



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

NOTICE OF PRECOMMENT DRAFT

**SML Amendments to 7 TAC §§81.1 - 81.3, 81.200, 81.202 – 81.206, 81.300, and
81.301
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 81, Subchapter A, §§81.1 - 81.3; Subchapter C, §§81.200, 81.202 – 81.206; and Subchapter D, § 81.300 and §81.301. The amendments were identified during the Department's periodic review of Chapter 81, 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 81 implement Finance Code, Chapter 157, the Mortgage Banker and Registration and Residential Mortgage Loan Originator Act (Chapter 157), and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Texas SAFE Act).

- *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

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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."
- *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 Multistate 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 §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.

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- *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 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 existing subparagraphs set forth thereunder. The provisions of existing subsection (b), paragraph (3), subparagraph (D), requiring a mortgage banker or 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 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 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

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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.

- *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; 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.

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Title 7. Banking and Securities.

Part 4. Department of Savings and Mortgage Lending.

Chapter 81. Texas Residential Mortgage Loan Companies.

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, Chapters 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, Chapters 157 and 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 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 [Commissioner" means the Savings and Mortgage Lending Commissioner].

(2) "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].

(3) "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, Chapter 157.024 [Criminal Offense" means any violation of any state or federal criminal statute which:

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

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

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

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

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

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

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

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

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

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(5) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive [Mortgage banker" shall have the same meaning as that provided in Finance Code, §157.002].

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

(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 [Residential mortgage loan" shall have the same 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 one-to-four-family residence, but is used for commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not 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 1003 Uniform Residential Loan Application), but who has submitted financial information constituting an application, as provided by paragraph (1) of this section [Residential mortgage loan originator" has the meaning assigned in Finance Code, §180.002].

(9) "Mortgage banker" has the meaning assigned by Tex. Fin. 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" 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);

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

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

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

(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

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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, Chapters 157 and 180 will be construed and implemented, the Commissioner may, from time to time, publish written interpretations of Finance Code, Chapters 157 and 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 shall provide [~~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 shall 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 shall 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 shall 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~~].

(c) Posted Notice on Mortgage Banker Websites and Social Media Sites. A mortgage banker or its sponsored originator shall 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 shall comply with

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~~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 shall 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 Nationwide Multistate Licensing System and Registry (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 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).

(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, 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]:

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(1) knowingly or negligently misrepresenting one's ~~[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 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 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 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 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) 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 statute or regulation; or]~~

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

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(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, Chapters 157 or 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.

(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 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).

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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 may 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 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 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 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

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~~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 §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 broker or 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 banker or originator shall conform to the following requirements:

(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 banker or mortgage company followed by its Nationwide Mortgage Licensing System and Registry (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 shall not make or omit any statement the result of which is to present a misleading or deceptive impression to consumers; and

(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

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medium that promotes directly or indirectly, a residential mortgage loan or is otherwise designed to solicit residential mortgage loan 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 ~~[credit transaction]~~. 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 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 ~~[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 [-]

(3) signs located on or adjacent to the mortgage banker 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 shall not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage banker shall 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 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 D[d]epartment, the following books and records:

(1) Residential Mortgage Loan File. A residential mortgage loan file for each mortgage loan application received; each file shall contain at a minimum the following:

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(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;

(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. [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. [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.) ~~[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 information as to how to contact them]; [and]~~

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(E) a description of the disposition of the application for a residential mortgage loan; [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 originator and their Nationwide Multistate Licensing 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 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 shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but

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not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(d) Each 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) An originator may meet applicable recordkeeping requirements if their [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 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 their [his or her] former originator copies of records relating to residential mortgage loans handled by such former originator.

(h) Records Retention after Dissolution. Upon the termination of operations as a mortgage banker or an originator, 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 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 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

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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, 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, [~~which includes the assessment~~] of an administrative penalty.

§81.206. Physical Office.

(a) A Physical o[~~o~~]ffice 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 p[~~P~~]hysical o[~~o~~]ffice 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].~~

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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 D[e]partment determines that giving advance notice would impair the examination, the D[e]partment 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 ~~[contact person's]~~ address ~~[of record]~~ or email [e-mail] address of record [on file] with the Nationwide Mortgage Licensing System and Registry (NMLS) ~~[department]~~ and will specify the date on which the D[e]partment'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 records the originator ~~[mortgage banker]~~ should have available for the examiners to review.

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

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

(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, Chapters 157 and 180.

(d) The examiners will review a sample of residential mortgage loan files identified by the 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 their ~~[his or her]~~ discretion, conditions warrant.

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(e) The examiners may require an originator, at their ~~[his or her]~~ own cost, to make copies of loan files or such other books and records as the examiners deem[s] 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, 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 access to books, records, documents, operations, and facilities may result in disciplinary ~~[will subject the originator and any mortgage banker employer to enforcement]~~ action[s by the Commissioner,] including, but not limited to, imposition of an administrative penalty ~~[penalties]~~.

(h) Reimbursement for Costs. When the D[d]epartment must travel outside of Texas ~~[out-of-state]~~ to conduct an examination of an originator[;], because that originator maintains required records at a location outside of Texas ~~[the state]~~, the originator will be required to reimburse the D[d]epartment for the actual costs incurred by the D[d]epartment ~~[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) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstances 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;

(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 157 and this chapter.

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(c) 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 157 [~~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.~~].

~~[(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 157.]~~