



DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

NOTICE OF STAKEHOLDER WEBINAR

SML Residential Mortgage Loan Rule Review

The Department of Savings and Mortgage Lending (Department) will hold a stakeholder webinar on July 29, 2020 at 1:00 p.m. to discuss the pre-comment draft of amendments to the Department's rules relating to the residential mortgage loan industry. The rules up for discussion are:

- ❖ Residential Mortgage Loan Servicers – 7 TAC §79.1 and §79.2
- ❖ Texas Residential Mortgage Loan Companies – 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, 80.300 and 80.301
- ❖ Mortgage Bankers and Residential Mortgage Loan Originators – 7 TAC §§81.1 – 81.3, 81.200, 81.202 – 81.206, 81.300 and 81.301

The amendments were identified during the Department's periodic review of its rules affecting the residential mortgage loan industry, conducted pursuant to Government Code, §2001.039.

The Department will also accept informal written pre-comments until August 5, 2020 at 5:00 p.m. The Department plans to present the rules for consideration by the Finance Commission at its August 21, 2020 meeting.

The preamble proposal for each chapter of the rules (7 TAC, Chapters 79, 80, 81) contains an explanation for the rule amendments as well as a summary of the proposed changes.

Participating in the Webinar

The webinar will take place utilizing the WebEx platform by Cisco.

Note: Participants need to pre-register for the webinar. While WebEx has the capability for participants to appear by video, participation by panelists and the attendees will be by audio only.

[Registration Link](#)

Submission of Informal Pre-comments

Informal pre-comments regarding the Department's draft rule amendments may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by e-mail to rules.comments@sml.texas.gov. **Informal pre-comments must be received by 5:00 p.m. on August 5, 2020.**

PROPOSED AMENDMENTS
7 TAC §79.1 AND §79.2
PAGE 1 OF 4

Title 7. Banking and Securities.
Part 4. Department of Savings and Mortgage Lending.
Chapter 79. Residential Mortgage Loan Servicers.
Subchapter A. Registration.
7 TAC §79.1 and §79.2.

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to existing rules at 7 Texas Administrative Code (TAC), Chapter 79, Subchapter A, §79.1 and §79.2. This proposal and the rules as amended by this proposal are referred to collectively as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 7 TAC Chapter 79 implement Finance Code, Chapter 158, Residential Mortgage Loan Servicers. The proposed rules were identified during the department's periodic review of Chapter 79, conducted pursuant to Government Code §2001.039. The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing existing language to improve clarity and readability; removing unnecessary provisions; updating terminology; and eliminating a form published by rule.

SUMMARY OF CHANGES

The proposed rules amend Subchapter A, Residential Mortgage Loan Servicers.

The proposed rules amend §79.1, Definitions. The proposed rules amend the implied subsection (a) to add language clarifying that the definitions are also used in the department's administration and enforcement of Finance Code, Chapter 158. The definition for commissioner at paragraph (1) is amended to clarify that the commissioner is that individual appointed under Finance Code, Chapter 13. The definition for commissioner's designee at paragraph (2) is amended correct a minor error in grammar. The definition for the term "Nationwide Mortgage Licensing System and Registry" is amended to eliminate a definition adopted by reference to a statute unrelated to Finance Code, Chapter 158 and, instead adopt a definition set forth in the rule. The definition for person is amended to adopt by reference a statutory definition within Finance Code, Chapter 158, and reduce word count. The definition for "Act," creating a defined term for the entirety of Finance Code, Chapter 158, is amended to make it a definition for the two-word phrase "the Act," thereby organizing the definitions by alphabetical order.

The proposed rules amend §79.2, Required Disclosure. Subsection (a) is amended to combine the existing requirements of subsection (a) and (b), concerning the form and content of the required disclosure, into a single subsection. The graphic and form embedded in the rule after existing subsection (b) is eliminated. Instead, language is added to subsection (a) to state that the department will publish the form on its website. The remaining requirements of existing subsection (b), prohibiting provision of the disclosure by residential mortgage loan servicer registrants when servicing loans secured by real estate not located in Texas, are restated to improve clarity.

PROPOSED AMENDMENTS
7 TAC §79.1 AND §79.2
PAGE 2 OF 4

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Florence, director of mortgage examination for the department (director), has determined that for the first five-year period the proposed rules are in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of administering or enforcing the proposed rules.

PUBLIC BENEFITS

The director has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSED RULES

The director has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do not expand, limit, or eliminate an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

PROPOSED AMENDMENTS
7 TAC §79.1 AND §79.2
PAGE 3 OF 4

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial economic costs anticipated to persons who are required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code §158.003 which authorizes the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code, Chapter 158.

This proposal affects the statutes contained in Finance Code, Chapter 158. No other statute is affected by this proposal.

<rule>

Subchapter A. Registration.

§79.1. Definitions.

As used in this chapter, and in the Department's administration and enforcement of Finance Code, Chapter 158, the following terms have the meanings indicated:

- (1) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.
- (2) "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 the Act.
- (3) (No change.)
- (4) "Nationwide Mortgage Licensing System and Registry" or "NMLS" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of

PROPOSED AMENDMENTS
7 TAC §79.1 AND §79.2
PAGE 4 OF 4

state residential mortgage loan originators [has the meaning assigned by Finance Code §180.002(12)].

(5) "Person" has the meaning assigned by Tex. Fin. Code §158.002 [~~means an individual, corporation, company, limited liability company, partnership or association~~].

(6) "The ["]Act" means the Residential Mortgage Loan Servicer Registration Act, as provided by Tex. Fin. Code §158.001 [~~Finance Code, Chapter 158~~].

§79.2. Required Disclosure.

(a) Residential mortgage loan servicer registrants must include a written disclosure of the Department's regulatory oversight on all correspondence provided to the borrower, including all periodic statements. The disclosure must be in the current form prescribed by the Department and published on its website [~~For the servicing of residential mortgage loans on real estate located in Texas, pursuant to Texas Finance Code §158.101 a registrant shall provide to the borrower of each residential mortgage loan the disclosure contained in the following figure not later than the 30th day after the registrant begins servicing the loan~~].

(b) The requirements of this section apply only to residential mortgage loan registrants servicing residential mortgage loans secured by real estate located in Texas. Residential mortgage loan servicer registrants servicing mortgage loans secured by real estate not located in Texas must not include the written disclosure referenced by this section. [~~In order to let borrowers know how to file complaints with the Department, Residential Mortgage Loan Servicer registrants servicing residential mortgage loans on real estate located in Texas, must include the disclosure contained in the following figure in all correspondence provided to the borrowers. This written notice shall not be provided regarding the servicing of residential mortgage loans on real estate which is not located in Texas. Registrants servicing residential mortgage loans on real estate located in Texas, shall also post the disclosure in the following figure on their website, with a statement to reflect that such disclosure notice only applies to the residential mortgage loans on real estate located in Texas:~~

Figure: §79.2(b)]

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 1 OF 26

Title 7. Banking and Securities.

Part 4. Department of Savings and Mortgage Lending.

Chapter 80. Texas Residential Mortgage Loan Companies.

7 TAC §§ 80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 and 80.301.

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to existing rules at 7 Texas Administrative Code (TAC), 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. This proposal and the rules as amended by this proposal are referred to collectively as the "proposed rules."

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 proposed 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 proposed rules, if adopted, add several new definitions to §80.2 related to the definition of a residential mortgage loan originator. The proposed rules eliminate the existing definition for "residential mortgage loan originator," the subject matter of which is replaced by inserting 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 proposed rules insert 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 proposed 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 proposed rules, if adopted, 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 proposed rules add a definition for "compensation" for that same purpose.

Other Definitions Changes

The proposed rules, if adopted, make other changes to the definitions section in §80.2. The proposed rules eliminate the existing definition for "one-to-four family residential real property," the subject matter of which is generally replaced by inserting two new definitions for "dwelling" and "residential real estate," terms which are used in Finance Code, Chapter 156. The proposed 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 proposed rules also add the following new definitions: "mortgage applicant," "mortgage company," "person," and "social media site."

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 2 OF 26

Required Disclosures and Advertising Changes

The proposed rules, if adopted, would make changes to the disclosures a mortgage company or its sponsored originator are required to make, as provided by §80.200. The proposed 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 proposed 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 proposed 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 such physical office. The proposed rules, if adopted, would make changes to the advertising requirements imposed on mortgage companies by rule, contained in §80.203. The proposed 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 proposed 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 proposed rules, if adopted, would 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). Certain acts on such list, which presently require a violation to be a knowing violation, are revised to also include acts committed negligently. 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 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

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 3 OF 26

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 inserted 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 proposed 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 proposed rules, if adopted, would make various changes to the requirements for a mortgage company and its sponsored originator to keep books and records, contained in §80.204. The proposed 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 proposed rules also expand existing requirements that a mortgage company maintain a log of its mortgage transactions including by requiring that such log describe the purpose for the loan and the owner's intended occupancy of the real estate securing the mortgage loan. The proposed 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 proposed rules, if adopted, would 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 CHANGES

The proposed rules amend Subchapter A, General Provisions.

The proposed rules amend §80.1, Scope. Capitalized terms in the existing implied subsection (a) that have not been reduced to a defined term elsewhere in the rules are eliminated. Language suggesting Chapter 80 also governs the actions of licensed residential mortgage loan originators is eliminated. A new closing sentence is added to clarify that Chapter 80 should be construed as applying to any company registered with the Department as a financial services company just as if such company were licensed by the Department as a mortgage company, as provided by Tex. Fin. Code §156.2012. (Other Modernization and Update Changes.)

The proposed rules amend §80.2, Definitions. A new definition for "application" is inserted at paragraph (1) and the existing paragraphs are renumbered accordingly. Statutory references are

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 4 OF 26

added to such definition to indicate its use in determining when an individual is acting as a residential mortgage loan originator. A new definition for "compensation" is inserted at paragraph (5), and the existing paragraphs are renumbered accordingly. A new definition for the phrase "offers or negotiates the terms of a residential mortgage loan" for purposes of Tex. Fin. Code §156.002(14) is inserted at paragraph (12), and the existing paragraph renumbered accordingly. A new definition for "originator" is inserted at paragraph (13). A new definition for the phrase "takes a residential mortgage loan application" for purposes of Tex. Fin. Code 156.002(14) is inserted at paragraph (20). (Definition of a Residential Mortgage Loan Originator Changes.) The existing definition for "company" located at paragraph (4) is eliminated and its subject matter replaced with a new definition for "mortgage company" at paragraph (10) which adopts by reference the statutory definition for residential mortgage company in Chapter 156, and the existing paragraphs are renumbered accordingly. The existing definition for "criminal offense" located at paragraph (6) is eliminated. The existing definition for "one-to-four family residential real property" located at paragraph (9) is eliminated and its subject matter replaced with two new definitions for "dwelling" and "residential real estate" inserted at paragraphs (8) and (18), respectively, and the existing paragraphs are renumbered accordingly. A new definition for "mortgage applicant" is inserted at paragraph (9), replacing the existing definition for "one-to-four family residential real property." A new definition for "person" is inserted at paragraph (14). A new definition for "social media site" is inserted at paragraph (19). (Other Definitions Changes.) The implied subsection (a) is amended to add language clarifying that the definitions are also used in the department's administration and enforcement of Finance Code, Chapter 156. The existing definition for "branch office" is renumbered and amended to: eliminate capitalization of the term; add a statutory reference which uses the term; and eliminate use of the phrase "headquarters location" and, instead, replace it with the phrase "principal place of business," used to determine what a branch office is by differentiation with such principal place of business. The existing definition for "commissioner" is renumbered and amended to clarify that the commissioner is that individual appointed under Finance Code, Chapter 13. (Other Modernization and Update Changes.)

The proposed rules amend Subchapter C, Duties and Responsibilities.

The proposed rules amend §80.200, Required Disclosures. Subsection (b) is amended to eliminate the requirement that a licensed mortgage company post a notice to consumers in its physical office. The provisions in existing subsection (c), which dictate how a mortgage company displays such notice in its physical office, are eliminated. Subsection (b) is further amended to expressly require a mortgage company to post the disclosure on its social media sites. Subsection (b) is further amended to clarify that only websites and social media sites accessible by a consumer and used to conduct business are affected by the rule's requirements. New provisions are inserted in subsection (c) requiring a mortgage company to disclose its NMLS identification number, and if the correspondence is from a sponsored originator, the NMLS number of that originator. Existing subsection (a) requires that a specific disclosure be made and served on a mortgage applicant upon receipt of a mortgage application. A new subsection (d) is inserted to clarify that a determination of when an application has been received for purposes of the rule will be made in accordance with

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 5 OF 26

federal law and the Truth in Lending Act. (Required Disclosures and Advertising Changes.) Subsection (a) is amended to provide additional notice that the mortgage company must maintain records reflecting delivery of the disclosures required by the rule, as is also provided by existing 7 TAC §80.204. (Books and Recordkeeping Changes.) Subsection (a) is amended to eliminate language imposing the requirement on residential mortgage loan originators directly as being duplicative of similar provisions in 7 TAC §81.200. Subsection (a) is further amended to insert an introductory heading and use updated terminology. Subsection (b) is amended to add an introductory heading and use updated terminology. The new provisions of subsection (c) include an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §80.202, Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings. The existing language of subsection (a) is eliminated and replaced with language clarifying that the commission of an act in the paragraphed list set forth under subsection (a) constitutes a violation of Tex. Fin. Code §156.303(a)(3). Existing subsection (a), paragraphs (1), (2) and (4), which require that a violation be committed knowingly, are amended to also include violations committed negligently. Existing subsection (a), paragraph (3), establishing a violation for disparaging the source of mortgage loan funds, is amended to insert language establishing a violation for inflating or amending such source of income. Existing subsection (a), paragraph (7), establishing a violation for inducing a party to breach a contract in order to secure a mortgage loan, is eliminated as duplicative of the statutory provisions of Tex. Fin. Code §156.303(a)(9), without offering any additional guidance, and the remaining paragraphs are renumbered accordingly. The existing language of subsection (b) is eliminated and replaced with language clarifying that commission of an act in the paragraphed list set forth under subsection (b) constitutes a violation of Tex. Fin. Code §156.303(a)(3). Subsection (b), paragraph (3) is amended to clarify that any representation to a mortgage applicant that an origination fee payable to the mortgage company confers a financial benefit on the mortgage applicant is violative of the rule. The provisions of existing subsection (b), paragraph (3), subparagraph (D), requiring an originator (not the mortgage company) to respond accurately to a question about the scope and nature of his or her 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 inserted 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 CFPB in Regulation X. (Duties and Responsibilities Changes.) Subsection (a), paragraph (5) is amended to clarify that the federal Real Estate Settlement Procedures Act is implemented by the CFPB in Regulation X. Subsection (a) is further amended to include an introductory heading. Subsection (b), paragraph (2), subparagraphs (A) - (F) are amended to insert citations to federal law referenced in subsection (b). Subsection (b), paragraph (3), subparagraph (C) is eliminated and restated as new subsection (c), including with clearer language and an introductory heading. Subsection (b) is also amended to include an introductory heading. New subsection (d) includes an introductory heading. (Other Modernization and Update Changes.)

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 6 OF 26

The proposed rules amend §80.203, Advertising. Subsection (b), paragraph (2) is amended to require that an advertisement by a mortgage company include the name and NMLS number of the mortgage company, and the name and NMLS number of its sponsored originator, if applicable. Subsection (b), paragraph (2) is further amended to eliminate the requirement that a mortgage company recite the mortgage company's street address in Texas when making an advertisement. Subsection (c) is amended to expressly make certain items subject to the requirements of the rule, including physical printed handouts and messages delivered through a social media site. Subsection (c) is further amended to allow certain items already exempt from the rule's existing requirements to include the website address for the mortgage company. Subsection (c) is further amended to clarify that signs located on or adjacent to a mortgage company's physical office are exempt from the rule's requirements. A new subsection (d) is inserted allowing a mortgage company to directly advertise its services, and clarifies that it need not advertise by and through a sponsored originator. (Required Disclosures and Advertising Changes.) Subsection (a) is restated to improve clarity. Subsection (b) is restated to improve clarity and use updated terminology. New subsection (d) includes an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §80.204, Books and Records. Subsection (b), paragraph (2) is amended to require the mortgage transaction log maintained by the mortgage company to include the following additional information: the stated purpose for the loan; and a description of the owner's intended occupancy of the subject real estate securing the loan. New provisions are inserted at subsection (b), paragraph (4) to require a mortgage company to maintain records establishing its physical office including the staff members present at such physical office, and documents establishing its right to occupy the physical office and conduct business there. (Books and Recordkeeping Changes.) Subsection (a) is amended to insert an introductory heading. Subsection (a) is further amended to clarify that the rule applies to licensed mortgage companies. Subsection (b) is amended to use updated terminology. Subsection (b), paragraph (1), subparagraph (A) is amended to clarify that the signed application the mortgage company is required to maintain in its records should be signed by each mortgage applicant and the sponsored originator. Subsection (b), paragraph (1), subparagraph (C) is amended to similarly clarify that the signed disclosure to consumers the mortgage company is required to maintain in its records should be signed by each mortgage applicant and the sponsored originator. Subsections (c) and (d) are amended to use updated terminology. Subsection (e) is amended to insert an introductory heading, use updated terminology, and to clarify that violation of the rule may result in disciplinary action broadly, and is not limited to license suspension or revocation. Subsection (f) is amended to insert an introductory heading and use updated terminology. The existing provisions of subsection (g) are eliminated as being duplicative of similar provisions in 7 TAC §81.204 and inappropriate for the rules chapter pertaining to mortgage companies. The existing provisions of subsection (h) are relocated to subsection (g), and further amended to insert an introductory heading and use updated terminology. The existing provisions of subsection (h), are restated in subsection (g) for additional clarity. (Other Modernization and Update Changes.)

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 7 OF 26

The proposed rules amend §80.205, Mortgage Call Reports. Subsection (a) is amended to use updated terminology. Subsection (b) is amended to use updated terminology. Subsection (c) is amended to clarify the rule's application to originators sponsored by a mortgage company, and to use updated terminology. Subsection (d) is amended to use updated terminology and clarify that a violation of the rule may result in disciplinary action broadly, and is not limited to an administrative penalty. (Other Modernization and Update Changes.)

The proposed rules amend §80.206, Physical Office. Subsection (a) is amended to eliminate language requiring a mortgage company to post its hours of operation at its physical office. (Required Disclosures and Advertising Changes.) A new subsection (b) is proposed to cross reference 7 TAC §80.204 and the proposed new requirement to maintain records reflecting establishment of the mortgage company's physical office, to provide additional notice of such requirement and promote compliance. The existing provisions of subsection (b) meanwhile are relocated to a proposed new subsection (c). (Books and Recordkeeping Changes.) Subsection (a) is further amended to remove capitalization of the term physical office, which has not been reduced to a defined term elsewhere in the rules. Proposed new subsection (b), which replaces the existing subsection (b), includes an introductory heading. The provisions of proposed new subsection (c), derived from those in existing subsection (b), are also restated to improve clarity. (Other Modernization and Update Changes.)

The proposed rules amend Subchapter D, Compliance and Enforcement.

The proposed rules amend §81.300, Examinations. Subsection (a) is amended to use updated terminology. Subsection (b) is amended to insert an introductory heading, and is restated with updated terminology. Subsection (c) is amended to use updated terminology. Subsection (c), paragraph (1) is amended to clarify that the scope of examination will include whether the originators are appropriately sponsored by the mortgage company, and whether all branch offices have been registered with NMLS. Subsection (d) is amended to use updated terminology. Subsection (e) is amended to use updated terminology. Subsection (f) is amended to insert an introductory heading. Subsection (g) is amended to insert an introductory heading and is restated to clarify that failure to cooperate with the examination will result in disciplinary action broadly and is not limited to an administrative penalty. Subsection (h) is amended to insert an introductory heading, and is restated for clarity, including using updated terminology. (Other Modernization and Update Changes.)

The proposed rules amend §80.301, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions. The provisions of existing subsection (c), and (e) - (i) are eliminated as being duplicative of the requirements of the Finance Code, and without offering additional guidance. The provisions of existing subsection (d) are relocated to a proposed new subsection (c) and further amended to use updated terminology. (Other Modernization and Update Changes.)

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 8 OF 26

Tony Florence, director of mortgage examination for the department (director), has determined that for the first five-year period the rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the proposed rules.

PUBLIC BENEFITS

The director has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand. The proposed rules related to Required Disclosures and Advertising Changes will benefit the public by providing additional disclosure of the department's regulatory oversight of mortgage companies, and the public's opportunity to file a complaint with and seek redress from the department for a violation of Chapter 156 or the rules adopted thereunder. Such rule changes will further limit existing requirements enforced by the department, allowing the department to reallocate and better utilize its resources in its examination and enforcement functions, and allowing the department to pursue violations of Chapter 156 that more directly impact the public. The proposed rules related to Duties and Responsibilities Changes clarify and update the duties and responsibilities imposed on a mortgage company by rule, the compliance with which will benefit the public utilizing the services of a mortgage company licensed by the department. The proposed rules related to Books and Recordkeeping Changes will provide the department with additional information when conducting examinations of mortgage companies licensed by the department, allowing the department to better detect and pursue violations of Chapter 156 while simultaneously streamlining the examinations process for the department and mortgage companies alike.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSED RULES

The director has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

The proposed rules' changes to §80.200 require the inclusion of the mortgage company's NMLS identification information on all correspondence. Since correspondence is tailored to the recipient, it will not place a burden on the mortgage company to add the required information. A mortgage company may be using electronic forms or other pre-printed letterhead to generate correspondence. Those mortgage companies that do not already include the required information on such electronic forms may be inclined to update their electronic forms to more easily comply with the rule. However, any such costs should only be incurred on a one-time basis and are anticipated to be *de minimis*. Moreover, use of electronic forms by a mortgage company is not required by the proposed rules, and is discretionary. Physical letterhead preexisting adoption of the rule that does not include the required information may still be used but with the information added upon tailoring the correspondence for the intended recipient, at no cost.

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 9 OF 26

The proposed rules' changes to §80.204 require a mortgage company to record additional information on the mortgage transaction log it is required to make under existing requirements. The additional information is already created and exists as a byproduct of the residential mortgage loan application process. The rule merely requires that the existing information be transposed to the existing mortgage transaction log for review by the department's examiners in the same manner as the other information required on the mortgage transaction log under existing requirements. A mortgage company may be using electronic forms or other pre-printed paper logs for purposes of maintaining its mortgage transaction log. A Mortgage company that use such electronic forms may be inclined to update its electronic forms to more easily comply with the rule. However, any such costs are anticipated to be *de minimis*. Moreover, the use of electronic forms by a mortgage company is not required by the proposed rules, and is discretionary. Physical logs preexisting adoption of the rule may still be used and supplemented with the required information, at no cost.

The proposed rules' changes to §80.204 also require a mortgage company to maintain records concerning its physical office. The requirement to maintain such physical office is imposed by Tex. Fin. Code §156.2041, and not a rule adopted by the department. By establishing such physical office in conformity with the statute, the mortgage company will have already created the underlying information required to be maintained by the rule. The proposed rules merely require that the information be maintained in a form that is readily accessible to the department's examiners when examining the mortgage company, and does not impose a cost.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules create a new requirement for mortgage companies to list their NMLS identification number on all correspondence sent to a mortgage applicant. The proposed rules create a new requirement for mortgage companies to maintain records establishing their physical office; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules expand an existing rule requirement by establishing that certain conduct by a mortgage company constituting a violation of the rules when committed intentionally is also a violation when committed negligently. The proposed rules expand an existing rule requirement by requiring that additional information be included on the required mortgage transaction log. The proposed rules limit an existing rule requirement by eliminating the requirement to post disclosures at the physical office of the

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 10 OF 26

mortgage company (but not eliminating such disclosures entirely). The proposed rules limit an existing rule requirement by expanding the number of items deemed not to be an advertisement and exempt from the department's advertising requirements, and further allowing such items to recite the website address of the mortgage company. The proposed rules repeal an existing rule requirement that a mortgage company post its hours of operation at its physical office. The proposed rules repeal an existing rule requirement that a mortgage company recite its physical address in Texas when making an advertisement; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

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. No other statute is affected by this proposal.

<rule>

Subchapter A. General Provisions.

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 11 OF 26

§80.1. Scope.

This chapter governs the licensing, registration, and conduct of mortgage companies [~~Mortgage Companies~~], financial services companies [~~Financial Services Companies~~], credit union subsidiary organizations [~~Credit Union Subsidiary Organizations~~], auxiliary mortgage loan activity companies [~~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(c). 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 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) [~~(1)~~] "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.

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 12 OF 26

(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;~~

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

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 13 OF 26

~~[(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);

(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; or

(D) recommends, refers, or steers a mortgage applicant or prospective mortgage applicant to a particular originator, lender, or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the mortgage applicant or prospective mortgage applicant.

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

(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~~

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 14 OF 26

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

Subchapter C. Duties and Responsibilities.

§80.200. Required Disclosures.

(a) Specific Notice to Applicant. A mortgage company or its sponsored originator [~~An originator sponsored under Finance Code, Chapter 156~~] must provide [~~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)

(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:

Figure: 7 TAC §80.200(b)

(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~~

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 15 OF 26

~~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 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 or negligently 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 or negligently 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) 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;

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 16 OF 26

(4) knowingly or negligently 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 [~~its implementing regulations~~], brokering, arranging, or making [~~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 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) [~~(8)~~] altering [~~alter~~] any document produced or issued by the Department, unless otherwise permitted by statute or a rule of the Department.

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

(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 negligently in performing an act for which a person is required under Finance Code, Chapter 156 to hold a license;

(2) 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.

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 17 OF 26

(3) 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 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 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 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.

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 18 OF 26

(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 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 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 [~~name of the sponsoring mortgage company as designated in the records of the Commissioner as of the date of the advertisement~~]; and

(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]

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 19 OF 26

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

(3) 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 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 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 [a coffee mug], pens or pencils [pencil], shirts or other clothing (including company uniforms and sponsored youth league jerseys) [jersey], or other promotional items of nominal value; [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.

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 20 OF 26

(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;

(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, 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;

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 21 OF 26

(F) ~~(D)~~ the identity of the person who initially funded and/or acquired the residential mortgage loan ~~[and information as to how to contact them]~~; 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 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

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 22 OF 26

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.

(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]~~.

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 23 OF 26

(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 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 ~~[(4)]~~ 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.

(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.

§81.300. 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

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 24 OF 26

[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, 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 locations at which such activities are conducted are properly licensed and registered with NMLS;

(3) All required books and records are being maintained in accordance with §80.204 of this title [chapter];

(4) Legal and regulatory requirements applicable to the mortgage company and its originators [licensees] 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 [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, 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

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 25 OF 26

[out-of-state] to conduct an examination of a mortgage company or a [an] sponsored 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.)

(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) 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.~~]

[~~(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.~~

PROPOSED AMENDMENTS
7 TAC §§80.1, 80.2, 80.200, 80.202 - 80.206, 80.300 AND 80.301
PAGE 26 OF 26

~~(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 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.]~~

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 1 OF 25

Title 7. Banking and Securities.

Part 4. Department of Savings and Mortgage Lending.

Chapter 81. Mortgage Bankers and Residential Mortgage Loan Originators.

7 TAC §§ 81.1 - 81.3, 81.200, 81.202 - 80.206, 81.300 and 81.301.

The Finance Commission (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes amendments to existing rules at 7 Texas Administrative Code (TAC), Chapter 81, Subchapter A, §§81.1 - 81.3; Subchapter C, §§81.200, 81.202 - 81.206; and Subchapter D, §81.300, and §81.301. This proposal and the rules as amended by this proposal are referred to collectively as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 7 TAC Chapter 81 implement Finance Code, Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157. The proposed rules were identified during the department's periodic review of 7 TAC Chapter 81, conducted pursuant to Government Code, §2001.039.

Definition of a Residential Mortgage Loan Originator Changes

The proposed rules, if adopted, add several new definitions to §81.2 related to the definition of a residential mortgage loan originator. The proposed rules eliminate the existing definition for "residential mortgage loan originator," the subject matter of which is replaced by inserting a new definition for "originator," to adopt by reference the statutory definition for residential mortgage loan originator in Chapter 157 and the Texas SAFE Act, allowing for use of that shortened term throughout the rules, improving readability and reducing word count. The proposed rules add a definition for the phrase "takes a residential loan application," as used in Finance Code, §157.002(6) and §180.002(19) for purposes of determining when an individual is acting as a residential mortgage loan originator. The proposed 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 proposed rules, if adopted, also add a definition for the phrase "offers or negotiates the terms of a residential mortgage loan," as used in Finance Code, §157.002(6) and §180.002(19) for purposes of determining when an individual is acting as a residential mortgage loan originator. The proposed rules add a definition for "compensation" for that same purpose.

Other Definitions Changes

The proposed rules, if adopted, make other changes to the definitions section in §81.2. The proposed rules add the following new definitions: "dwelling," "mortgage applicant," "mortgage company," "Nationwide Mortgage Licensing System and Registry," "Recovery Fund," "residential real estate," and "social media site."

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 2 OF 25

Required Disclosures and Advertising Changes

The proposed rules, if adopted, would make changes to the disclosures a mortgage banker or originator is required to make, as provided by §81.200. The proposed rules limit existing disclosure requirements by eliminating the requirement for a mortgage banker or originator to post disclosures at a physical office. Existing requirements for posting disclosures on a website are clarified to expressly include a social media site of the mortgage banker or originator. The proposed rules impose a new requirement to disclose Nationwide Mortgage Licensing System and Registry (NMLS) identification information on all correspondence from an originator. The proposed rules also limit existing requirements in connection with a mortgage banker's physical office, as provided by 7 TAC §81.206, by eliminating the requirement that a mortgage banker post its hours of operation at such physical office. The proposed rules, if adopted, would make changes to the advertising requirements imposed on mortgage bankers and originators by rule, contained in §81.203. The proposed rules limit existing advertising requirements by eliminating the requirement that a mortgage banker or its sponsored originator recite the mortgage banker's address when making an advertisement. The proposed 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 banker or originator to promote a website address on certain promotional items deemed by rule not to constitute an advertisement; clarifying that signs on the premises of a mortgage banker or originator are not subject to the advertising requirements; and clarifying that a mortgage banker may advertise directly, and need not advertise by and through an originator sponsored by the mortgage banker.

Duties and Responsibilities Changes

The proposed rules, if adopted, would make changes to the duties and responsibilities imposed on mortgage bankers and originators by rule, contained in §81.202. 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 banker or originator engaging in fraudulent and dishonest dealings pursuant to Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1). Certain acts on such list, which presently require a violation to be a knowing violation, are revised to also include acts committed negligently. The prohibition against disparaging a source of income for a mortgage loan, contained in existing subsection (a), 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 violation of the prohibition against a mortgage banker or originator engaging in improper dealings pursuant to Tex. Fin. Code §157.009(d) and § 157.024(a)(3), and unfair practices for purposes of Tex. Fin. Code §180.153(2). Existing subsection (b), paragraph (3), which prohibits a mortgage banker or originator from representing to a mortgage applicant that a fee payable to the mortgage banker or

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 3 OF 25

originator 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 (d), requiring an originator to respond accurately to a question about the scope and nature of his or her services, are eliminated and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage banker or originator to respond within a reasonable time to reasonable questions from a mortgage applicant. New provisions are inserted in subsection (d) 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 and a real estate broker or sales agent licensed under Occupations Code, Chapter 1101, the proposed 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 proposed rules, if adopted, would make various changes to the requirements for a mortgage banker or originator to keep books and records, contained in §81.204. The proposed rules clarify the existing requirement that a mortgage banker or originator maintain a copy of the mortgage loan application signed by both the originator and the mortgage applicant. The proposed rules also expand existing requirements that a mortgage banker or originator maintain a log of mortgage transactions including by requiring that such log describe the purpose for the loan and the owner's intended occupancy of the real estate securing the mortgage loan.

Other Modernization and Update Changes.

The proposed rules, if adopted, would 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 CHANGES

The proposed rules amend Subchapter A, General Provisions.

The proposed rules amend §81.1, Scope. The implied subsection (a) is amended to eliminate language conflating licensed and registered status concerning application of 7 TAC Chapter 81. (Other Modernization and Update Changes.)

The proposed rules amend §81.2, Definitions. A new definition for "application" is inserted at paragraph (1) and the existing paragraphs are renumbered accordingly. Statutory references are added to such definition to indicate its use in determining when an individual is acting as a residential mortgage loan originator. A new definition for "compensation" is inserted at paragraph

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 4 OF 25

(5), and the existing paragraphs renumbered accordingly. A new definition for the phrase "offers or negotiates the terms of a residential mortgage loan" for purposes of Tex. Fin. Code §157.002(6) and §180.002(19) is inserted at paragraph (12). The existing definition for "residential mortgage loan originator" located at paragraph (8) is eliminated and its subject matter replaced by a new definition for "originator," inserted at paragraph (13). A new definition for the phrase "takes a residential mortgage loan application" for purposes of Tex. Fin. Code §157.002(6) and §180.002(19) is inserted at paragraph (19). (Definition of a Residential Mortgage Loan Originator Changes.) A new definition for "dwelling" is inserted at paragraph (7). A new definition for "mortgage applicant," which adopts by reference the statutory definition assigned by Tex. Fin. Code § 156.002, is inserted at paragraph (8), replacing the existing definition for "residential mortgage loan originator". A new definition for "mortgage company," which adopts by reference the statutory definition for residential mortgage company in Chapter 157, is inserted at paragraph (10). A new definition for "Nationwide Mortgage Licensing System and Registry," which adopts by reference the statutory definition assigned by Chapter 157 and the Texas SAFE Act, is inserted at paragraph (11). A new definition for "social media site" is inserted at paragraph (18). (Other Definitions Changes.) The existing implied subsection (a) is amended to add language clarifying that the definitions are also used in the department's administration and enforcement of Chapter 157 and the Texas SAFE Act. The existing definition for "commissioner" is renumbered and amended to clarify that the commissioner is that individual appointed under Finance Code, Chapter 13. (Other Modernization and Update Changes.)

The proposed rules amend §81.3, Interpretations. The existing implied subsection (a) is amended to add language clarifying that the commissioner may also publish written interpretations of the Texas SAFE Act, in addition to Chapter 157. (Other Modernization and Update Changes.)

The proposed rules amend Subchapter C, Duties and Responsibilities.

The proposed rules amend §81.200, Required Disclosures. The language of existing subsection (b) is eliminated and replaced with new language imposing the requirement for a mortgage company to make disclosures, as provided by 7 TAC §80.200(a), on the originators sponsored by such mortgage company. Existing subsection (c) is amended to eliminate the requirement that a mortgage banker or originator post a notice to consumers at a physical office. The provisions in existing subsection (d), which dictate how a mortgage banker or originator displays such notice at a physical office, are eliminated, and replaced with new language imposing the requirement for a mortgage company to make disclosures on its website and social media sites, as provided by 7 TAC §80.200(b), on the originators sponsored by such mortgage company. Existing subsection (c) is further amended to expressly require a mortgage banker to post the disclosure required by the rule on its social media sites and to clarify that only websites and social media sites accessible by a consumer and used to conduct business are affected by the rule's requirements. New provisions are inserted in subsection (e) requiring an originator to disclose their NMLS identification number on correspondence sent to a mortgage applicant. A new subsection (f) is inserted to clarify that a determination of when an application has been received for purposes of the rule will be made in accordance with federal law and the Truth in Lending Act. (Required Disclosures and Advertising

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 5 OF 25

Changes.) The subject matter of existing subsection (b), providing additional notice that a mortgage banker is required to maintain records evidencing delivery of required disclosures, as required by 7 TAC §81.204, is eliminated and addressed with new language inserted in subsection (a). Subsection (b) is further amended to clarify that an originator sponsored by a mortgage company must maintain records reflecting delivery of the disclosures required the rule, as provided by existing 7 TAC §81.204. (Books and Recordkeeping Changes.) Subsection (a) is further amended to insert an introductory heading. Subsection (b) is further amended to insert an introductory heading. Subsection (c) is further amended to insert an introductory heading. Subsection (d) is further amended to insert an introductory heading. New subsection (e) includes an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §81.202, Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings. The existing language of subsection (a) is eliminated and replaced with language clarifying that the commission of an act in the paragraphed list set forth under subsection (a) constitutes a violation of Tex. Fin. Code §§157.009(d), 157.024(a)(3), and 180.153(1). Existing subsection (a), paragraphs (1), (2) and (4), which require that a violation be committed knowingly, are amended to also include violations committed negligently. Existing subsection (a), paragraph (3), establishing a violation for disparaging the source of mortgage loan funds, is amended to insert language establishing a violation for inflating or amending such source of income. Existing subsection (a), paragraph (7), establishing a violation for inducing a party to breach a contract in order to secure a mortgage loan, is eliminated as duplicative of the statutory provisions of Tex. Fin. Code §157.024(a)(7) without offering any additional guidance, and the remaining paragraphs are renumbered accordingly. The existing language of subsection (b) is eliminated and replaced with language clarifying that commission of an act in the paragraphed list set forth under subsection (b) constitutes a violation of Tex. Fin. Code §§157.009(d), 157.024(a)(3), and 180.153(2). Subsection (b), paragraph (3) is amended to clarify that any representation to a mortgage applicant that an origination fee payable to the mortgage banker or originator confers a financial benefit on the mortgage applicant is violative of the rule. The provisions of existing subsection (d), requiring an originator to respond accurately to a question about the scope and nature of their services and any costs, are eliminated, and the subject matter replaced with a new subsection (b), paragraph (4), requiring a mortgage banker or originator to respond within a reasonable time to reasonable questions from a mortgage applicant. New provisions are inserted in subsection (d) 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 CFPB in Regulation X. (Duties and Responsibilities Changes.) Subsection (a), paragraph (5) is amended to clarify that the federal Real Estate Settlement Procedures Act is implemented by the CFPB in Regulation X. Subsection (a) is further amended to insert an introductory heading. Subsection (b), paragraph (2), subparagraphs (A) - (F) are amended to insert citations to federal law referenced in subsection (b). Subsection (b) is further amended to insert an introductory heading. Existing subsection (c), which establishes a violation for engaging in fraudulent dealings in a transaction related to the mortgage application, is restated with clearer language and eliminates duplicative language in existing subsection (c), paragraph (3). Subsection (c) is further amended

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 6 OF 25

to insert an introductory heading. Subsection (d) is amended to insert an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §81.203, Advertising. Subsection (b), paragraph (2) is amended to require that an advertisement by a mortgage banker or mortgage company include the name and NMLS number of the mortgage banker or mortgage company, and the name and NMLS number of the sponsored originator. Subsection (b), paragraph (2) is further amended to eliminate the requirement that a mortgage banker recite the mortgage banker's street address in Texas when making an advertisement. Subsection (c) is amended to expressly make certain forms of advertising subject to the requirements of the rule, including physical printed handouts and messages delivered through a social media site. Subsection (c) is further amended to allow promotional items already exempt from the rule's requirements to include the website address for the mortgage banker or originator. Subsection (c) is further amended to clarify that signs located on or adjacent to a mortgage banker's or originator's physical office are exempt from the rule's requirements. A new subsection (d) is inserted allowing a mortgage banker to directly advertise its services, and clarifies that it need not advertise by and through a sponsored originator. (Required Disclosures and Advertising Changes.) Subsection (a) is restated to clarify that the requirements of the rule apply to mortgage bankers. Subsection (b) is amended to use updated terminology. Subsection (c) is amended to use updated terminology. New subsection (d) includes an introductory heading. (Other Modernization and Update Changes.)

The proposed rules amend §81.204, Books and Records. Subsection (b), paragraph (1), subparagraph (C) is amended to require an originator sponsored by a mortgage company to maintain a copy of the disclosure required of mortgage companies by Tex. Fin. Code §156.004 and 7 TAC §80.200. Subsection (b), paragraph (2) is amended to require the mortgage transaction log maintained by an originator to include the following additional information: the stated purpose for the loan; and a description of the owner's intended occupancy of the subject real estate securing the loan. (Books and Recordkeeping Changes.) Subsection (a) is amended to insert an introductory heading and use updated terminology. Subsection (b), paragraph (1), subparagraph (A) is amended to clarify that the signed application the originator is required to maintain in their records should be signed by each mortgage applicant and the originator. Subsection (b) is further amended to use updated terminology, and an introductory heading is inserted at subsection (b), paragraph (1). Subsection (c) is amended to use updated terminology. Subsection (d) is amended to use updated terminology. Subsection (e) is amended to insert an introductory heading, and to clarify that violation of the rule may result in disciplinary action broadly, and is not limited to license suspension or revocation. Subsection (f) is amended to insert an introductory heading. Subsection (g) is amended to clarify that an originator sponsored by a mortgage company meets applicable recordkeeping requirements if the mortgage company maintains such records on their behalf. Subsection (h) is amended to insert an introductory heading, and restated to improve clarity. (Other Modernization and Update Changes.)

The proposed rules amend §81.205, Mortgage Call Reports. Subsection (a) is amended to use updated terminology. Subsection (b) is amended to use updated terminology. Subsection (c) is

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 7 OF 25

amended to clarify the rule's application to originators sponsored by a mortgage banker, and to use updated terminology. Subsection (d) is amended to use updated terminology and clarify that a violation of the rule may result in disciplinary action broadly, and is not limited to an administrative penalty. (Other Modernization and Update Changes.)

The proposed rules amend §81.206, Physical Office. Subsection (a) is amended to eliminate language requiring a mortgage banker to post its hours of operation at a physical office. (Required Disclosures and Advertising Changes.) The existing provisions of subsection (b), clarifying that an originator sponsored by a mortgage banker need not store their books and records at a physical office, are eliminated as unnecessary. (Books and Recordkeeping Changes.) Having eliminated subsection (b), subsection (a) is amended and converted to an implied subsection (a). Subsection (a) is further amended to remove capitalization of the term physical office, which has not been reduced to a defined term elsewhere in the rules. (Other Modernization and Update Changes.)

The proposed rules amend Subchapter D, Compliance and Enforcement.

The proposed rules amend §81.300, Examinations. Subsection (a) is amended to clarify that the rule applies to all originators licensed by the department, and not just those sponsored by a mortgage banker. Subsection (a) is further amended to use updated terminology. Subsection (b) is amended to insert an introductory heading, and is restated with updated terminology. Subsection (c) is amended to use updated terminology. Subsection (c), paragraph (1) is amended to clarify that the scope of examination will include whether the originators are appropriately sponsored by the examined entity, and whether all branch offices have been registered with NMLS. Subsection (d) is amended to use updated terminology. Subsection (e) is amended to use updated terminology. Subsection (f) is amended to insert an introductory heading. Subsection (g) is amended to insert an introductory heading and is restated to clarify that failure to cooperate with the examination will result in disciplinary action broadly and is not limited to an administrative penalty. Subsection (h) is amended to insert an introductory heading, and is restated for clarity, including using updated terminology. (Other Modernization and Update Changes.)

The proposed rules amend §81.301, Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions. The provisions of existing subsection (c) are eliminated as being duplicative of the requirements of the Finance Code, and without offering additional guidance. The provisions of existing subsection (d) are relocated to subsection (c). (Other Modernization and Update Changes.)

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Florence, director of mortgage examination for the department (director), has determined that for the first five-year period the rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five-year period the rule is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the proposed rules.

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 8 OF 25

PUBLIC BENEFITS

The director has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand. The proposed rules related to Required Disclosures and Advertising Changes will benefit the public by providing additional disclosure of the department's regulatory oversight of mortgage bankers and originators, and the public's opportunity to file a complaint with and seek redress from the department for a violation of Chapter 157 or the Texas SAFE Act, or the rules adopted thereunder. Such rule changes will further limit existing requirements enforced by the department, allowing the department to reallocate and better utilize its resources in its examination and enforcement functions, allowing the department to pursue violations of Chapter 157 and the Texas SAFE Act that more directly impact the public. The proposed rules related to Duties and Responsibilities Changes clarify and update the duties and responsibilities imposed on a mortgage banker or originator by rule, the compliance with which will benefit the public utilizing the services of a mortgage banker registered with or an originator licensed by the department. The proposed rules related to Books and Recordkeeping Changes will provide the department with additional information when conducting examinations of mortgage bankers registered with or originators licensed by the department, allowing the department to better detect and pursue violations of Chapter 157 and the Texas SAFE Act while simultaneously streamlining the examinations process for the department and mortgage bankers and originators alike.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE PROPOSED RULES

The director has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

The proposed rules' changes to §81.200 require the inclusion of the originator's NMLS identification information on all correspondence. Since correspondence is tailored to the recipient, it will not place a burden on the originator to add the required information. An originator may be using electronic forms or other pre-printed letterhead to generate correspondence. Those originators that do not already include the required information on such electronic forms may be inclined to update their electronic forms to more easily comply with the rule. However, any such costs should only be incurred on a one-time basis and are anticipated to be *de minimis*. Moreover, use of electronic forms is not required by the proposed rules, and is discretionary. Physical letterhead preexisting adoption of the rule that does not include the required information may still be used but with the information added upon tailoring the correspondence for the intended recipient, at no cost.

The proposed rules' changes to §81.204 require a mortgage banker or originator to record additional information on the mortgage transaction log it is required to make under existing requirements. The additional information is already created and exists as a byproduct of the residential mortgage loan application process. The rule merely requires that the existing information be transposed to the existing mortgage transaction log for review by the department's

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 9 OF 25

examiners in the same manner as the other information required on the mortgage transaction log under existing requirements. A mortgage banker or originator may be using electronic forms or other pre-printed paper logs for purposes of maintaining its mortgage transaction log. A mortgage banker or originator that uses such electronic forms may be inclined to update their electronic forms to more easily comply with the rule. However, any such costs are anticipated to be *de minimis*. Moreover, the use of electronic forms is not required by the proposed rules, and is discretionary. Physical logs preexisting adoption of the rule may still be used and supplemented with the required information, at no cost.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement). The proposed rules create a new requirement for originators to list their NMLS identification number on all correspondence sent to a mortgage applicant; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules expand an existing rule requirement by establishing that certain conduct by a mortgage banker or originator constituting a violation of the rules when committed intentionally is also a violation when committed negligently. The proposed rules expand an existing rule requirement by requiring that additional information be included on the required mortgage transaction log. The proposed rules limit an existing rule requirement by eliminating the requirement to post disclosures at a physical office of the mortgage banker (but not eliminating such disclosures entirely). The proposed rules limit an existing rule requirement by expanding the number of items deemed not to be an advertisement and exempt from the department's advertising requirements, and further allowing such items to recite the website address of the mortgage banker or originator. The proposed rules repeal an existing rule requirement requiring that a mortgage banker post its hours of operation at a physical office. The proposed rules repeal an existing rule requirement that a mortgage banker recite a physical address when making an advertisement; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 10 OF 25

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated costs to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, 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 and Chapter 180. No other statute is affected by this proposal.

<rule>

Subchapter A. General Provisions.

§81.1. Scope.

This chapter governs the licensing, registration, and conduct of residential mortgage loan originators and mortgage bankers under Finance Code, Chapter 157 and Chapter 180, except for individuals engaged in authorized activity subject to the authority of a regulatory official under Tex. Fin. Code [Finance Code,] §180.251(c). [~~The terms "licensed" and "registered" may be used interchangeably.~~]

§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 (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

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 11 OF 25

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) [~~1~~] "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(3) [~~2~~] "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) [~~3~~] "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;

(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.

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

(6) [~~4~~] "Department" means the Department of Savings and Mortgage Lending.

(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.

(8) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited 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

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 12 OF 25

1003 Uniform Residential Loan Application), but who has submitted financial information constituting an application, as provided by paragraph (1) of this section.

~~[(8) Residential mortgage loan originator" has the meaning assigned in Finance Code, §180.002.]~~

(9) [(5)] "Mortgage banker" has the meaning assigned by Tex. Fin. Code [shall have the same meaning as that provided in Finance Code] §157.002.

(10) "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.

(11) "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002.

(12) "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);

(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; or

(D) recommends, refers, or steers a mortgage applicant or prospective mortgage applicant to a particular originator, lender, or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the mortgage applicant or prospective mortgage applicant.

(13) "Originator" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 in defining "residential mortgage loan originator."

(14) [(6)] "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.

(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.

(16) [(7)] "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §157.002 and [shall have the meaning as 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.

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 13 OF 25

(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.

(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.

(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.

§81.3. Interpretations.

In order to provide clarification as to how Finance Code, Chapter 157 and Chapter 180 will be construed and implemented, the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapter 157 and Chapter 180, and this chapter.

Subchapter C. Duties and Responsibilities.

§81.200. Required Disclosures.

(a) Specific Notice to Applicant by Mortgage Banker. An originator sponsored by a mortgage banker under Finance Code, Chapter 157 must provide [~~shall include~~] the following notice[; Figure: 7 TAC §81.200(a).] to a residential mortgage loan applicant with an initial application for a residential mortgage loan, and the mortgage banker and its sponsored originator must maintain in their records, evidence of timely delivery of such disclosure:

Figure: 7 TAC §81.200(a)

(b) Specific Notice to Applicant by Mortgage Company. An originator sponsored by a mortgage company under Finance Code, Chapter 156 must provide a residential mortgage loan applicant with the notice required by §80.200(a) of this title at the time of the initial application for a residential mortgage loan and must maintain or otherwise ensure the mortgage company maintains in its records, evidence of timely delivery of such disclosure [~~A mortgage banker or originator shall maintain in its records evidence of timely delivery of the disclosure in subsection (a) of this section].~~

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 14 OF 25

(c) Posted Notice on Mortgage Banker Websites and Social Media Sites. A mortgage banker or its sponsored originator must post in conspicuous fashion the following notice on each website and social media site of the mortgage banker 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 banker or sponsored originator, or from which the mortgage banker or sponsored originator advertises to solicit such business, as provided by §81.203 of this title [At each physical office, and on its website, a mortgage banker or an originator shall conspicuously post the following notice]:

Figure: 7 TAC §81.200(c)

(d) Posted Notice on Mortgage Company Websites and Social Media Sites. An originator sponsored by a mortgage company under Finance Code, Chapter 156 must comply with the requirements of §80.200(b) of this title [A notice is deemed to be conspicuously posted under subsection (c) 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].

(e) Disclosures in Correspondence. An originator must provide the following information on all correspondence sent to a mortgage applicant:

(1) the name of the mortgage banker or mortgage company sponsoring the originator, followed by its NMLS identification number; and

(2) the name of the originator, followed by the originator's NMLS identification number.

(f) The determination of what constitutes a mortgage application for purposes of triggering the notice required by subsections (a) and (b) 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).

(g) The notice under subsection (c) 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 under subsection (c) of this section is deemed to be conspicuously posted on a social media site when it is readily apparent or otherwise 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 banker 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,

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 15 OF 25

or similar.

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

(a) False, Misleading or Deceptive Practices. The following conduct by a mortgage banker or an originator constitutes fraudulent and dishonest dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1): [~~No originator may~~]:

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

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

(3) 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 or negligently 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 [~~its implementing regulations~~], brokering, arranging, or making [~~broker, arrange, or make~~] a residential mortgage loan in which the 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 delinquency or continuation of an existing default or delinquency by a residential mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

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

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

(8) [~~(9)~~] engaging [~~engage~~] in any other practice which the Commissioner, by published

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 16 OF 25

interpretation, has determined to be false, misleading, or deceptive.

(b) Improper and Unfair Dealings. The following conduct by a mortgage banker or an originator constitutes improper dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), and unfair practices for purposes of Tex. Fin. Code § 180.153(2) [~~The term "improper dealings" in Finance Code, §157.024(a)(3) includes, but is not limited to the following~~]:

(1) Acting negligently in performing an act for which a person is required under Finance Code, Chapter 157 to hold a license;

(2) 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 157 or Chapter 180, 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 to a mortgage applicant that a charge or fee which is payable to the mortgage banker or originator is a "discount point" or otherwise confers a financial benefit on the mortgage applicant unless the loan closes and:

(A) the mortgage banker or mortgage company sponsoring the originator is the lender in the transaction. For purposes of this paragraph, the mortgage banker or mortgage company sponsoring the originator is deemed to be the lender if such entity is the payee as evidenced on the face of the note or other written evidence of indebtedness; or

(B) the mortgage banker or mortgage company sponsoring the 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 banker or mortgage company sponsoring the originator has actually paid to the lender on behalf of the mortgage applicant, to buy down the interest rate on a residential mortgage loan.

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 17 OF 25

(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 banker's or originator's services and any costs.

(c) Related Transactions. A mortgage banker or originator engages in a fraudulent and deceptive dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1) if, [false, misleading or deceptive practice or improper dealings] when in connection with the origination of a mortgage loan:

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

(2) The mortgage banker or 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 banker or originator to the mortgage transaction knew or should have known of the false, misleading or deceptive acts. [The originator offers other goods or services to a consumer in a separate but related transaction and the mortgage banker or originator engages in a false, misleading or deceptive practice in the related transaction, and the mortgage banker knew or should have known of the transaction; or

~~(3) A mortgage banker or originator affiliates with a second originator who offers other goods or services to a consumer in a separate but related transaction, and the second originator engages in a false, misleading or deceptive practice in the related transaction when the mortgage banker or originator participates with the second originator in the separate transaction or when the mortgage banker allows the second originator to originate loans in the name of the mortgage banker and the mortgage banker knew or should have known of the related transaction performed by the second originator.]~~

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage banker or originator must not offer or agree to share or split any loan origination fees with a mortgage applicant, rebate all or a 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. An originator acting in the dual capacity of an originator and real estate sales broker or agent licensed under Occupations Code, Chapter 1101 may rebate his or her fees legitimately earned and derived from his or her 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 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 an 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 originator's fees for mortgage origination services, and constitutes

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 18 OF 25

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 banker or 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 be deemed to constitute improper dealings for purposes of Tex. Fin. Code §157.009(d) and §157.024(a)(3), and unfair practices for purposes of Tex. Fin. Code §180.153(2) [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].

§81.203. Advertising.

(a) A mortgage banker or 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 banker or originator must [shall] conform to the following requirements:

(1) A mortgage banker or 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 as provided in subsections [subsection] (c) and (d) of this section, the advertisement must [shall] contain:

(A) the name of the mortgage banker or mortgage company followed by its NMLS identification number [originator followed by the name of the sponsoring mortgage banker, as designated in the records of the Commissioner as of the date of the advertisement]; and

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

~~[(C) the mortgage banker's physical office address. If a physical office exists in this State, the advertisement must contain that address; otherwise, it must contain the address of a location registered with the department.]~~

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

(4) An advertisement must [shall otherwise] comply with applicable state and federal disclosure requirements.

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 19 OF 25

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan [eredit] 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 [shall] not apply to:

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

(d) Advertising Directly by a Mortgage Banker. The provisions of subsection (b) 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, Chapters 157 and 180, and this chapter, each 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 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 originator must create and maintain a [A] residential mortgage loan file containing, [for each mortgage loan application received; each file shall contain] at a minimum [the following]:

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

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 20 OF 25

(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) for an originator sponsored by a mortgage banker, a copy of the disclosure statement required by Tex. Fin. Code ~~[Finance 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 ~~[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 ~~[residential]~~ 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)~~ 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 information as to how to contact them]~~; and

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

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 21 OF 25

(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 business;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a ~~[residential]~~ mortgage ~~[loan]~~ 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 ~~[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, 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.

(c) Each 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) Each 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

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 22 OF 25

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 ~~shall~~ 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.

(h) Records Retention After Dissolution. Within 10 days of terminating operations, ~~Upon the termination of operations as~~ a mortgage banker or ~~an~~ originator must provide the Department with written notice of ~~[, the mortgage banker or originator shall notify] the Department~~ ~~[Commissioner,] in writing, within ten days~~ 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 of such records ~~shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Department~~ ~~Commissioner~~.

§81.205. Mortgage Call Reports.

(a) Call Report.

(1) A mortgage banker 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 banker 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 banker, satisfies the requirements of an originator sponsored by the mortgage banker to submit a mortgage call report, as required by Tex. Fin. Code ~~[under Finance Code,]~~ §180.101 for the period of sponsorship,

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 23 OF 25

provided that the sponsored originator's information is included in the report.

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

§81.206. 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 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 ~~[(4)]~~ staff member present to assist customers during the hours in which the physical office ~~[Physical Office]~~ is open.

~~[(b) The Physical Office of a licensee need not be the location at which such person's required records are maintained, but the location 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.

§81.300. 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 an originator ~~[sponsored by mortgage bankers]~~ 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 originator and/or the entity sponsoring the originator ~~[mortgage banker]~~ advance notice of each examination. Such notice will be sent to the mailing ~~[contact person's]~~ 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 ~~[will commence]~~ the examination. Failure ~~[of the mortgage banker]~~ 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

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 24 OF 25

records the originator must make [~~mortgage banker should have~~] available to facilitate the examination [~~for the examiner to review~~].

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

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

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

(3) All required books and records are being maintained in accordance with §81.204 of this title [~~chapter~~];

(4) Legal and regulatory requirements applicable to the originator [~~originators or the originator's residential mortgage business~~] 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 157 and Chapter 180.

(d) The examiners [~~examiner~~] will review a sample of residential mortgage loan files identified by the examiners [~~examiner~~] and randomly selected from the originator'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 an originator, at his or her 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, 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 an 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 originator and any mortgage banker employer 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 an originator[;] because the [~~that originator maintains~~] required records are maintained at a location outside of Texas [~~the state~~], the originator will be required to reimburse the Department [~~department~~] for the actual costs incurred by [~~cost~~] the

PROPOSED AMENDMENTS
7 TAC §§81.1 - 81.3, 81.200, 81.202 - 80.206, §81.300 AND 81.301
PAGE 25 OF 25

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.

§81.301. Investigations.

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

(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 157.

[~~(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 157.~~]