

Title 09
MARYLAND DEPARTMENT OF LABOR
Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.06 Mortgage Lenders

Authority: Business Regulation Article, §2-105; Financial Institutions Article, §§2-105.1, 11-503, 11-503.1, 11-505, 11-506(a)[,] and (c)(1), 11-507, 11-508(g), 11-511, 11-511.1, 11-513(a), and 11-515(c); Real Property Article, §3-104.1; Annotated Code of Maryland

Notice of Proposed Action

[22-075-P]

The Commissioner of Financial Regulation proposes to amend Regulation .02 and adopt new Regulations .26 and .27 under **COMAR 09.03.06 Mortgage Lenders**.

Statement of Purpose

The purpose of this action is to increase consumer protections by aligning Maryland regulations with nationwide model standards and creating uniform standards regarding safety and soundness, financial responsibility, and corporate governance for certain mortgage service providers.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Joseph Cunningham, Director of Legislative Response and Special Projects, Department of Labor, 1100 N. Eutaw Street, Suite 611, Baltimore, MD 21201, or call 410-230-6094, or email to joseph.cunningham@maryland.gov, or fax to 410-333-0475. Comments will be accepted through April 11, 2022. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) —(9) (text unchanged)

(10) *“Corporate governance” means the management structure of the licensee and the processes by which the business is managed, including the corporate controls, rules, policies, processes, and practices used to oversee and manage the institution.*

[(10)] (11)—[(13)] (14) (text unchanged)

(15) *“External audit” means the formal report prepared by an independent certified public accountant expressing an opinion on whether the financial statements are presented fairly, in all material aspects, in accordance with the applicable financial reporting framework, and is inclusive of an evaluation of the adequacy of a company’s internal control structure.*

[(14)] (16)—[(18)] (20) (text unchanged)

(21) *“Internal audit” means the internal independent and objective assurance and consulting activity performed to evaluate and improve the effectiveness of a licensee’s operations, risk management, internal controls, and governance processes.*

[(19)] (22)—[(27)] (30) (text unchanged)

[(28)] (31) *Mortgage Servicer.*

(a) *“Mortgage servicer” has the meaning stated in Financial Institutions Article, §11-501, Annotated Code of Maryland.*

(b) *“Mortgage servicer” includes a person that engages in one or more of the following actions for the benefit of other persons in connection with mortgage loans:*

(i) *Performs the routine administration of mortgage loans as agent of a servicer or MSR investor under the terms of a subservicing contract;*

(ii) *Invests in and owns mortgage servicing rights and relies on subservicers to administer the mortgage loans on its behalf;*

[(a)] (iii)—[(b)] (iv) (text unchanged)

[(c)] (v) *Communicates [to] with the borrower regarding loss mitigation options;*

[(d)] (vi) *Is responsible for supervision of third parties that take action to protect a secured party’s interest in the property under the applicable security instrument, [including] such as[:*

(i) *Maintenance] maintenance of hazard and mortgage insurance coverage[:] and*

[(ii) *Preservation] preservation of the property; or*

[(e)] (vii) (text unchanged)

(32) *“Mortgage servicing rights” or “MSR” means the contractual right to service a mortgage loan on behalf of the owner of the associated mortgage in exchange for specified compensation in accordance with the servicing contract.*

(33) *“MSR Investor” means a person who invests in and owns mortgage servicing rights and relies upon subservicers to administer the mortgage loans on the person’s behalf, and who may be referred to as a master servicer.*

[(29)] (34)—[(32)] (37) (text unchanged)

(38) *“Risk management program” means the policies, procedures, and internal controls designed to identify, measure, monitor and mitigate risk.*

[(33)] (39)—[(34)] (40) (text unchanged)

(41) *“Subservicer” means a person performing the routine administration of mortgage loans as an agent of a servicer or MSR investor under the terms of a subservicing contract.*

[(35)] (42)—[(36)] (43) (text unchanged)

.26 Corporate Governance.

A. *Corporate Governance—Generally.*

(1) *A licensee shall establish, document, and maintain sufficient corporate governance.*

(2) *Each element of a licensee’s corporate governance shall be commensurate with the size, operational complexity, and overall risk profile of the licensee.*

(3) *For purposes of this regulation, the operational complexity and risk profile of a licensee shall, in part, be defined by the results of regulatory examinations, any external audits, and internal audits.*

(4) *A licensee bears the burden of demonstrating to the Commissioner that its corporate governance is sufficient and commensurate with its size, operational complexity, and overall risk profile.*

(5) *A licensee’s corporate governance shall, at a minimum, include:*

(a) *Clearly defined responsibilities and accountability;*

(b) *Internal controls, policies, processes, and practices for monitoring, testing, and ensuring compliance with the corporate governance framework;*

(c) Internal controls, policies, processes, and practices for training of employees on corporate governance requirements; and

(d) Internal controls, policies, processes, and practices addressing internal audits, external audits, and risk management as set forth in §§B, C and D of this regulation.

(6) Each licensee shall, not less than annually, conduct a review of its corporate governance to determine its overall effectiveness, address emerging risks, and otherwise assure that the corporate governance remains commensurate with the size, operational complexity, and overall risk profile of the licensee.

(7) Any documentation, controls, policies, procedures, requirements, audits, reports, or other materials included in this regulation shall be made available to the Commissioner upon the Commissioner's request.

B. Internal Audit.

(1) A licensee shall establish internal audit requirements that are appropriate for the size, complexity, and risk profile of the licensee.

(2) Unless impracticable given the size of the licensee, internal audit functions shall be performed by employees of the licensee who report to the licensee's owners or board of directors and who are not otherwise supervised by the persons who directly manage the activities being reviewed.

(3) Employees performing internal audit functions shall have sufficient knowledge, training, and resources to provide a reliable evaluation of the licensee's operations, risk management, internal controls, and governance processes.

C. External Audit.

(1) If the Commissioner determines based on the size, operational complexity, and overall risk profile of the licensee that an external audit is appropriate, the Commissioner may direct a licensee to receive an external audit.

(2) If the Commissioner directs a licensee to receive an external audit, that external audit shall include:

(a) Annual financial statements, including a balance sheet, statement of operations (income statement), and cash flows, including notes and supplemental schedules prepared in accordance with generally accepted accounting principles;

(b) Assessment of the internal control structure;

(c) Computation of tangible net worth;

(d) Validation of MSR valuation and reserve methodology, if applicable;

(e) Verification of adequate fidelity and errors and omissions (E&O) insurance;

(f) Testing of controls related to risk management activities, including compliance and stress testing, if applicable; and

(g) Any other element the Commissioner deems appropriate.

(3) Nothing in this section is intended to abrogate a requirement of a licensee to receive an external audit under any other law, rule, regulation, or bylaw, policy, or procedure of the licensee.

D. Risk Management.

(1) A licensee shall at all times maintain a risk management program that identifies, measures, monitors, and controls risk sufficient for the size, operational complexity, and overall risk profile of the licensee.

(2) The risk management program shall have appropriate processes and models in place to measure, monitor and mitigate financial risks and changes to the risk profile of the licensee.

(3) Evidence of risk management activities throughout the year shall be maintained, including findings of issues and the response to address those findings.

E. Authority to Address Risk as Necessary. If risk is determined by a formal review of a licensee to be extremely high, the Commissioner may order or direct the licensee to satisfy additional conditions necessary to ensure that the licensee will continue to operate in a safe and sound manner and be able to continue to engage in business as a mortgage lender in compliance with State and federal law and/or regulation.

F. A covered institution as defined in Regulation .27 of this chapter is not subject to this regulation.

.27 Enhanced Prudential Standards for Certain Mortgage Servicers.

A. Definitions.

(1) In this regulation, the following terms have the meanings indicated.

(2) Terms Defined.

(a) "Agency" means Fannie Mae, Freddie Mac, and Ginnie Mae.

(b) "Allowable assets for liquidity means" those assets that may be used to satisfy the liquidity requirements herein, including unrestricted cash and cash equivalents and unencumbered investment grade assets held for sale or trade (for example, agency MBS, obligations of Fannie Mae or Freddie Mac, or U.S. Treasury obligations).

(c) "Board of directors" means the formal body established by a covered institution that is responsible for corporate governance and compliance with this regulation.

(d) "Covered institution" means a licensee who is a mortgage servicer with servicing portfolios of 2,000 or more one-unit to four-unit residential mortgage loans serviced or subserviced for others, excluding whole loans owned, and loans being interim serviced prior to sale as of the most recent calendar year end, reported in the NMLS Mortgage Call Report, and who operates in two or more states, districts, or territories of the United States, either currently or as of the prior calendar year end.

(e) "Fannie Mae" means Federal National Mortgage Association.
(f) "FHFA" means the Federal Housing Finance Agency.
(g) "Freddie Mac" means Federal Home Loan Mortgage Corporation.
(h) "Ginnie Mae" means Government National Mortgage Association.
(i) "Interim serviced prior to sale" means the activity of collecting a limited number of contractual mortgage payments immediately after origination on loans held for sale but prior to the loans being sold into the secondary market.

(j) "Mortgage Call Report" means the quarterly or annual report of residential real estate loan origination, servicing, and financial information completed by companies licensed in NMLS.

(k) "Mortgage-backed security" or "MBS" means a financial instrument, often a debt security, collateralized by residential mortgages.

(l) "Operating liquidity" means the funds necessary to perform normal business operations, such as payment of rent, salaries, interest expenses, and other typical expenses associated with operating the entity.

(m) "Residential mortgage loans serviced" means the specific portfolio or portfolios of residential mortgage loans for which a licensee is contractually responsible to the owner or owners of the mortgage loans for the defined servicing activities.

(n) "Reverse mortgage loan" has the meaning stated in Commercial Law Article, §12-1201, Annotated Code of Maryland.

(o) "Risk management assessment" means a functional evaluation performed under the risk management program and any report thereof provided to the board of directors under the relevant governance protocol.

(p) "Servicing liquidity" or "liquidity" means the financial resources available to the licensee to meet such financial obligations as may arise from the servicing of mortgage loans, including, but not limited to, acquiring and financing MSR, hedging costs associated with the MSR asset and financing facilities, including margin calls, and advancing or financing the advance of principal, interest, taxes, insurance, and any other servicing related advances.

(q) "Subserviced for others" means the contractual activities performed by subservicers on behalf of a servicer or MSR investor.

(r) "Tangible net worth" means total equity less receivables due from related entities, less goodwill, and other intangibles, less pledged assets.

(s) "Whole loans" means those loans for which a mortgage and the underlying credit risk is owned and held on the balance sheet of the entity with all ownership rights.

B. Applicability — Exclusions.

(1) This regulation shall be applicable to covered institutions as defined. For entities within a holding company or affiliated group of companies, applicability shall be at the covered institution level.

(2) The following exclusions apply:

(a) This regulation does not apply to a not-for-profit mortgage servicer or a housing finance agency.

(b) §C of this regulation does not apply to a mortgage servicer solely owning and/or conducting reverse mortgage loan servicing, or the reverse mortgage loan portfolio administered by a covered institution or the whole loan portion of portfolios.

C. Financial Condition.

(1) A covered institution shall maintain capital and liquidity in compliance with this section.

(2) For the purposes of complying with the capital and liquidity requirements of this section, all financial data shall be determined in accordance with generally accepted accounting principles.

(3) A covered institution that meets the FHFA Eligibility Requirements for Enterprise Single-Family Seller/Servicers for capital, net worth ratio, and liquidity, regardless of whether the covered institution is approved for Fannie Mae or Freddie Mac servicing, meets the requirements of §C(1) and (2) of this regulation.

(4) A covered institution shall maintain written policies and procedures implementing the capital and servicing liquidity requirements of this section. Such policies and procedures shall include a sustainable written methodology for satisfying the requirements of §C(3) of this regulation and be available to the Commissioner upon request.

(5) Operating Liquidity.

(a) A covered institution shall maintain sufficient allowable assets for operating liquidity in addition to the amounts required for servicing liquidity, to cover normal business operations.

(b) A covered institution shall have in place sound cash management and business operating plans that match the size, operational complexity, and overall risk profile of the covered institution to ensure normal business operations.

(c) A covered institution's management shall develop, establish, and implement plans, policies, and procedures for maintaining operating liquidity sufficient for the ongoing needs of the covered institution. Such plans, policies, and procedures shall contain sustainable, written methodologies for maintaining sufficient operating liquidity and be available to the Commissioner upon request.

D. Corporate Governance.

(1) Each element of a covered institution's corporate governance shall be commensurate with the size, operational complexity, and overall risk profile of the covered institution.

(2) Any documentation, controls, policies, procedures, requirements, audits, reports, or other materials included in this regulation shall be made available to the Commissioner upon the Commissioner's request.

(3) For purposes of this regulation, the operational complexity and risk profile of a covered institution shall, in part, be defined by the results of regulatory examinations, external audits, and internal audits.

(4) A covered Institution shall establish and maintain a board of directors responsible for oversight of the covered institution.

(5) For a covered institution that is not approved to service loans by Fannie Mae, Freddie Mac, or Ginnie Mae, or if these agencies have granted approval for a board alternative, an institution may establish a similar body constituted to exercise oversight and fulfill all board of directors' responsibilities in this section.

(6) In addition to any other responsibilities required of the board of directors under State or federal law, or these regulations, the board of directors shall be responsible for:

(a) Establishing a written corporate governance framework, including appropriate internal controls designed to monitor corporate governance and assess compliance with the corporate governance framework;

(b) Monitoring and ensuring institution compliance with the corporate governance framework and these regulations; and

(c) Accurate and timely regulatory reporting, including the requirements for filing the Mortgage Call Report.

(7) Internal Audit.

(a) The board of directors shall establish internal audit requirements that are appropriate for the size, complexity, and risk profile of the covered institution.

(b) Internal audit functions shall be performed by employees of the covered institution who report to the board of directors or its authorized equivalent under this section and who are not otherwise supervised by the persons who directly manage the activities being reviewed.

(c) Employees performing internal audit functions shall have sufficient knowledge, training, and resources to provide a reliable evaluation of the covered institution's operations, risk management, internal controls, and governance processes.

(8) External Audit.

(a) A covered institution shall receive an external audit, which shall include audited financial statements and audit reports, conducted by an independent public accountant annually.

(b) The external audit shall include at a minimum:

(i) Annual financial statements including a balance sheet, statement of operations (income statement), and cash flows, including notes and supplemental schedules prepared in accordance with generally accepted accounting principles;

(ii) Assessment of the internal control structure;

(iii) Computation of tangible net worth;

(iv) Validation of MSR valuation and reserve methodology, if applicable;

(v) Verification of adequate fidelity and errors and omissions (E&O) insurance; and

(vi) Testing of controls related to risk management activities, including compliance and stress testing, if applicable.

(9) Risk Management.

(a) A covered institution shall establish a documented risk management program under the oversight of the board of directors that identifies, measures, monitors, and controls risk sufficient for the size, operational complexity, and overall risk profile of the covered institution.

(b) The risk management program shall have appropriate processes and models in place to measure, monitor, and mitigate financial risks and changes to the risk profile of the covered institution and assets being serviced.

(c) The risk management program shall be scaled to the complexity of the covered institution, but shall be sufficiently robust to manage risks in several areas, including, but not limited to:

(i) Credit risk — the potential that a borrower or counterparty will fail to perform on an obligation;

(ii) Liquidity risk — the potential that the covered institution will be unable to meet its obligations as they come due because of an inability to liquidate assets or obtain adequate funding or that it cannot easily unwind or offset specific exposures;

(iii) Operational risk — the risk resulting from inadequate or failed internal processes, people, and systems or from external events;

(iv) Market risk — the risk to the covered institution's condition resulting from adverse movements in market rates or prices;

(v) Compliance risk — the risk of regulatory sanctions, fines, penalties, or losses resulting from failure to comply with laws, rules, regulations or other supervisory requirements applicable to the covered institution;

(vi) Legal risk — the potential that actions against the covered institution that result in unenforceable contracts, lawsuits, legal sanctions or adverse judgments can disrupt or otherwise negatively affect the operations or condition of the covered institution; and

(vii) Reputation risk — the risk to earnings and capital arising from negative publicity regarding the covered institution's business practices.

(d) Risk Management Assessment. A covered institution shall conduct a risk management assessment on an annual basis, concluding with a formal report to the board of directors. Evidence of risk management activities throughout the year shall be maintained and made part of the report, including findings of issues and the response to address those findings.

E. Authority to Address Risk as Necessary.

(1) If risk is determined by a formal review of a specific covered institution to be extremely high, the Commissioner may order or direct the covered institution to satisfy additional conditions necessary to ensure that the covered institution will continue to operate in a safe and sound manner and be able to continue to service loans in compliance with State and federal law and/or regulation.

(2) If risk is determined by a formal review of any covered institution to be extremely low, the Commissioner may provide notice that all or part of this regulation is not applicable to that covered institution.

(3) If economic, environmental, or societal events are determined to be of such severity to warrant a temporary suspension of all or certain sections of this regulation, the Commissioner may provide public notice of such temporary suspension.

ANTONIO P. SALAZAR
Commissioner of Financial Regulation