**WRITTEN NOTICE FROM THE COMMISSIONER PURSUANT TO SECTION 156.404 OF THE TEXAS FINANCE CODE**

Re: **Seller Financing de minimis exemption** to individuals licensed under Chapter 156

Texas, in 156.202 (a) (3) of the Finance Code (the "Code"), has had a statutory de minimis exemption from licensure under Chapter 156 for "an owner of real property who in any 12-consecutive-month period makes no more than five mortgage loans to purchasers of the property for all or part of the purchase price of the real estate against which the mortgage is secured" since 2007. The Department has received no consumer complaints regarding this exemption.

In the 81st legislative session, HB 10 was passed and enacted as Chapter 180 of the Code. This Chapter, the Texas Safe and Fair Enforcement of Mortgage Licensing Act ("TX SAFE Act"), does not contain the de minimis exemption and, therefore, could be considered to be in conflict with Chapter 156. However, House Bill 2774, which amended § 156.202, but which left § 156.202 (a) (3) intact, was the last bill passed by the 81st legislative session, and therefore, if in conflict with House Bill 10, House Bill 2774 prevails as provided for in Government Code § 311.025.

Further Rule 80.1 (6)(B) (ii), provided for the de minimis exemption until it was repealed by the Finance Commission at the department's request in response to strict HUD interpretations on other issues provided in January, 2010. Subsequently, HUD has verbally indicated that states should enforce their specific state statutes even if in variance with the model SAFE act language, if the state takes a reasonable approach and can justify the variance. Additionally, Rep. Barney Frank, Chair of the House Committee on Financial Services and Rep. Spencer Bachus, Ranking Member on the same committee, who were the primary authors of the federal SAFE Act, issued a letter July 22, 2010 stating they "think it is permissible for States to consider a de minimis standard for registration and licensing requirements under the Act……".

The Department has spoken with numerous citizens directly and staff members from the offices of thirteen legislators whose constituents are economically impacted by the loss of a de minimis exemption from licensure. Seller financing in part or in whole has historically been an important part of facilitating real estate sales transactions. To depart from long standing Texas de minimis tradition in the midst of the current credit restrictions and a market where sellers are having difficulty selling homes would run counter to the efforts of stabilizing the housing market and reviving the economy.

HUD's final rules have not been published and with the passing of the Dodd Frank Wall Street Reform and Consumer Protection Act, could be delayed longer than originally expected due to the creation and transfer of oversight authority to the Financial Consumer Protection Bureau.

**Therefore, and pursuant to the authority granted to the Commissioner in § 156.404, written notice is hereby given, that the Department will continue to allow the exemption found in § 156.202(a) (3), until or unless there is a subsequent statutory amendment or a rule adopted under this chapter, in which case said amendment or rule will supersede. Further, should HUD or its successor determine that no de minimis is appropriate under the SAFE Act, this written notice will have no effect.**

Douglas B Foster

Douglas B. Foster
Commissioner

August 12, 2010

In connection with the above notice concerning the de minimis exemption for seller financed transactions issued on August 12, 2010, this notice is issued to clarify questions which have risen concerning compliance with federal regulations.

The position expressed in the notice is that an individual who engages in no more than five mortgage loans in a rolling twelve month period is exempt from the Department's licensing requirements. The Department holds the position that exemption from licensing does not relieve that individual from complying with all applicable laws and rules pertaining to disclosures required by RESPA, new GFE, TILA, APR, new HOEPA, High Priced Loans, etc and the timing of each disclosure and rules.

Douglas B Foster

Douglas B. Foster
Commissioner

August 17, 2010