**

4.11 Subdivision 1. **Compliance required.** A covered institution must maintain capital and
4.12 liquidity in compliance with this section.

4.13 Subd. 2. **Generally accepted accounting principles.** For the purposes of complying
4.14 with the capital and liquidity requirements of this section, all financial data must be
4.15 determined in accordance with generally accepted accounting principles.

4.16 Subd. 3. **Federal Housing Finance Agency eligibility requirements; policies and**
4.17 **procedures.** (a) A covered institution that meets the Federal Housing Finance Agency
4.18 eligibility requirements for enterprise single-family sellers and servicers with respect to
4.19 capital, net worth ratio, and liquidity meets the requirements of subdivisions 1 and 2,
4.20 regardless of whether the servicer is approved for government-sponsored enterprise servicing.

4.21 (b) A covered institution must maintain written policies and procedures that implement
4.22 the capital and servicing liquidity requirements of this section. The policies and procedures
4.23 implemented pursuant to this paragraph must include a sustainable written methodology to
4.24 satisfy the requirements of paragraph (a) and must be made available to the commissioner
4.25 upon request.

4.26 Subd. 4. **Operating liquidity.** (a) A covered institution must maintain sufficient allowable
4.27 assets for liquidity, in addition to the amounts required for servicing liquidity, to cover
4.28 normal business operations.

4.29 (b) Covered institutions must have sound cash management and business operating plans
4.30 that (1) match the complexity of the institution; and (2) ensure normal business operations.

4.31 (c) Management must develop, establish, and implement plans, policies, and procedures
4.32 to maintain operating liquidity sufficient for the ongoing needs of the covered institution.

5.1 Plans, policies, and procedures implemented pursuant to this paragraph must contain
5.2 sustainable, written methodologies to maintain sufficient operating liquidity and must be
5.3 made available to the commissioner upon request.

5.4 Sec. 4. **[58.23] CORPORATE GOVERNANCE.**

5.5 Subdivision 1. **Board of directors required.** A covered institution must establish and
5.6 maintain a board of directors that is responsible for oversight of the covered institution.

5.7 Subd. 2. **Board of directors; alternative.** If a covered institution has not received
5.8 approval to service loans by a government-sponsored enterprise or the Government National
5.9 Mortgage Association, or if a government-sponsored enterprise or the Government National
5.10 Mortgage Association has granted approval for a board of directors alternative, the covered
5.11 institution may establish a similar body constituted to exercise oversight and fulfill the
5.12 responsibilities specified under subdivision 3.

5.13 Subd. 3. **Board of directors; responsibilities.** The board of directors must:

5.14 (1) establish a written corporate governance framework, including appropriate internal
5.15 controls designed to monitor corporate governance and assess compliance with the corporate
5.16 governance framework, and must make the corporate governance framework available to
5.17 the commissioner upon request;

5.18 (2) monitor and ensure the covered institution complies with (i) the corporate governance
5.19 framework; and (ii) sections 58.20 to this section; and

5.20 (3) perform accurate and timely regulatory reporting, including filing the mortgage call
5.21 report.

5.22 Subd. 4. **Internal audit.** The board of directors must establish internal audit requirements
5.23 that (1) are appropriate for the size, complexity, and risk profile of the servicer; and (2)
5.24 ensure appropriate independence to provide a reliable evaluation of the servicer's internal
5.25 control structure, risk management, and governance. The board-established internal audit
5.26 requirements and the results of internal audits must be made available to the commissioner
5.27 upon request.

5.28 Subd. 5. **External audit.** (a) A covered institution must receive an external audit,
5.29 including audited financial statements and audit reports, that is conducted by an independent
5.30 public accountant annually. The external audit must be made available to the commissioner
5.31 upon request.

5.32 (b) The external audit must include, at a minimum:

6.1 (1) annual financial statements, including (i) a balance sheet; (ii) a statement of operations
6.2 and income statement; and (iii) cash flows, including notes and supplemental schedules
6.3 prepared in accordance with generally accepted accounting principles;

6.4 (2) an assessment of the internal control structure;

6.5 (3) a computation of tangible net worth;

6.6 (4) validation of mortgage servicing rights valuation and reserve methodology, if
6.7 applicable;

6.8 (5) verification of adequate fidelity and errors and omissions insurance; and

6.9 (6) testing of controls related to risk management activities, including compliance and
6.10 stress testing, if applicable.

6.11 Subd. 6. Risk management. (a) Under oversight by the board of directors, a covered
6.12 institution must establish a risk management program that identifies, measures, monitors,
6.13 and controls risk commensurate with the covered institution's size and complexity. The risk
6.14 management program must have appropriate processes and models in place to measure,
6.15 monitor, and mitigate financial risks and changes to the servicer's risk profile and assets
6.16 being serviced.

6.17 (b) The size and risk management program must be scaled to the size and complexity
6.18 of the organization, including but not limited to:

6.19 (1) the potential that a borrower or counterparty fails to perform on an obligation;

6.20 (2) the potential that the servicer (i) is unable to meet the servicer's obligations as the
6.21 obligations come due as a result of an inability to liquidate assets or obtain adequate funding;
6.22 or (ii) cannot easily unwind or offset specific exposures;

6.23 (3) the risk resulting from (i) inadequate or failed internal processes, people, and systems;
6.24 or (ii) external events;

6.25 (4) the risk to the servicer's condition resulting from adverse movements in market rates
6.26 or prices;

6.27 (5) the risk of regulatory sanctions, fines, penalties, or losses resulting from the failure
6.28 to comply with laws, rules, regulations, or other supervisory requirements that apply to the
6.29 servicer;

6.30 (6) the potential that legal proceedings against the institution resulting in unenforceable
6.31 contracts, lawsuits, legal sanctions, or adverse judgments can disrupt or otherwise negatively
6.32 affect the servicer's operations or condition; and

7.1 (7) the risk to earnings and capital arising from negative publicity regarding the servicer's
7.2 business practices.

7.3 Subd. 7. **Risk management assessment.** A covered institution must conduct a risk
7.4 management assessment on an annual basis. The risk management assessment must conclude
7.5 with a formal report to the board of directors and must be made available to the commissioner
7.6 upon request. A covered institution must maintain evidence of risk management activities
7.7 throughout the year and must include the evidence of risk management activities as part of
7.8 the report. The risk management assessment must include issue findings and the response
7.9 or action taken to address the issue findings.