

NOTICE OF PRECOMMENT DRAFT AND STAKEHOLDERS WEBINAR

SML Rulemaking – Chapters 80 and 81 July 23, 2021 Pre-comment Draft

The Department of Savings and Mortgage Lending (SML or the Department) is considering amendments, new rules, and repeals in 7 Texas Administrative Code (TAC) Chapter 80, concerning Texas Residential Mortgage Loan Companies, and Chapter 81, concerning Mortgage Bankers and Residential Mortgage Loan Originators.

The Department will hold a stakeholder webinar on July 28, 2021 at 3:00 p.m. to discuss the pre-comment draft of the rule changes.

The Department will also accept informal written pre-comments until August 4, 2021 at 5:00 p.m.

The Department plans to present the rules for consideration by the Finance Commission at its August 20, 2021 meeting.

Participating in the Webinar

The webinar will be conducted utilizing the Webex platform by Cisco.

Note: Participants need to preregister for the webinar. While WebEx has the capability for participants to appear by video, participation by the panelists and attendees will be by audio only (with screen sharing by the panelists).

[**Registration Link**](#)

Submission of Informal Pre-comments

Informal written pre-comments regarding the Department's draft rule amendments may be submitted by email to rules.comments@sml.texas.gov or by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294. **Informal pre-comments must be received by 5:00 p.m. on August 4, 2021.**

Overview of Changes: Chapter 80 – Texas Residential Mortgage Loan Companies

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Changes Concerning Office Requirements and Remote Work. During the 87th Legislature (Regular Session), Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617) were enacted into law (eff. September 1, 2021) which, among other things, amends Finance Code Sections 156.2041 and 156.156.2042 to eliminate the requirement for a mortgage company or credit union subsidiary organization licensed under Chapter 156 to maintain a physical office in Texas. One stated purpose for HB3617, as reflected by the bill’s House Committee Report was to address “a rise in demand for remote working.” The rule changes implement those portions of HB3617 addressing the physical office requirement and further seek to fulfill the stated purpose of HB3617 by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage company to work remotely. The rule changes also formalize and clarify in rule existing requirements concerning what constitutes the main office or the branch office of a mortgage company such that the office must be licensed by the Department. The rules, if adopted, would:

- eliminate use of the term “physical office” throughout Chapter 80 and instead use the terms “main office” and “branch office,” as used in Finance Code Chapter 156;
- eliminate existing requirements for a mortgage company to maintain records tied to the physical office requirement;
- clarify that the main office or a branch office must be established by the mortgage company and not a sponsored originator;
- set forth specific circumstances under which an office of the mortgage company must be licensed by the Department;
- describe certain activities and operations of a mortgage company that may be performed at a location other than the main office or a branch office and does not trigger the requirement for an office of the mortgage company to be licensed;
- describe conditions under and parameters by which the employees and sponsored originators of a mortgage company are authorized to work from a remote location; and
- require that the mortgage company maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work from a remote location.

Overview of Changes: Chapter 81 – Mortgage Bankers and Residential Mortgage Loan Originators

The rule changes recognize the growing demand for the employees and sponsored originators of a mortgage company to work remotely by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage banker to

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do so. The rule changes also formalize and clarify in rule existing requirements concerning what constitutes the main office or the branch office of a mortgage banker such that the office must be registered with the Department. The rules, if adopted, would:

- clarify that the main office or a branch office must be established by the mortgage banker or mortgage company and not an originator;
- set forth specific circumstances under which an office of the mortgage banker must be registered with the Department;
- describe certain activities and operations of a mortgage company that may be performed at a location other than the main office or a branch office and does not trigger the requirement for an office of the mortgage banker to be registered;
- describe conditions under and parameters by which the employees and sponsored originators of a mortgage banker are authorized to work from a remote location; and
- require that the mortgage banker maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work from a remote location.

<rule>

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80 [TEXAS] RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER A GENERAL PROVISIONS

§80.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 156, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §156.002(14) and paragraph (18) [~~(20)~~] of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

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~~[(2) "Branch office," as used in Tex. Fin. Code §156.2041(a)(4), means any office that is separate and distinct from the mortgage company's principal place of business of record with NMLS, whether located in Texas or not, which conducts mortgage business on residential real estate located in Texas.]~~

(2) ~~[(3)]~~ "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(3) ~~[(4)]~~ "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

(4) ~~[(5)]~~ "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(5) ~~[(6)]~~ "Control person" means an individual that directly or indirectly exercises control over a mortgage company. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage company, whether through ownership of securities, by contract, or otherwise. Control person includes any person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, is a managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the partnership's capital assets.

(6) ~~[(7)]~~ "Department" means the Department of Savings and Mortgage Lending.

(7) ~~[(8)]~~ "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.

(8) ~~[(9)]~~ "Mortgage applicant" has the meaning assigned by Tex. Fin. Code §156.002 and includes a person who contacts a mortgage company or its sponsored originator in response to a solicitation to obtain a residential mortgage loan, and a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted

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financial information constituting an application, as provided by paragraph (1) of this section.

(9) ~~[(40)]~~ "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §156.002.

(10) ~~[(41)]~~ "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §156.002.

(11) ~~[(42)]~~ "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §156.002(14), means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs); or

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.

(12) ~~[(43)]~~ "Originator" has the meaning assigned by Tex. Fin. Code §156.002 in defining "residential mortgage loan originator." Paragraphs (11) ~~[(42)]~~ and (18) ~~[(20)]~~ of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

(13) ~~[(44)]~~ "Person" means an individual, corporation, company, limited liability company, partnership or association.

~~[(15) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is conducted.]~~

(14) ~~[(46)]~~ "Qualifying Individual" or "Qualified Individual" has the meaning assigned by Tex. Fin. Code §156.002 in defining "qualifying individual." Additionally, the license held by the Qualifying Individual must be held in a status which authorizes him or her ~~[them]~~

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to conduct regulated activities, and the individual sponsored of record in NMLS by the mortgage company for which he or she is acting as ~~[they are]~~ the Qualifying Individual.

(15) ~~[(47)]~~ "Residential Mortgage Loan" has the meaning assigned by Tex. Fin. Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(16) ~~[(48)]~~ "Residential real estate" has the meaning assigned by Tex. Fin. Code §156.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(17) ~~[(49)]~~ "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage company or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage company or sponsored originator posts commercial messages or other content designed to solicit business.

(18) ~~[(20)]~~ "Takes a residential mortgage loan application," as used in Tex. Fin. Code §156.002(14) in defining "residential mortgage loan originator", means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

SUBCHAPTER C DUTIES AND RESPONSIBILITIES

§80.203. Advertising.

(a) A mortgage company or sponsored originator that advertises rates, terms, or conditions must comply with the disclosure requirements of Regulation Z.

(b) Any advertisement of residential mortgage loans or for residential mortgage loan origination services which is offered by or through a mortgage company or sponsored originator must conform to the following requirements:

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(1) a mortgage company or sponsored originator may only advertise for such products and terms as are actually available and, if availability is subject to any material requirements or limitations, the advertisement must specify those requirements or limitations;

(2) except as provided in subsections (c) and (d) of this section the advertisement must contain:

(A) the name of the mortgage company followed by the mortgage company's NMLS identification number; and

(B) the name of the sponsored originator followed by the sponsored originator's NMLS identification number;

(3) an advertisement must not make any statement or omit relevant information, the result of which is to present a misleading or deceptive representation to consumers; and

(4) an advertisement must comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan transaction or is otherwise designed to solicit residential mortgage loan [~~origination~~] business for the mortgage company or sponsored originator. This includes "flyers," business cards, or other handouts, and commercial messages delivered by and through a social media site. However, the requirements of subsection (b)(2) of this section do not apply to:

(1) any advertisement which indirectly promotes a residential mortgage loan transaction and which contains only the name of the mortgage company or sponsored originator and not any contact information with the exception of a website address, such as on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value;

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or

(3) signs located on or adjacent to the mortgage company's licensed office as provided by §80.206 of this title (relating to Office Locations; Remote Work) [~~physical office~~].

(d) Advertising Directly by a Mortgage Company. The provisions of subsection (b) of this section notwithstanding, a mortgage company may advertise directly to the public and not

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by and through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section do not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage company will not be considered an advertisement made directly by a mortgage company for purposes of this subsection.

§80.204. Books and Records.

(a) Maintenance of Records, Generally. In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 156 and this chapter, each mortgage company or sponsored originator must maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each mortgage company or sponsored originator is required to maintain, at the location specified in their official record on file with the Department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received, the mortgage company must create and maintain a residential mortgage loan file containing, at a minimum:

(A) a copy of the initial residential mortgage loan application (including any attachments, supplements, or addenda thereto), signed and dated by each mortgage loan applicant and the sponsored originator;

(B) a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other documentation evidencing the disposition of the application for a residential mortgage loan;

(C) a copy of the disclosure statement required by Tex. Fin. Code §156.004 and §80.200(a) of this title (relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored originator;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate locks or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

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(E) a copy of the notice to mortgage applicants required by Tex. Fin. Code §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant;

(B) the date of the initial residential mortgage loan application;

(C) a description of the purpose for the loan (e.g., purchase, refinance, construction, etc.);

(D) a description of the owner's intended occupancy of the subject real estate (e.g., primary residence, secondary residence, investment property (no occupancy), etc.);

(E) a description of the disposition of the application for a residential mortgage loan;

(F) the identity of the person who initially funded and/or acquired the residential mortgage loan; and

(G) the full name of the originator and his or her NMLS identification number.

(3) General Business Records. General business records include:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan [~~origination~~] business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage company employees, independent

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contractors and all others compensated by such mortgage company in connection with the residential mortgage loan [origination] business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(4) Records Concerning Remote Work. A mortgage company must create and maintain records reflecting its compliance with the requirements for remote work as provided by §80.206 of this title (relating to Office Locations; Remote Work).

~~[Records Establishing Physical Office. A mortgage company must create and maintain records establishing its physical office including:~~

~~— (A) records reflecting the names and contact information for persons serving as staff for the mortgage company assisting customers at the physical office; and~~

~~— (B) records reflecting the mortgage company's right to access the physical office and conduct business of the mortgage company at such office (e.g., a lease agreement or deed).]~~

(c) A mortgage company and/or sponsored originator must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) A mortgage company and/or sponsored originator must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) Production of Records; Disciplinary Action. All books and records required by this section must be maintained in good order and must be produced for the Commissioner

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or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may result in disciplinary action including, but not limited to, suspension or revocation of a license.

(f) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) Records Retention After Dissolution. Within 10 days of terminating operations, a mortgage company must provide the Department with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage company licensed by the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.

{{Existing §80.206 will be repealed and replaced with new §80.206}}

§80.206. Office Locations; Remote Work.

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Branch office," as provided by Tex. Fin. Code §156.212, means any office a mortgage company maintains that is separate and distinct from its main office, whether located in Texas or not, from which it conducts residential mortgage loan business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas.

(2) "Licensed office" means a physical office of the mortgage company that is properly licensed by the Department as its main office or a branch office.

(3) "Main office" means the address the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by the Department through the mortgage company's license.

(4) "Remote location" means a location other than a licensed office of the mortgage company from which the employees or sponsored originators of the mortgage company may conduct residential mortgage loan business as provided subsection (d) of this section.

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(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage company. A licensed office of the mortgage company must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage company. A sponsored originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (d) of this section (however, the conduct of a sponsored originator may trigger the requirement for the mortgage company to seek licensure of a branch office as provided by this section). A mortgage company in particular (but not exclusively) must obtain a license for:

(1) any office or property it owns or has a legal right to occupy (e.g. a lease agreement) where it conducts residential mortgage loan business;

(2) any office or location at which it maintains physical records other than an offsite storage facility, warehouse, or similar location;

(3) any office or location it advertises or promotes to the public as an office or location from which the mortgage company conducts residential mortgage loan business;

(4) any office or location from which the mortgage company or its employees or sponsored originators regularly or routinely meet in-person with mortgage applicants or prospective mortgage applicants;

(5) any office or location from which two or more employees or sponsored originators regularly or routinely work and conduct residential mortgage loan business on behalf of the mortgage company; or

(6) any office or location that is a private residence that is used to meet in-person with mortgage applicants or prospective mortgage applicants, other than the mortgage applicant's own residence.

(c) Activities Not Requiring an Office. The following mortgage company activities, or any combination thereof, may be performed at a location other than the main office or a branch office and does not trigger the requirement for an office of the mortgage company to be licensed:

(1) Advertising and marketing. A mortgage company may engage in advertising and marketing itself to the public from a location other than the main office or a branch office (e.g., distributing flyers, producing a radio or television advertisement, occupying a booth at a promotional event etc.).

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(2) Trade association participation; community events and engagement. A mortgage company may participate in trade association events promoting the mortgage or financial services industry broadly. A mortgage company may also host, attend, or otherwise participate in community events, provided the mortgage company does not conduct residential mortgage loan business at such event.

(3) Information technology (IT) infrastructure. A mortgage company may operate information technology equipment including the placement of IT infrastructure in a data center, the hosting or processing of a website or data by a third party IT service provider, or such other physical presence tied to the IT infrastructure of the mortgage company.

(4) Ancillary customer service activities. A mortgage company may engage in customer service ancillary to its residential mortgage loan functions including relating to accessing or using its website or a software application (but not arranging or assisting a mortgage applicant or prospective applicant in applying for a residential mortgage loan).

(d) Authorization for Remote Work. The employees of a mortgage company and its sponsored originators may conduct business and work from a remote location if the mortgage company:

(1) maintains appropriate safeguards for the mortgage company and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage company, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to:

(A) keep all conversations about and with consumers conducted from a remote location confidential as if conducted from a licensed office of the mortgage company; and

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_____ (B) ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

_____ (A) the mortgage company and its employees and sponsored originators comply with this section; and

_____ (B) the employees and sponsored originators do not perform an activity that would be prohibited at a licensed office of the mortgage company.

~~§80.206. Physical Office.~~

~~(a) A physical office must:~~

~~_____ (1) have a physical or street address. A post office box or other similar designation will not suffice.~~

~~_____ (2) be accessible to the general public as a place of business and must hold itself open on a regular basis.~~

~~_____ (3) have at least one staff member present to assist customers during the hours in which the physical office is open.~~

~~(b) Records Establishing Physical Office. A mortgage company must create and maintain records establishing the mortgage company's physical office, as provided by §80.204 of this title (relating to Books and Records).~~

~~(c) The Physical Office need not be the location where required records are maintained; however, the location where such records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.]~~

SUBCHAPTER D COMPLIANCE AND ENFORCEMENT

§80.300. EXAMINATIONS.

(a) The Commissioner, or the Commissioner's designee(s), will conduct periodic examinations of a mortgage company or sponsored originator as the Commissioner deems necessary.

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person ~~[qualifying individual]~~ of the mortgage company listed in NMLS or a person

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designated by the primary contact person advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's ~~[qualifying individual's]~~ mailing address or email address of record with NMLS and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made ~~[the mortgage company or sponsored originator must make]~~ available to facilitate the examination.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 156 and this chapter, and will specifically address whether:

(1) all persons conducting residential mortgage loan origination activities are properly licensed and sponsored ~~[by the mortgage company in NMLS];~~

(2) all office locations ~~[at which such activities are conducted]~~ are properly licensed ~~[and registered]~~, as provided by §80.206 of this title (relating to Office Locations; Remote Work) ~~[with NMLS];~~

(3) all required books and records are being maintained in accordance with §80.204 of this title (relating to Books and Records);

(4) legal and regulatory requirements applicable to the mortgage company and its originators are being properly followed; and

(5) other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapter 156.

(d) The examiners will review a sample of residential mortgage loan files identified by the examiners and randomly selected from the mortgage company's mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners may require a mortgage company, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will be maintained as confidential except as required or expressly permitted by law.

(g) Failure to Cooperate; Disciplinary Action. Failure of a mortgage company or a sponsored originator to cooperate with the examination or failure to grant the examiners

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access to books, records, documents, operations, and facilities may result in disciplinary action including, but not limited to, imposition of an administrative penalty.

(h) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of a mortgage company or a sponsored originator because the required records are maintained at a location outside of Texas, ~~[the mortgage company or sponsored originator will be required to reimburse]~~ the Department will require reimbursement for the actual costs incurred by the Department in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs.

CHAPTER 81 MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER A GENERAL PROVISIONS

§81.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 157 and Chapter 180, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §§157.002(6) and 180.002(19), and paragraph (16) ~~[(19)]~~ of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(3) "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.

~~[(4) "Criminal Offense" means any violation of any state or federal criminal statute which:~~

~~(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;~~

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~~(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;~~

~~(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;~~

~~(D) involves deceiving the public by means of swindling, false advertising or the like;~~

~~(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;~~

~~(F) involves acts of violence or use of a deadly weapon;~~

~~(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or~~

~~(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.]~~

(4) ~~[(5)]~~ "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(5) ~~[(6)]~~ "Department" means the Department of Savings and Mortgage Lending.

(6) ~~[(7)]~~ "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.

(7) ~~[(8)]~~ "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a mortgage banker or originator in response to a solicitation) to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(8) ~~[(9)]~~ "Mortgage banker" has the meaning assigned by Tex. Fin. Code §157.002.

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(9) ~~[(40)]~~ "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §157.002.

(10) ~~[(44)]~~ "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002.

(11) ~~[(42)]~~ "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §157.002(6) and §180.002(19) means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs); or

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.

(12) ~~[(43)]~~ "Originator" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (11) ~~[(42)]~~ and (16) ~~[(49)]~~ of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

~~[(14) "Physical office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is conducted.~~

~~(15) "Recovery Fund" means the fund administered and maintained by the Commissioner for the recovery of actual damages by persons aggrieved by a licensed residential mortgage loan originator, established pursuant to Tex. Fin. Code §13.016.]~~

(13) ~~[(46)]~~ "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

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(14) [~~(17)~~] "Residential real estate" has the meaning assigned by Tex. Fin. Code §180.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(15) [~~(18)~~] "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage banker or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage banker or sponsored originator posts commercial messages or other content designed to solicit business.

(16) [~~(19)~~] "Takes a residential mortgage loan application," as used in Tex. Fin. Code §157.002(6) and §180.002(19) in defining "residential mortgage loan originator" means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

SUBCHAPTER C DUTIES AND RESPONSIBILITIES

§81.203. Advertising.

(a) A mortgage banker or originator that advertises rates, terms, or conditions must comply with the disclosure requirements of Regulation Z.

(b) Any advertisement of residential mortgage loans or for residential mortgage loan origination services which is offered by or through a mortgage banker or originator must conform to the following requirements:

(1) A mortgage banker or originator may only advertise for such products and terms as are actually available and, if availability is subject to any material requirements or limitations, the advertisement must specify those requirements or limitations.

(2) Except as provided in subsections (c) and (d) of this section, the advertisement must contain:

(A) the name of the mortgage banker or mortgage company followed by its NMLS identification number; and

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(B) the name of the sponsored originator followed by the sponsored originator's NMLS identification number.

(3) An advertisement must not make any statement or omit relevant information the result of which is to present a misleading or deceptive representation to consumers.

(4) An advertisement must comply with applicable state and federal disclosure requirements.

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan transaction or is otherwise designed to solicit residential mortgage loan ~~[origination]~~ business for the mortgage banker or originator. This includes "flyers," business cards, or other handouts, and commercial messages delivered by and through a social media site. However, the requirements of subsection (b)(2) of this section do not apply to:

(1) any advertisement which indirectly promotes a residential mortgage loan transaction and which contains only the name of the mortgage banker or originator and not any contact information with the exception of a website address, such as on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value;

(2) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or

(3) signs located on or adjacent to the mortgage banker's registered office as provided by §81.206 of this title (relating to Office Locations; Remote Work) ~~[or originator's physical office]~~.

(d) Advertising Directly by a Mortgage Banker. The provisions of subsection (b) of this section notwithstanding, a mortgage banker may advertise directly to the public and not by and through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section do not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage banker will not be considered an advertisement made directly by a mortgage banker for the purposes of this subsection.

§81.204. Books and Records.

(a) Maintenance of Records, Generally. In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code,

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Chapters 157 and 180, and this chapter, each originator must maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Mortgage Application Records. Each originator is required to maintain, at the location specified in their official record on file with the Department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received, the originator must create and maintain a residential mortgage loan file containing, at a minimum:

(A) a copy of the initial mortgage loan application (including any attachments, supplements, or addenda thereto), signed and dated by each mortgage applicant and the originator;

(B) a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other documentation evidencing the disposition of the application for a residential mortgage loan;

(C) for an originator sponsored by a mortgage banker, a copy of the disclosure statement required by Tex. Fin. Code §157.0021 and §81.200(a) of this title; or, for an originator sponsored by a mortgage company, a copy of the disclosure statement required by Tex. Fin. Code §156.004 and §80.200(a) of this title;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate locks or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to mortgage applicants required by Tex. Fin. Code §343.105;

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

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(2) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant;

(B) the date of the initial residential mortgage loan application;

(C) a description of the purpose for the loan (e.g., purchase, refinance, construction, etc.);

(D) a description of the owner's intended occupancy of the subject real estate (e.g., primary residence, secondary residence, investment property (no occupancy), etc.);

(E) a description of the disposition of the application for a residential mortgage loan;

(F) the identity of the person who initially funded and/or acquired the residential mortgage loan; and

(G) the full name of the originator and his or her NMLS identification number.

(3) General Business Records. General business records include:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan [~~origination~~] business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage banker employees, independent contractors and others compensated by such originator in connection with the residential mortgage loan [~~origination~~] business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

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(E) copies of all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction including, but not limited to, delegations of underwriting authority, price agreements for goods or services, investor contracts, or employment agreements;

(F) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed.

(4) Records Concerning Remote Work. A mortgage banker must maintain records reflecting compliance with the requirements for remote work as provided by §81.206 of this title (relating to Office Locations; Remote Work).

(c) Each originator must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) Each originator must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(e) Production of Records; Disciplinary Action. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may result in disciplinary action including, but not limited to, suspension or revocation of a license.

(f) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(g) An originator may meet applicable recordkeeping requirements if his or her sponsoring mortgage banker or mortgage company maintains the required records. Upon termination of a mortgage banker's sponsorship of an originator, that originator's records must remain with the mortgage banker or be transferred to the new sponsoring mortgage banker. Upon written request from a former originator, a former mortgage banker may release to his or her former originator copies of records relating to residential mortgage loans handled by such former originator.

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(h) Records Retention After Dissolution. Within 10 days of terminating operations, a mortgage banker or originator must provide the Department with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another mortgage banker registered with the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.

{{Existing §81.206 will be repealed and replaced with new §81.206}}

§81.206. Office Locations; Remote Work.

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Branch office," as provided by Tex. Fin. Code §157.003(b)(6), means any office a mortgage banker maintains that is separate and distinct from its main office, whether located in Texas or not, from which it conducts residential mortgage loan business in Texas.

(2) "Main office" means the address the mortgage banker has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore registered with the Department.

(3) "Registered office" means a physical office of the mortgage banker that is properly registered with the Department as a branch office or its main office.

(4) "Remote location" means a location other than a registered office of the mortgage banker from which the employees or sponsored originators of the mortgage banker may conduct residential mortgage loan business as provided by subsection (d) of this section.

(b) Office Requirements. A mortgage banker must register any office constituting the main or a branch office of the mortgage banker. A registered office of the mortgage banker must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main or a branch office must be established by the mortgage banker or mortgage company. An originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (d) of this section (however, the conduct of an originator may trigger the requirement for a mortgage banker or mortgage company to obtain a license for or register a branch office as provided by this section and §80.206 of this title

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(relating to Office Locations; Remote Work). A mortgage banker in particular (but not exclusively) must register:

(1) any office or property it owns or has a legal right to occupy (e.g. a lease agreement) where it conducts residential mortgage loan business;

(2) any office or location at which it maintains physical records other than an offsite storage facility, warehouse, or similar location;

(3) any office or location it advertises or promotes to the public as an office or location from which the mortgage banker conducts residential mortgage loan business;

(4) any office or location from which the mortgage banker or its employees or sponsored originators regularly or routinely meet in-person with mortgage applicants or prospective mortgage applicants;

(5) any office or location from which two or more employees or sponsored originators regularly or routinely work and conduct residential mortgage loan business on behalf of the mortgage banker; or

(6) any office or location that is a private residence that is used to meet in-person with mortgage applicants or prospective mortgage applicants, other than the mortgage applicant's own residence.

(c) Activities Not Requiring an Office. The following mortgage banker activities, or any combination thereof, may be performed at a location other than the main or a branch office and does not trigger the requirement for an office of the mortgage banker to be registered:

(1) Advertising and marketing. A mortgage banker may engage in advertising and marketing itself to the public from a location other than the main office or a branch office (e.g., distributing flyers, producing a radio or television advertisement, occupying a booth at a promotional event etc.);

(2) Trade association participation; community events and engagement. A mortgage banker may participate in trade association events promoting the mortgage or financial services industry broadly. A mortgage banker may also host, attend, or otherwise participate in community events, provided the mortgage banker does not conduct residential mortgage loan business at such event.

(3) Information technology (IT) infrastructure. A mortgage banker may operate information technology equipment including the placement of IT infrastructure in a data

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center, the hosting or processing of a website or data by a third party IT service provider, or such other physical presence tied to the IT infrastructure of the mortgage banker.

(4) Ancillary customer service activities. A mortgage banker may engage in customer service ancillary to its residential mortgage loan functions including relating to accessing or using its website or a software application (but not arranging or assisting a mortgage applicant or prospective applicant in applying for a residential mortgage loan).

(d) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a location other than a registered office of the mortgage banker (remote location) if the mortgage banker:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to:

(A) keep all conversations about and with consumers conducted from a remote location confidential as if conducted from a registered office of the mortgage banker; and

(B) ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage banker and its employees and sponsored originators comply with this section; and

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(B) the employees and sponsored originators do not perform an activity that would be prohibited at a registered office of the mortgage banker.

~~§81.206. Physical Office.~~

~~A physical office must:~~

~~_____ (1) have a physical or street address. A post office box or other similar designation will not suffice.~~

~~_____ (2) be accessible to the general public as a place of business and must hold itself open on a regular basis.~~

~~_____ (3) have at least one staff member present to assist customers during the hours in which the physical office is open.]~~

SUBCHAPTER D COMPLIANCE AND ENFORCEMENT

§81.300. EXAMINATIONS.

(a) The Commissioner, or the Commissioner's designee(s), will conduct periodic examinations of an ~~[a mortgage company or sponsored]~~ originator as the Commissioner deems necessary.

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person of the mortgage banker or mortgage company sponsoring the originator listed in NMLS or a person designated by the primary contact person ~~[qualifying individual of the mortgage company]~~ advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's ~~[qualifying individual's]~~ mailing address or email address of record with NMLS and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made ~~[the mortgage company or sponsored originator must make]~~ available to facilitate the examination.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapters 157 and 180, ~~[Chapter 156]~~ and this chapter, and will specifically address whether:

(1) all persons conducting residential mortgage loan origination activities are properly licensed and sponsored ~~[by the mortgage company in NMLS];~~

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(2) all office locations [~~at which such activities are conducted~~] are properly licensed or [~~and~~] registered, as provided by §§80.206 and 81.206 of this title (relating to Office Locations; Remote Work) [with NMLS];

(3) all required books and records are being maintained in accordance with §80.204 of this title (relating to Books and Records);

(4) legal and regulatory requirements applicable to the originator and the mortgage banker or mortgage company sponsoring the originator [~~mortgage company and its originators~~] are being properly followed; and

(5) other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapters 157 and 180 [~~Chapter 156~~].

(d) The examiners will review a sample of residential mortgage loan files identified by the examiners and randomly selected from the originator's [~~mortgage company's~~] mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners may require an originator, at his or her [~~a mortgage company, at its~~] own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will be maintained as confidential except as required or expressly permitted by law.

(g) Failure to Cooperate; Disciplinary Action. Failure by an [~~of a mortgage company or a sponsored~~] originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in disciplinary action including, but not limited to, imposition of an administrative penalty.

(h) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of an [~~a mortgage company or a sponsored~~] originator because the required records are maintained at a location outside of Texas, [~~the mortgage company or sponsored originator will be required to reimburse~~] the Department will require reimbursement for the actual costs incurred by the Department in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs.