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TITLE 7. BANKING AND SECURITIES

**PART 4. DEPARTMENT OF SAVINGS
AND MORTGAGE LENDING**

**CHAPTER 80. TEXAS RESIDENTIAL
MORTGAGE LOAN COMPANIES**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments to existing rules at Title 7, Texas Administrative Code (TAC), Part 4, Chapter 80, Subchapter A, §80.1 and §80.2; Subchapter C, §§80.200, 80.202 - 80.206; and Subchapter D, §80.300 and §80.301. The commission's proposal for the amendments was published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6637). Amended §80.2 is adopted with substantive changes to the published text and is republished to reflect such changes. Sections 80.200, 80.202 - 80.204, 80.206, and 80.300 are further republished to adopt minor, non-substantive changes to add TAC references and correct minor errors in grammar. The substantive changes to amended §80.2 regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment. The remaining sections affected by the proposal, §§80.1, 80.205, and 80.301, are adopted without changes to the text as published in the *Texas Register* and will not be republished.

Explanation of and Justification for the Rules

The rules under 7 TAC Chapter 80 implement Finance Code, Chapter 156, Residential Mortgage Loan Companies

(Chapter 156). The adopted rules were identified during the department's periodic review of 7 TAC Chapter 80, conducted pursuant to Government Code, §2001.039.

Definition of a Residential Mortgage Loan Originator Changes

The adopted rules add several new definitions to §80.2 related to the definition of a residential mortgage loan originator. The adopted rules add a new definition for "originator," to adopt by reference the statutory definition for residential mortgage loan originator in Chapter 156, allowing for use of that shortened term throughout the rules, improving readability and reducing word count. The adopted rules add a definition for the phrase "takes a residential loan application," as used in Finance Code, §156.002(14), for purposes of determining when an individual is acting as a residential mortgage loan originator. The adopted rules add a definition for the term "application" to further define and clarify when an individual has received information constituting a residential mortgage loan application for that same purpose. The adopted rules also add a definition for the phrase "offers or negotiates the terms of a residential mortgage loan," as used in Finance Code, §156.002(14) for purposes of determining when an individual is acting as a residential mortgage loan originator. The adopted rules add a definition for "compensation" for that same purpose.

Other Definitions Changes

The adopted rules make other changes to the definitions section in §80.2. The adopted rules eliminate the existing definition for "one-to-four family residential real property," the subject matter of which is

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generally replaced by adding two new definitions for "dwelling" and "residential real estate," terms which are used in Finance Code, Chapter 156. The adopted rules also eliminate the existing definition for "criminal offense," used in evaluating an individual's fitness and eligibility to be licensed by the department as a residential mortgage loan originator, as being unnecessary in the rules chapter pertaining to mortgage companies. The adopted rules also add the following new definitions: "mortgage applicant," "mortgage company," "person," and "social media site."

Required Disclosures and Advertising Changes

The adopted rules make changes to the disclosures a mortgage company or its sponsored originator are required to make, as provided by §80.200. The adopted rules limit existing disclosure requirements by eliminating the requirement for a licensed mortgage company to post disclosures at its physical office. Existing requirements for posting disclosures on a website are clarified to expressly include a social media site of the mortgage company. The adopted rules impose a new requirement to disclose Nationwide Mortgage Licensing System and Registry (NMLS) identification information on all correspondence from a mortgage company or sponsored originator. The adopted rules also limit existing disclosure requirements in connection with a mortgage company's physical office, as provided by §80.206, by eliminating the requirement that a mortgage company post its hours of operation at each physical office. The adopted rules make changes to the advertising requirements imposed on mortgage companies by rule, contained in §80.203. The adopted rules limit existing

advertising requirements by eliminating the requirement that a mortgage company recite the address of its physical office in Texas when making an advertisement. The adopted rules further alter requirements for advertising including by: clarifying an existing requirement that advertisements on social media sites are subject to the rules; limiting existing advertising requirements by allowing a mortgage company to promote its website address on certain promotional items deemed by rule not to constitute an advertisement; clarifying that signs on the premises of a mortgage company are not subject to the advertising requirements; and clarifying that a mortgage company may advertise directly, and need not advertise by and through an originator sponsored by the mortgage company.

Duties and Responsibilities Changes

The adopted rules make changes to the duties and responsibilities imposed on licensed mortgage companies by rule, contained in §80.202. The provisions of existing subsection (a) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (a) to be deemed a violation of the prohibition against a mortgage company engaging in fraudulent and dishonest dealings pursuant to Tex. Fin. Code §156.303(a)(3). The prohibition against disparaging a source of income for a mortgage loan, contained in existing subsection (b), paragraph (3), is clarified to include the more likely and harmful scenario where the source of funds is inflated to secure loan approval. The provisions of existing subsection (b) are eliminated and replaced with language causing each discrete act contained in the paragraphed list under subsection (b) to be deemed a

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violation of the prohibition against a mortgage company engaging in improper dealings pursuant to Tex. Fin. Code §156.303(a)(3). Existing subsection (b), paragraph (3), which prohibits a mortgage company from representing to a mortgage applicant that a fee payable to the mortgage company operates as a discount point for the transaction, is clarified to prohibit any similar representation that such fee confers a financial benefit on the mortgage applicant, except in the limited circumstances set forth in the subparagraphs under existing subsection (b), paragraph (3). The provisions of existing subsection (b), paragraph (3), subparagraph (D), requiring a mortgage company to respond accurately to a question about the scope and nature of its services and any costs, are eliminated and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage company to respond within a reasonable time to questions from a mortgage applicant. A new subsection (d) is added to offer additional guidance on the existing requirement barring the splitting of origination fees with a mortgage applicant except in the narrow circumstances elucidated by the Consumer Financial Protection Bureau (CFPB) in Regulation X. In order to aid enforcement and prevent evasion of the requirement by those individuals who are acting in the dual capacity of an originator sponsored by the mortgage company and a real estate broker or sales agent licensed under Occupations Code, Chapter 1101, the adopted rules create a rebuttable presumption that a rebate or other transfer to the mortgage applicant made after closing is derived from his or her role as originator (a violation), and, conversely, not derived from his or her role as real estate broker or sales agent.

Books and Recordkeeping Changes

The adopted rules make various changes to the requirements for a mortgage company and its sponsored originator to keep books and records, contained in §80.204. The adopted rules clarify the existing requirement that a mortgage company or its sponsored originator maintain a copy of the mortgage loan application signed by both the originator and the mortgage applicant. The adopted rules also expand an existing requirement directing a mortgage company to maintain a log of its mortgage transactions. The adopted rule requires that such log describe the purpose for the loan and the owner's intended occupancy of the real estate securing the mortgage loan. The adopted rules also impose a new requirement to maintain records establishing the physical office of the mortgage company, and other more minor such changes.

Other Modernization and Update Changes.

The adopted rules make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal for the rule amendments recited a deadline of 30 days to receive public comments, or October 25, 2020. A public hearing in accordance with Government Code §2001.029 was not required. No comments were received.

The agency certifies that legal counsel has reviewed the adoption and found it to be a

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valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 14, 2020.

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Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §80.1, §80.2

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapter 156.

§80.1.Scope.

This chapter governs the licensing, registration, and conduct of mortgage companies, financial services companies, credit union subsidiary organizations, auxiliary mortgage loan activity companies [~~Mortgage Companies, Financial Services Companies, Credit Union Subsidiary Organizations, Auxiliary Mortgage Loan Activity Companies~~], and independent contractor loan processors and underwriters [~~Independent Contractor Loan Processors and Underwriters~~] under Finance Code, Chapter 156. Pursuant to Tex. Fin. Code §156.2012(b)(7), a company registered with the Department as a financial services company is subject to the requirements of this chapter as if the company were licensed by the Department as a mortgage company and the rules contained in this chapter must be construed accordingly [~~This chapter also governs the conduct of Residential Mortgage Loan Originators who are subject to or engage in regulated activities under Finance Code, Chapter 156 and Chapter 180, except for individuals engaged in authorized activity subject to the authority of a regulatory official under Finance Code, §180.251(e). The terms "licensed" and "registered" may be used interchangeably.~~].

§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 (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

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

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

(4) [(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 156.

[(4)] "Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002.]

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

(6) [(5)] "Control person [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 [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[is presumed to control that company].

[(6)] "~~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;]

[(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;]

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~~[(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.]~~

(7) (No change.)

(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.

(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 financial information

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

~~[(9) One to four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one to four family dwelling, including a manufactured home, is being or is to be constructed or situated.]~~

(10) "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.

(11) [(8)] "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §156.002 [Finance Code §180.002(12)].

(12) "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.

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(13) "Originator" has the meaning assigned by Tex. Fin. Code §156.002 in defining "residential mortgage loan originator." Paragraphs (12) and (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.

(14) "Person" means an individual, corporation, company, limited liability company, partnership or association.

(15) [(40)] "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 [are] conducted.

(16) [(44)] "Qualifying Individual" or "Qualified Individual" has the meaning assigned by Tex. Fin. Code [shall have the same meaning as that provided in Finance Code,] §156.002 in defining "qualifying individual."[-] Additionally, the license held by the Qualifying Individual [qualifying individual] must be held in a status[;] which authorizes them to conduct regulated activities, and the individual [is] sponsored of record in NMLS by the mortgage company for which they are the Qualifying Individual [qualifying individual].

(17) [(42)] "Residential Mortgage Loan" has the meaning assigned by Tex. Fin. Code [shall have the same meaning as that provided in Finance 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 [~~one to four family residence~~], but is used for a commercial purpose such as a professional office, [~~beauty~~] salon, or other non-residential use, and is not used as a residence.

(18) "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.

(19) "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.

(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

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applicant, and regardless of whether or not a particular lender has been identified or selected.

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.200, 80.202 - 80.206

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapter 156.

§80.200. Required Disclosures.

(a) Specific Notice to Applicant. A mortgage company or its sponsored originator must provide [An originator sponsored under Finance Code, Chapter 156 shall include] the following notice[, Figure: 7 TAC §80.200(a),] to a residential mortgage loan applicant with an initial application for a residential mortgage loan, and the mortgage company must maintain in its records evidence of the timely delivery of such disclosure:

Figure: 7 TAC §80.200(a) (No change.)

(b) Posted Notice on Mortgage Company Websites and Social Media Sites. A mortgage [At each physical office, and on its website, a] company or its sponsored [an-

originator must [shall conspicuously] post in conspicuous fashion the following notice on each website and social media site of the mortgage company or sponsored originator that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business by the mortgage company or sponsored originator, or from which the mortgage company or sponsored originator advertises to solicit such business, as provided by §80.203 of this title (relating to Advertising):

Figure: 7 TAC §80.200(b) (No change.)

(c) Disclosures in Correspondence. A mortgage company must provide the following information on all correspondence sent to a mortgage applicant: [A notice is deemed to be conspicuously posted under subsection (b) of this section if a customer with 20/20 vision can read it from each place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, etc.) are posted. If applicable a notice is deemed conspicuously posted if prominently displayed on the website.]

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

(2) if the correspondence is from a sponsored originator, the name of the sponsored originator, followed by the sponsored originator's NMLS identification number.

(d) The determination of what constitutes a mortgage application for purposes of

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triggering the notice required by subsection (a) of this section will be made in accordance with applicable federal law determining what constitutes an application for purposes of the Truth in Lending Act, as implemented and defined by the Consumer Financial Protection Bureau in Regulation Z (12 C.F.R. §1026.2).

(e) The notice required by subsection (b) of this section is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. The notice required by subsection (b) of this section is deemed to be conspicuously posted on a social media site when it is readily apparent or easily accessible to the mortgage applicant or prospective mortgage applicant upon visiting the home page, profile page, account page, or similar, on such social media site, without the necessity to review various historical content posted by the mortgage company or sponsored originator in order to derive the information required by the notice, which may include an interactive link to the information with such link prominently displayed on such home page, profile page, account page, or similar.

§80.202.Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

(a) False, Misleading or Deceptive Practices. The following conduct by a mortgage company or its sponsored originator constitutes fraudulent and dishonest dealings for purposes of Tex. Fin. Code §156.303(a)(3) [No company or originator may]:

(1) knowingly misrepresenting the mortgage company's or its sponsored originator's [~~misrepresent his or her~~] relationship to a mortgage applicant or any other party to an actual or proposed residential mortgage loan transaction;

(2) knowingly misrepresenting [~~misrepresent~~] or understating [~~understate~~] any cost, fee, interest rate, or other expense in connection with a mortgage applicant's applying for or obtaining a residential mortgage loan;

(3) knowingly overstating, inflating, altering, amending, or disparaging [~~disparage~~] any source or potential source of residential mortgage loan funds in a manner which [~~knowingly~~] disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly participating [~~participate~~] in or permitting [~~permit~~] the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether or not to make or acquire a residential mortgage loan;

(5) as provided for by the Real Estate Settlement Procedures Act and Regulation X, brokering, arranging, or making [~~its implementing regulations, broker, arrange, or make~~] a residential mortgage loan in which the mortgage company [~~or originator~~] retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bear no reasonable relationship to the value of services actually performed;

(6) recommending [~~recommend~~] or encouraging [~~encourage~~] default or

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delinquency or continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

~~[(7) induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan.]~~

(7) ~~[(8)]~~ altering [~~alter~~] any document produced or issued by the Department [~~department~~], unless otherwise permitted by statute or a rule of the Department [~~statutory regulation~~]; or

(8) ~~[(9)]~~ engaging [~~engage~~] in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive.

(b) Improper Dealings. The following conduct by a mortgage company or its sponsored originator constitutes improper dealings for purposes of Tex. Fin. Code [~~The term "improper dealings" in Finance Code,~~] §156.303(a)(3) [~~includes, but is not limited to the following~~]:

(1) acting [~~Acting~~] negligently in performing an act for which a person is required under Finance Code, Chapter 156 to hold a license;

(2) violating [~~Violating~~] any provision of a local, State of Texas, or federal, constitution, statute, rule, ordinance, regulation, or final court decision that governs the same activity, transaction, or subject matter that is governed by the provisions of Finance Code, Chapter 156 or this chapter including, but not limited to, the following:

(A) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.);

(B) Regulation X (12 C.F.R. §1024 et seq.);

(C) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.);

(D) Regulation Z (12 C.F.R. §1026 et seq.);

(E) Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.);

(F) Regulation B; (12 C.F.R. §1002 et seq.); and

(G) Texas Constitution, Article XVI, §50.

(3) representing [~~Representing~~] to a mortgage applicant that a charge or fee which is payable to the mortgage company or its sponsored originator is a "discount point" or otherwise confers a financial benefit on the mortgage applicant unless the loan closes and:

(A) the [~~The~~] mortgage company [~~or originator~~] is the lender in the transaction. For purposes of this paragraph, the mortgage company [~~or originator~~] is deemed to be the lender if the mortgage company or sponsored originator, is the payee as evidenced on the face of the note or other written evidence of indebtedness; or

(B) the [~~The~~] mortgage company [~~or originator,~~] is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount point(s) or other fees which the mortgage company actually paid [~~or originator has remitted~~] to the lender on behalf of the mortgage applicant, to buy

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down the interest rate on a residential mortgage loan.

~~[(C) A company or an originator engages in a false, misleading or deceptive practice or improper dealings when in connection with the origination of a residential mortgage loan:]~~

~~[(i) The company or originator offers other goods or services to a consumer in a separate but related transaction and the company or originator engages in a false misleading or deceptive practice in the related transaction; or]~~

~~[(ii) The sponsor of an originator who offers other goods or services to a consumer in a separate but related transaction and the person engages in a false, misleading or deceptive practice in the related transaction; and the sponsor knew or should have known of the transaction.]~~

~~[(D) An originator receiving a verbal or written inquiry about his or her services shall respond accurately to any questions about the scope and nature of such services and any costs.]~~

(4) failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant concerning the scope and nature of the mortgage company's services and any costs.

(c) Related Transactions. A mortgage company engages in fraudulent and deceptive dealings for purposes of Tex. Fin. Code §156.303(a)(3) when, in connection with the origination of a residential mortgage loan:

(1) the mortgage company or sponsored originator offers other goods or services to a consumer in a separate but related transaction and the mortgage company or sponsored originator engages in a false misleading or deceptive practice in the related transaction; or

(2) the mortgage company or sponsored originator affiliates with another person that provides goods or services to a consumer in a separate but related transaction, and the affiliated person performs false, misleading or deceptive acts, and the mortgage company or sponsored originator to the mortgage transaction knew or should have known of the false, misleading or deceptive acts of the affiliated person and failed to take appropriate steps to prevent or limit such false, misleading or deceptive acts.

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage company and its sponsored originator must not offer or agree to share or split any residential mortgage loan origination fees with a mortgage applicant, rebate all or part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing mortgage loan origination services unless otherwise allowable as provided by Regulation X. A sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent licensed under Occupations Code, Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or

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other transfer described herein occurs as a part of closing and is properly reflected in the closing disclosure for the transaction. If a payment or other transfer described herein by a mortgage company or sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the sponsored originator's fees for mortgage origination services, and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption created by this subsection may only be overcome by clear and convincing evidence established by the mortgage company or sponsored originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection (d) is deemed to constitute improper dealings for purposes of Tex. Fin. Code §156.303(a)(3).

§80.203.Advertising.

- (a) A mortgage company or sponsored originator that advertises [~~Licensees who advertise~~] 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 [~~are~~] offered by or through a mortgage company or sponsored originator must [~~shall~~] conform to the following requirements:
- (1) a mortgage company or sponsored originator may [~~An advertisement shall be made~~] only advertise for such products and terms as are actually available and, if [~~their~~] availability is subject to any material

requirements or limitations, the advertisement must [~~shall~~] specify those requirements or limitations.

(2) except [~~Except~~] as provided in subsections [~~subsection~~] (c) and (d) of this section the advertisement must [~~shall~~] contain:

(A) the name of the mortgage company [~~originator~~] followed by the mortgage company's NMLS identification number; and [~~name of the sponsoring mortgage company as designated in the records of the Commissioner as of the date of the advertisement;~~]

(B) the name of the sponsored originator followed by the sponsored originator's NMLS [~~originator's Nationwide Mortgage Licensing System and Registry~~] identification number. [~~;~~ and]

~~[(C) the company's physical office or branch office street address in Texas.]~~

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

(4) an [~~An~~] advertisement must [~~shall~~ ~~otherwise~~] 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 [~~credit~~] transaction or is otherwise designed to solicit residential mortgage loan origination business for the mortgage

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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~~ [shall] not apply to:

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

(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 physical office.

(d) Advertising Directly by a Mortgage Company. The provisions of subsection (b) notwithstanding, a mortgage company 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 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 [shall] 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 [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, [shall contain] at a minimum [the following]:

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

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(B) ~~[either]~~ 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 ~~[signed and dated]~~ disclosure statement required by Tex. Fin. Code §156.004 [Finance Code, Chapter 156] and §80.200(a) of this title (relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored originator ~~[chapter]~~;

(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 ~~[lock-ins]~~ 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 ~~[Finance 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 ~~[and how to contact them]~~;

(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) ~~[(C)]~~ a description of the disposition of the application for a residential mortgage loan;

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

(G) ~~[(E)]~~ the full name of the originator and his or her NMLS ~~[their Nationwide Mortgage Licensing System and Registry]~~ identification number.

(3) General Business Records. General business records include ~~[the following]~~:

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

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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 contractors and all others compensated by such mortgage company [~~originator~~] in connection with the residential mortgage loan origination [~~lending~~] 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 [~~lending services~~] 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 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] be maintained in good order and must [~~shall~~] 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, [~~be grounds for~~] suspension or revocation of a license.

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

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(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 [An originator may meet applicable recordkeeping requirements if his or her sponsoring company maintains the required records].

~~[(h) Upon termination of operations, the licensee shall notify the Commissioner, in writing, within ten days where the required records will be maintained for the prescribed periods. If such records are transferred to another licensee the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Commissioner.]~~

§80.205.Mortgage Call Reports.

(a) Call Report.

(1) A mortgage company must [~~shall~~] file a mortgage call report on a quarterly basis. The filing deadlines are set by NMLS [~~the Nationwide Mortgage Licensing System and Registry~~].

(2) A call report is required to be filed for each quarter a license is held, including partial quarters.

(3) The call report must [~~shall~~] be submitted through and in the manner and form prescribed by NMLS [~~the Nationwide Mortgage Licensing System and Registry~~].

(b) Statement of Condition Report.

(1) A mortgage company must [~~shall~~] file a statement of condition on an annual basis.

(2) A statement of condition report is required to be filed for each year a license is held, including partial years.

(3) The statement of condition report must [~~shall~~] be submitted through and in the manner and form prescribed by NMLS [~~the Nationwide Mortgage Licensing System and Registry~~].

(c) Submission of a call report or statement of condition report, by a mortgage company[~~;~~] satisfies the requirements of an originator sponsored by the mortgage company to submit a mortgage call report, as required by Tex. Fin. Code [~~under Finance Code,~~] §180.101 for the period of sponsorship, provided that the sponsored originator's information is included in the report.

(d) Failure to file a mortgage call report or a statement of condition report may result in disciplinary [~~administrative~~] action, including, but not limited to, imposition [~~which includes the assessment~~] of an administrative penalty.

§80.206.Physical Office.

(a) A physical office [~~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

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on a regular basis ~~[during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area].~~

(3) have at least one ~~[(1)]~~ staff member present to assist customers during the hours in which the physical office ~~[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) ~~(b)~~ The Physical Office ~~[of a licensee]~~ need not be the location where ~~[at which such person's]~~ required records are maintained; however, ~~[but]~~ the location where ~~[at which]~~ such ~~[required]~~ 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

7 TAC §80.300, §80.301

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code, Chapter 156, and as required

to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code, Chapter 156.

§80.300.Examinations.

(a) The Commissioner, or the Commissioner's designee(s), ~~[operating through the department staff and such others as the Commissioner may, from time to time, designate]~~ will conduct periodic examinations of a mortgage company or sponsored ~~[an]~~ originator as the Commissioner deems necessary.

(b) Notice of Examination. Except when the Department ~~[department]~~ determines that giving advance notice would impair the examination, the Department ~~[department]~~ will give the qualifying individual of the mortgage company advance notice of each examination. Such notice will be sent to the qualifying individual's mailing address ~~[of record]~~ or email ~~[e-mail]~~ address of record ~~[on file]~~ with NMLS ~~[the department]~~ and will specify the date on which the Department's ~~[department's-]~~ examiners are scheduled to begin the examination. Failure [of the qualifying individual] 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 the mortgage company or sponsored originator must make ~~[qualifying individual should have]~~ available to facilitate the examination ~~[for the examiner to review]~~.

(c) Examinations will be conducted to determine compliance with Finance Code,

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Chapter 156 and this chapter, and will specifically address whether:

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

(2) all [~~All~~] locations at which such activities are conducted are properly licensed and registered with NMLS;

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

(4) legal [~~Legal~~] and regulatory requirements applicable to the mortgage company and its originators [~~licensees~~] are being properly followed; and

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

(d) The examiners [~~examiner~~] will review a sample of residential mortgage loan files identified by the examiners [~~examiner~~] and randomly selected from the mortgage company's [~~residential~~] 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 [~~examiner~~] may require a mortgage company [~~or an originator~~], at its [~~their~~] own cost, to make copies of loan files or such other books and records as the examiners deem [~~examiner deems~~] appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work papers, compilations, [~~workpapers,~~] findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will [~~shall~~] 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 [~~an~~] sponsored originator to cooperate with the examination or failure to grant the examiners [~~examiner~~] access to books, records, documents, operations, and facilities may result in disciplinary action [~~will subject the company or originator to enforcement actions by the Commissioner,~~] including, but not limited to, imposition of an administrative penalty [~~penalties~~].

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

§80.301. Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions.

(a) - (b) (No change.)

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~~[(e) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 156.]~~

(c) ~~[(d)]~~ Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner ~~[he or she]~~ has no reason to believe to be other than reliable, including documentary or other evidence, or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 156.

~~[(e) A complaint which names a company or sponsored originator as the subject of the complaint is also a complaint against the qualifying individual at the time of any alleged violation. The qualifying individual of a company is responsible for all acts and conduct performed by or through the company and is required to fulfill his or her professional responsibility to the Commissioner and members of the public.]~~

~~[(f) If the Commissioner determines that a person has violated the requirements of Finance Code, Chapter 156, this chapter, or any order pursuant to Finance Code, Chapter 156 or this chapter, the Commissioner, after notice and opportunity for hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$25,000 per violation. The amount of the violation is at the Commissioner's discretion. In determining the amount of any administrative penalty(ies) for any violation(s) of Finance Code, Chapter 156 or this chapter, the Commissioner shall~~

~~consider such factors as required by Finance Code, §156.302.]~~

~~[(g) If the Commissioner has reasonable cause to believe that a licensee has violated or is about to violate Finance Code, Chapter 156, this chapter, or an order issued pursuant to this chapter, the Commissioner may, without notice and hearing, issue an order to cease and desist a particular action or an order to take affirmative action, or both, to enforce compliance with Finance Code, Chapter 156 and this chapter. Any such order must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter and Government Code, Chapter 2001. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.]~~

~~[(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.]~~

~~[(i) The Commissioner may order disciplinary action after notice and opportunity for hearing against a company or an originator if the Commissioner becomes aware during the term of the~~

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license of any fact that would have been
~~grounds for denial of an original license if~~
~~the fact had been known by the~~
Commissioner on the date the license was
issued.]