

Frequently Asked Questions Concerning Legislative Changes to Chapter 58

The department has received questions about the changes made to Chapter 58 in 2007. Answers here are provided for your information but not intended as legal advice. These FAQs will be updated from time to time. (SF 988 and HF 1004.)

Question 1: Can a licensee make a “stated income,” “no ratio” or “no documentation” loan after August 1, 2007?

These loans are covered by the new standards of conduct added to Section 58.13 by House File 1004, which requires verification and documentation of the borrower’s reasonable ability to pay.

Question 2: Section 23 of SF 1004 prohibits making, providing or arranging a residential mortgage loan without verifying the borrower’s reasonable ability to pay the scheduled payments and has an effective date of August 1, 2007. Are loans that are currently “in the pipeline” exempt from this requirement?

The statutory language is clear and contains no provision for exempting loans in the pipeline. The Department understands, however, that there may be situations, particularly with respect to permanent financing commitments in construction loan situations, where the lender had, prior to the date the law was signed into law (April 20, 2007), made a binding commitment to a borrower and where the actual loan closing would not take place until after the August 1, 2007 effective date of the statute. Failure to honor the commitment could subject the lender to litigation and changing the loan terms could be detrimental to the borrower, particularly given the rising interest rate environment in recent weeks. While the Department is unable to grant waivers from the statute’s requirements, the specific facts of individual cases would be considered and weighed prior to commencing an enforcement action and/or imposing civil penalties. In the meantime, lenders are encouraged to work with customers who have loans in the pipeline in an effort to satisfy the statutory requirements to verify a borrower’s financial resources.

Question 3: What is the acceptable method for documenting a borrower’s reasonable ability to repay a residential mortgage loan under the new requirements of Section 58.13, subd. 1(a)(23)?

The statute does not limit a mortgage originator’s ability to rely on criteria other than the borrower’s income and financial resources to establish the borrower’s reasonable ability to repay. It does specify that a statement by the borrower is not sufficient documentation to establish the borrower’s income and resources. The statute requires that the borrower’s income and financial resources be verified by tax returns, payroll receipts, bank records or other similarly reliable documents. We would expect that the mortgage originator would have appropriate written file documentation, on a case-by-case basis, to support the underwriting decision if resources other than income were relied upon to repay the loan.

Question 4: Can a state or federally chartered bank make a “stated income,” “no ratio” or “no documentation” loan after August 1, 2007?

State and federally chartered banks and credit unions are not covered by the new standards of conduct added to Section 58.13 by House File 1004. Banks and credit unions can continue to make these loans after August 1, 2007; however, guidance from various federal depository institution regulatory agencies may discourage or prohibit these types of loans.

Question 5: Can a licensee “broker” a “stated income,” “no ratio” or “no documentation” loan to a bank?

No. The language in the statute is broad and does not permit a licensee to “make, provide or arrange” for a residential mortgage loan without verifying the borrower’s reasonable ability to pay the scheduled payments.

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Question 6: Can a licensee that is a wholesale lender table fund a loan that has been originated by an exempt lender such as a bank? In this situation the loan would be closed in the name of the licensee with the licensee's funds.

In this situation the licensee/lender remains subject to the new standards of conduct in Chapter 58. The licensee would be able to table fund a loan originated by a bank as long as funding the loan would not lead to a violation by the lender/licensee. In other words, the licensee would not be able to table fund a stated income loan originated by a bank because the lender/licensee is prohibited from making that type of loan directly.

Question 7: Can a licensee that is a wholesale lender purchase a stated income loan that has been originated, closed and funded by an exempt lender such as a bank?

In this case the loan has already been made by the bank and it is our view that a wholesale lender licensee could purchase a stated income loan from a bank. In this case the licensee would not be acting in the capacity of a residential mortgage originator making a residential mortgage loan as those terms are defined in Chapter 58.

Question 8: State and federally-chartered banks are exempt from the new standards of conduct that were added to Chapter 58 by House File 1004. Could a licensed mortgage originator and a state or federally-chartered bank form a joint venture corporation which would become a subsidiary of the bank, which could then make residential mortgage loans and not have to comply with the requirements imposed by the new standards of conduct?

The statutory language is silent with respect to subsidiaries of banks. Subsidiary activities of Minnesota state-chartered banks are subject to the provisions of Minn. Stat., Section 48.61, subd. 7, which require, among other things, that the subsidiary be at least 20 percent owned by the bank and that the activity be approved in writing by the commissioner. Questions concerning subsidiaries of federally-chartered banks and thrifts should be directed to the appropriate federal regulatory agency.

Question 9: Section 3 of House File 1004 changed the definition of "lender fee" in Section 58.137, which caps the amount of lender fees at 5 percent of the loan amount. The definition has been changed to add amounts payable "by the lender to a mortgage broker." Does this include the yield spread premium?

Yes, it includes the yield spread premium payable by a lender to a broker.

Question 10: Does the definition of "lender fee" also include the "service release premium" which is paid to a lender when the servicing rights to a loan are sold?

It is our opinion that the new definition of "lender fee" in Section 58.13 does not include the service release premium which is paid to a lender when loan servicing rights are sold.

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Question 11: Are loans on investment or non-owner occupied properties exempt from the new standards of conduct that were added to Chapter 58?

The definition of “Residential mortgage loan” found in Section 58.02, subd. 18, has not changed. Residential mortgage loan means a loan made primarily for personal, family, or household use and secured primarily by either: (1) a mortgage on residential real property; or (2) certificates of stock or other evidence of ownership interest in and proprietary lease from corporations, partnerships, or other forms of business organizations formed for the purpose of cooperative ownership of residential real property (emphasis added).

Properties purchased for investment purposes where the purchaser has no intention of occupying the property would not be loans made primarily for personal, family, or household use and therefore not subject to Chapter 58.