



DEPARTMENT of
SAVINGS & MORTGAGE LENDING
Caroline C. Jones, Commissioner

NOTICE OF PRECOMMENT DRAFT

**SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft**

Please take notice that, on behalf of the Finance Commission of Texas (the Commission), the Department of Savings and Mortgage Lending (SML or the Department) is considering amendments to 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, §80.301. The amendments were identified during the Department's periodic review of Chapter 80, conducted pursuant to Government Code, §2001.039.

The Department issues this notice to solicit informal written comments to the rule amendments being considered, prior to potential consideration of the amendments by the Finance Commission. The Department will accept informal written precomments until 5:00 p.m. on May 25, 2020. The Department tentatively plans to present these rules for consideration by the Finance Commission at its June 19, 2020 meeting.

Background and Purpose

The rules under 7 TAC Chapter 80 implement Finance Code, Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act (Chapter 156).

- *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

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

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 and Chapter 180. 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."
- *Required Disclosures and Advertising Changes.* The proposed rules, if adopted, would make changes to the disclosures a mortgage company and/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 Multistate 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;

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

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 (a), 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 existing subparagraphs set forth thereunder. The provisions of existing subsection (b), paragraph (3), subparagraph (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 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 their role as originator (a violation), and conversely, not derived from their role as real estate broker or sales agent.

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

- *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 amendments, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; replacing existing language with gender neutral language; removing unnecessary or duplicative provisions; and updating terminology.

The Department invites stakeholders and other interested persons to comment on the rule amendments being considered. In particular, the Department would like to know what costs regulated persons will experience if the rule amendments are adopted, and what the potential benefits are to the public of the rule amendments.

Submission of Informal Precomments

Informal precomments regarding the Department's April 30, 2020 draft 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.

Informal precomments regarding the Department's April 30, 2020 draft rule amendments must be received by 5:00 p.m. on May 25, 2020.

<rule>

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

Title 7. Banking and Securities.

Part 4. Department of Savings and Mortgage Lending.

Chapter 80. Texas Residential Mortgage Loan Companies.

Subchapter A. General Provisions.

§80.1. Scope.

This chapter governs the licensing, registration, and conduct of m[M]ortgage c[C]ompanies, f[F]inancial s[S]ervices c[C]ompanies, c[C]redit u[U]nion s[S]ubsidiary o[O]rganizations, a[A]uxiliary m[M]ortgage l[L]oan a[A]ctivity c[C]ompanies, and i[I]ndependent c[C]ontractor l[L]oan p[P]rocessors and u[U]nderwriters 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 shall 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 ["Branch Office" means any office that is separate and distinct from the company's headquarters location, whether located in Texas or not, which conducts mortgage business on residential real estate located in the state of Texas].

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

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13 [~~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) "Commissioner's designee" means an employee of the Department performing their 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 that term is used in Tex. Fin. Code §156.303. [~~Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002."Commissioner" means the Savings and Mortgage Lending Commissioner].~~

(5) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive [~~Control Person" means an individual that directly or indirectly exercises control over a company. Control is defined by the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. 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, 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 capital, is presumed to control that company].~~

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

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

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

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

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

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

~~(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 [Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Finance Code §180.002(12)].

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

(11) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Tex. Fin. Code §156.002 [Qualifying Individual" shall have the same meaning as that provided in Finance Code, §156.002. Additionally, the license held by the qualifying

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

~~individual must be held in a status, which authorizes them to conduct regulated activities, and is sponsored by the company for which they are the qualifying individual].~~

(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

~~[Residential Mortgage Loan" 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 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].~~

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

(16) "Qualifying Individual" or "qualified individual" has the meaning assigned by Tex. Fin. Code §156.002 in defining "qualifying individual". Additionally, the license held by the Qualifying Individual must be held in a status which authorizes them to conduct regulated activities, and the individual sponsored of record by the mortgage company for which they are the qualifying individual.

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

(17) "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §156.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(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~~] shall ~~provide~~ [~~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 shall maintain in its records evidence of the timely delivery of such notice:

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 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:

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

Figure: 7 TAC §80.200(b)

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

(1) the name of the mortgage company, followed by the mortgage company's Nationwide Multistate Licensing and Registry (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 shall 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 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 or its sponsored originator's [his or her] relationship to a mortgage applicant or any other party to an actual or proposed residential mortgage loan transaction;

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

(2) knowingly or negligently misrepresenting 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;

(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 [~~arrange~~], or making [~~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) altering any document produced or issued by the Department, unless otherwise permitted by statute or a rule of the Department [~~induce or attempt to induce a party to a contract to breach that contract so the person may make a residential mortgage loan~~];

(8) engaging in any other practice which the Commissioner, by published interpretation, has determined to be false, misleading, or deceptive [~~alter any document produced or issued by the department, unless otherwise permitted by statutory regulation; or~~];

(9) ~~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 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:

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

- (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 company [~~or 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 company or 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.]~~
- (c) Related Transactions. A mortgage company or sponsored originator 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:

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

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

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

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage company or sponsored originator may 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) shall be 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 [Licensees who] advertises rates, terms, or conditions must comply with the disclosure requirements of Regulation Z.

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

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

(1) An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.

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

(A) the name of the mortgage company [~~originator~~] followed by the mortgage company's Nationwide Mortgage Licensing System and Registry (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~~]

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

(3) An advertisement shall not make any statement or omit to make any statement the result of which is to present a misleading or deceptive impression to consumers.

(4) An advertisement 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 "flyer," 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 shall not apply to:

(1) any advertisement which indirectly promotes a 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 [~~a~~] coffee mugs, pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), 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 [~~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

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section shall not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originators sponsored by the mortgage company shall 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 shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

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

(1) Residential Mortgage Loan File. For each residential mortgage loan application received the residential mortgage loan file 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 lock[~~-in~~]s 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;

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

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

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

(E) a description of the disposition of the residential mortgage loan application; [~~full name of the originator and their Nationwide Mortgage Licensing System and Registry identification number.~~]

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

(G) the full name of the sponsored originator and their Nationwide Mortgage Licensing System and Registry (NMLS) 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;

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

(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 and conduct business of the mortgage company at the physical office (e.g., a lease agreement or deed).

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

(d) A mortgage company and/or sponsored originator 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 shall be maintained in good order and 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 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 Dissolution. Upon termination of operations, the mortgage company shall notify the Department, in writing, within ten days, where the required records will be maintained for the prescribed periods. If such records are transferred to

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

another mortgage company licensed by the Department, the transferee shall, in writing, within ten days of accepting responsibility for maintaining such records, notify the Department [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 the Nationwide Mortgage Licensing System and Registry (NMLS).

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

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

(b) Statement of Condition Report.

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

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

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

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

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

§80.206. Physical Office.

(a) A p~~[P]~~hysical o~~[O]~~ffice must:

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

(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 ~~p[P]hysical o[O]ffice~~ 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. ~~[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].~~

(c) Company Records. The physical office need not be the location where required records are maintained; however, the location where 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.

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

(a) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstance then known. Such investigation may include any or all of the following:

(1) review of documentary evidence;

(2) interviews with complainants, licensees, and third parties;

(3) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and

(4) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 156 and this chapter.

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

(c) Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner 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 [~~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~~].

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

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

~~(f) If the Commissioner determines that a person has violated the requirements of Finance Code, Chapter 156, this chapter, or any order pursuant to Finance Code, Chapter 156 or this chapter, the Commissioner, after notice and opportunity for hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$25,000 per violation. The amount of the violation is at the Commissioner's discretion. In determining the amount of any administrative penalty(ies) for any violation(s) of Finance Code, Chapter 156 or this chapter, the Commissioner shall consider such factors as required by Finance Code, §156.302.~~

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

~~(h) The Commissioner may, after giving notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in~~

SML Amendments to 7 TAC §§80.1, 80.2, 80.200, 80.202 – 80.206, and 80.301
April 30, 2020 Precomment Draft

~~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.]~~