

NOTICE OF PRECOMMENT DRAFT AND STAKEHOLDERS WEBINAR

SML Rulemaking – 7 TAC §80.204 and §81.204 January 14, 2022 Pre-comment Draft

The Department of Savings and Mortgage Lending (SML or the Department) is considering changes to its rules at 7 Texas Administrative Code (TAC) §80.204 and §81.204, concerning Books and Records.

The Department will hold a stakeholder webinar on January 19, 2022 at 2:00 p.m. to discuss the pre-comment draft of the rule changes.

The Department will also accept informal written pre-comments until January 26, 2022 at 5:00 p.m.

The Department plans to present the rules for consideration by the Finance Commission at its February 18, 2022 meeting.

Participating in the Webinar

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

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

[Registration Link](#)

Submission of Informal Pre-comments

Informal written pre-comments regarding the Department's draft rules may be submitted by email to rules.comments@sml.texas.gov or by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294. **Informal pre-comments must be received by 5:00 p.m. on January 26, 2022.**

Overview of Changes:

Changes Concerning Books and Records. Pursuant to Finance Code §156.301 and §157.021, the Department's commissioner (Commissioner) may conduct inspections of a

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mortgage company licensed under Finance Code Chapter 156, or an individual licensed as a residential mortgage loan originator (RMLO) under Finance Code Chapters 157 and 180 (including RMLOs sponsored by a mortgage banker registered with the Department under Finance Code Chapter 157). Inspections include inspection of the mortgage company's or RMLO's books and records. Pursuant to Finance Code §156.102(c) and §157.02015(b), the Finance Commission "may adopt rules regarding books and records that a [mortgage company or RMLO] is required to keep, including the location at which the books and records must be kept." Pursuant to Finance Code §157.0022 the Department's commissioner "may request documentary and other evidence [from a mortgage banker] considered by the commissioner as necessary to effectively evaluate [a consumer] complaint, including correspondence, loan documents, and disclosures . . . [and a] mortgage banker shall promptly provide any evidence requested by the commissioner." Existing 7 TAC §80.204 and §81.204 establish requirements concerning the books and records that a mortgage banker, mortgage company, or RMLO must create and maintain. The rule changes, if adopted, would:

- establish a new requirement concerning the location where records must be maintained;
- clarify existing requirements concerning the mortgage transaction log under existing §80.204 and §81.204 with respect to the description of the purpose for the loan, and the owner's or prospective owner's intended occupancy of the subject real estate;
- establish a new requirement that the mortgage transaction log include information concerning the type of lien anticipated after consummation of the mortgage loan (first lien, second lien, or wrap mortgage);
- clarify and provide additional detail as to the specific books and records a mortgage banker, mortgage company, or RMLO is required to create and maintain under existing §80.204 and §81.204, including specific records required to comply with applicable federal law and the Texas Constitution; and
- establish requirements for records in connection with wrap mortgage loans made in accordance with Finance Code Chapter 159.

Other Modernization and Update Changes. The rule changes, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing and restating the requirements of existing §80.204 and §81.204 for clarity, including the insertion of explanatory headings throughout the rules.

<rule>

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

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CHAPTER 80 RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER C DUTIES AND RESPONSIBILITIES

{{Existing §80.204 will be repealed and replaced with new §80.204}}

~~[§80.204. Books and Records~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(4) Records Concerning Administrative Offices. A mortgage company must create and maintain a list reflecting any office constituting an "administrative office" of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work).~~

~~(5) Records Concerning Remote Work. A mortgage company must create and maintain records reflecting its compliance with the requirements for remote work as provided by §80.206 of this title (relating to Office Locations; Remote Work).~~

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

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

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

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

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

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~~company licensed by the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.]~~

§80.204. Books and Records.

(a) Maintenance of Records, Generally. In order to ensure a mortgage company will have all records necessary to facilitate an inspection of the mortgage company by the Commissioner or the Commissioner's designee, enable the Commissioner or the Commissioner's designee to investigate complaints against a mortgage company or its sponsored originators, and otherwise ensure compliance with the requirements of Finance Code Chapter 156, and this chapter, a mortgage company must create and maintain records as prescribed by this section.

(1) Format. The records required by this section may be maintained by using a physical, electronic, or digitally-imagined recordkeeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.

(2) Location. A mortgage company must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage company or the location the mortgage company has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section the term "main office" has the meaning assigned by §80.206 of this title (relating to Office Locations; Remote Work).)

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

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law.

(5) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage company differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.

(b) Required Records. A mortgage company is required to create and maintain the following items:

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(1) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means all entries must be made within no more than 7 days from the date on which the matters they relate to occurred), setting forth, at a minimum:

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

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

(C) the full name of the originator who took the initial loan application, and his or her NMLS identification number;

(D) a description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);

(E) a description of the owner's or prospective owner's intended occupancy of the subject real estate (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence));

(F) the lien type (e.g., first lien, second lien, or wrap mortgage);

(G) a description of the current status or disposition of the residential mortgage loan application (e.g., in-process, withdrawn, closed, or denied); and

(H) if the loan is closed, the identity of the person who initially funded and/or acquired the residential mortgage loan; and

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction the mortgage company must create and maintain a residential mortgage loan file containing, at a minimum:

(A) All Transactions. For all transactions, the following records:

(i) the initial and final loan application (including any attachments, supplements, or addendum thereto), signed and dated by each mortgage applicant and the sponsored originator, and any other written or recorded information used in evaluating the application, as required by Regulation B, 12 C.F.R. §1002.4(c);

(ii) the initial and revised good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar, provided to the mortgage applicant;

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(iii) the final settlement statement (Regulation X, 12 C.F.R §1024.8), closing statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

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

(v) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Pre-Qualification Letter, or similar, as specified by Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms);

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Approval Letter, or similar, as specified by Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms);

(vii) each item of correspondence, all evidence of any contractual agreement or understanding, and all notes and memoranda of conversations or meetings with a mortgage applicant or any other party in connection with the loan application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);

(viii) the notice of penalties for making a false or misleading written statement required by Finance Code §343.105, signed at closing by each mortgage applicant;

(ix) if the transaction is a purchase money or wrap mortgage loan transaction, the real estate contract for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the loan or prospective loan, and invoices/receipts for the purchase of the consumer report or credit report;

(xi) appraisal reports or written valuation reports used to determine the value of the subject property secured or designed to be secured by the loan, and invoices/receipts for the appraisal report or written valuation report;

(xii) invoices and proof of payment for third party fees;

(xiii) refund checks issued to the mortgage applicant;

(xiv) if applicable, the risk-based pricing notice required by Regulation V, 12 C.F.R. §1022.72;

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(xv) if applicable, invoices for independent loan processors or underwriters;

(xvi) if the mortgage company or sponsored originator acts in a dual capacity as the loan originator and real estate broker, sales agent, or attorney in the transaction, the disclosure of multiple roles in a consumer real estate transaction, signed and dated by each mortgage applicant, as required by Finance Code §156.303(a)(13) and §157.024(a)(10);

(xvii) the initial privacy notice required by Regulation P, 12 C.F.R. §1016.4 or 16 C.F.R. §313.4;

(xviii) the mortgage applicant's written authorization to receive electronic documents;

(xix) records reflecting compensation paid to employees or independent contractors in connection with the transaction;

(xv) any other agreements, notices, disclosures, or affidavits required by federal or state law in connection with the transaction; _____ and

(xvi) any written agreements or other records governing the origination of the loan or prospective loan;

(B) Lender Transactions. For transactions where the mortgage company acted as the lender, the following records:

(i) the promissory note, loan agreement, or repayment agreement, signed by the borrower;

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document, signed by the borrower;

(iii) any verifications of income, employment, or deposits obtained in connection with the loan;

(iv) copies of any title insurance policies with endorsements or title search reports obtained in connection with the loan, and receipts/invoices for the title insurance policy or title search report; and

(v) if applicable, the flood determination certificate obtained in connection with the loan and receipts/invoices for the flood determination certificate;

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(C) Truth in Lending Act (TILA). For transactions that are subject to the requirements of TILA (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.), the following records:

(i) the initial Truth-in-Lending statement for home equity lines of credit and reverse mortgage transactions required by Regulation Z, 12 C.F.R. §1026.19;

(ii) if the transaction is an adjustable rate mortgage transaction, the adjustable rate mortgage program disclosures;

(iii) records relating to the mortgage applicant's ability to repay the loan, as required by Regulation Z, 12 C.F.R. §1026.43(c);

(iv) if the mortgage applicant is permitted to shop for a settlement service, the written list of providers required by Truth-in-Lending, 12 C.F.R. §1026.19(e)(1)(vi)(C);

(v) the notice of intent to proceed with the transaction required by Regulation Z, 12 C.F.R. §1026.19(e)(2)(i)(A);

(vi) if applicable, records related to a changed circumstance required by Regulation Z, 12 C.F.R. §1026.19(e)(3)(iv);

(vii) the notice of right to rescission required by Regulation Z, 12 C.F.R. §1026.15 or §1026.23;

(viii) for high-cost mortgage loans, the disclosures required by Regulation Z, 12 C.F.R. §1026.32(c);

(ix) for high-cost mortgage loans, the certification of counseling required by Regulation Z, 12 C.F.R. §1026.34(a)(5)(i); and

(x) any other notice or disclosure required by TILA or Regulation Z;

(D) Real Estate Settlement Procedures Act (RESPA). For transactions that are subject to the requirements of RESPA (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.), the following records:

(i) records reflecting delivery of the special information booklet required by Regulation X, 12 C.F.R. §1024.6;

(iii) any affiliated business arrangement disclosure statement provided to the borrower in accordance with Regulation X, 12 C.F.R. §1024.15;

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(iv) records reflecting delivery of the list of homeownership counseling organizations required by Regulation X, 12 C.F.R. §1024.20; and

(v) any other notice or disclosure required by RESPA or Regulation X;

(E) Equal Credit Opportunity Act - Transactions Not Resulting in Approval. For residential mortgage loan applications where a notice of incompleteness is issued, a counteroffer is made, or adverse action is taken, as provided by Regulation B (12 C.F.R. §1002.1 et seq.), the following records, as applicable:

(i) the notice of incompleteness required by Regulation B, 12 C.F.R. §1002.9(c)(2);

(ii) the counteroffer letter sent to the mortgage applicant in accordance with Regulation B, 12 C.F.R. §1002.9; and

(iii) the adverse action notification (a/k/a turndown letter) required by Regulation B, 12 C.F.R. §1002.9(a);

(F) Home Equity Transactions. For home equity loan or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 refers to Article XVI, Section 50, Texas Constitution):

(i) the preclosing disclosures required by Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii); as provided by such section, the closing disclosure or account-opening disclosures required by Regulation Z fulfills this requirement);

(ii) the consumer disclosure required by Section 50(g) and §153.51 of this title (relating to Consumer Disclosure: Section 50(g));

(iii) if an attorney-in-fact executes the closing documents on behalf of the owner or owner's spouse, a copy of the executed power of attorney and any other documents evidencing execution of such power of attorney at the permanent physical address of an office of the lender, an attorney at law, or a title company, as required by §153.15 of this title (relating to Location of Closing: Section 50(a)(6)(N));

(iv) if the borrower uses the proceeds of the loan to pay off a non-homestead debt with the same lender, a written statement, signed by the borrower, indicating the proceeds of the home equity loan were voluntarily used to pay such debt (see Section 50(a)(6)(Q)(i));

(v) notice of the right of rescission, as required by Section 50(a)(6)(Q)(viii) (as provided by §153.25 of this title (relating to Right of Rescission: Section

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50(a)(6)(Q)(viii), the notice of right of rescission required by TILA and Regulation Z fulfills this requirement);

(vi) the written acknowledgement as to the fair market value of the homestead property, as required by Section 50(a)(6)(Q)(ix) and §153.26 of this title (relating to Acknowledgement of Fair Market Value: Section 50(a)(6)(Q)(ix)); and

(vii) if the home equity loan is refinanced into a non-home equity loan, the Texas Notice Concerning Refinance of Existing Home Equity to Non-Home Equity Loan, as required by Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f));

(G) Wrap Mortgage Loans. For wrap mortgage loan transactions subject to the requirements of Finance Code Chapter 159, the following records:

(i) the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), signed and dated by each mortgage applicant, and any foreign language disclosure statement required by Finance Code §159.102;

(ii) the disclosure statement required by Tex. Prop. Code §5.016 provided to each existing lienholder (the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure) referenced in clause (i) of this subparagraph fulfills this requirement if it was provided to each existing lienholder); and

(iii) documents evidencing that the wrap mortgage loan was closed by an attorney or a title company, as required by Finance Code §159.105;

(H) Home Improvement Loans. For home improvement transactions (including repair, renovation, and new construction), the following records:

(i) the mechanic's lien contract;

(ii) documents evidencing the transfer of lien from the contractor to the lender;

(iii) the residential construction contract;

(iv) notice of the right of rescission required by Article XVI, Section 50(a)(5)(C), Texas Constitution (the Truth-in-Lending Notice of Right to Cancel fulfills this requirement); and

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

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

(H) policies and procedures related to the origination of residential mortgage loans by the mortgage company and its sponsored originators, including, but not limited to:

(i) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));

(ii) anti-money laundering program (31 C.F.R. §1029.210);

(iii) information security program (16 C.F.R. §314.3(a));

(vii) ability-to-repay underwriting policies, if any (Regulation Z, 12 C.F.R. §1026.43(c));

(iv) quality control policy, if any;

(v) compliance manual, if any; and

(vi) personnel administration/employee policies, if any;

(4) Other Records Required by Federal Law. A mortgage company must maintain such other books and records as may be required to evidence compliance with applicable federal laws and regulations, including, but not limited to:

(i) the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(ii) the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.), and Regulation P (12 C.F.R. §1016.1 et seq.) and the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.);

(iii) the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and

(iv) Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.);

(5) Other Records Designated by the Commissioner. A mortgage company must maintain such other books and records as the Commissioner or the Commissioner's designee may, from time to time, specify in writing;

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(6) Records Concerning Administrative Offices. A mortgage company must create and maintain a list reflecting any office constituting an “administrative office” of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work); and

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

(c) Records Retention After Terminating Operations. Within 10 days of termination operations, a mortgage company must provide the Department with written notice of where the records required by this section will be maintained for the prescribed period. If such records are transferred to another mortgage company licensed by the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.

CHAPTER 81 MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER C DUTIES AND RESPONSIBILITIES

{{Existing §81.204 will be repealed and replaced with new §81.204}}

[§81.204. Books and Records

~~(a) Maintenance of Records, Generally. In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapters 157 and 180, and this chapter, each originator must maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(4) Records Concerning Administrative Offices. A mortgage banker must create and maintain a list reflecting any office constituting an "administrative office" of the mortgage banker for purposes of §81.206 of this title (relating to Office Locations; Remote Work).~~

~~(5) Records Concerning Remote Work. A mortgage banker must maintain records reflecting compliance with the requirements for remote work as provided by §81.206 of this title.~~

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

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

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

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

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

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

§81.204. Books and Records.

(a) Maintenance of Records, Generally. In order to ensure a mortgage banker or an originator will have all records necessary to facilitate an inspection of an originator, enable the Commissioner or the Commissioner's designee to investigate complaints against a mortgage banker or an originator, and otherwise ensure compliance with the requirements of Finance Code Chapters 157 and 180, and this chapter, a mortgage banker and an originator must create and maintain records as prescribed by this section.

(1) Format. The records required by this section may be maintained by using a physical, electronic, or digitally-imaged recordkeeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.

(2) Location. A mortgage banker must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage banker or the location the mortgage banker has designated in its MU1 filing under "Books and Records Information" in NMLS. An originator

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must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise accessible from the main office of the mortgage banker or the mortgage company sponsoring the originator, or the location the mortgage banker or mortgage company has designated in its MU1 filing under “Books and Records Information” in NMLS. (For purposes of this section the term “main office” has the meaning assigned by §81.206 of this title (relating to Office Locations; Remote Work), with respect to a mortgage banker, and §80.206 of this title (relating to Office Locations; Remote Work), with respect to a mortgage company.)

(3) Production of Records; Disciplinary Action or Violation. All records required by this section must be maintained in good order and produced for the Commissioner or the Commissioner’s designee upon request. Failure by an originator to produce records upon request after a reasonable time for compliance may result in disciplinary action against the originator, including, but not limited to, suspension or revocation of the originator’s license. Failure by a mortgage banker to produce records upon request after a reasonable time for compliance in response to a complaint investigation conducted by the Department may be treated as a failure by the mortgage banker to provide evidence in violation of the requirements of Finance Code §157.0022(b).

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law.

(5) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage banker or originator differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.

(6) Compliance by the Mortgage Banker or Mortgage Company on Behalf of the Originator. An originator fulfills the requirements of subsection (b) of this section if his or her sponsoring mortgage banker or mortgage company maintains the required books and records on behalf of the originator.

(b) Required Records of an Originator. An originator is required to create and maintain the following items:

(1) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means all entries must be made within no more than 7 days from the date on which the matters they relate to occurred), setting forth, at a minimum:

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

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

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(C) the full name of the originator who took the initial loan application, and his or her NMLS identification number;

(D) a description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);

(E) a description of the owner's or prospective owner's intended occupancy of the subject real estate (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence));

(F) the lien type (e.g., first lien, second lien, or wrap mortgage);

(G) a description of the current status or disposition of the residential mortgage loan application (e.g., in-process, withdrawn, closed, or denied); and

(H) if the loan is closed, the identity of the person who initially funded and/or acquired the residential mortgage loan; and

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction the originator must create and maintain a residential mortgage loan file containing, at a minimum:

(A) All Transactions. For all transactions, the following records:

(i) the initial and final loan application (including any attachments, supplements, or addendum thereto), signed and dated by each mortgage applicant and the sponsored originator, and any other written or recorded information used in evaluating the application, as required by Regulation B, 12 C.F.R. §1002.4(c);

(ii) the initial and revised good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar, provided to the mortgage applicant;

(iii) the final settlement statement (Regulation X, 12 C.F.R. §1024.8), closing statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

(iv) for an originator sponsored by a mortgage banker, the disclosure statement required by Finance Code §157.0021 and §81.200(a) of this title (relating to Required Disclosures); or, for and originator sponsored by a mortgage company, the disclosure statement required by Finance Code §156.004 and §80.200(a) of this title

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(relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored originator;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Pre-Qualification Letter, or similar, as specified by Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage company, or Finance Code §157.02012 and §81.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage banker;

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Approval Letter, or similar, as specified by Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage company, or Finance Code §157.02012 and §81.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage banker;

(vii) each item of correspondence, all evidence of any contractual agreement or understanding, and all notes and memoranda of conversations or meetings with a mortgage applicant or any other party in connection with the loan application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);

(viii) the notice of penalties for making a false or misleading written statement required by Finance Code §343.105, signed at closing by each mortgage applicant;

(ix) if the transaction is a purchase money or wrap mortgage loan transaction, the real estate contract for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the loan or prospective loan, and invoices/receipts for the purchase of the consumer report or credit report;

(xi) appraisal reports or written valuation reports used to determine the value of the subject property secured or designed to be secured by the loan, and invoices/receipts for the appraisal report or written valuation report;

(xii) invoices and proof of payment for third party fees;

(xiii) refund checks issued to the mortgage applicant;

(xiv) if applicable, the risk-based pricing notice required by Regulation V, 12 C.F.R. §1022.72;

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(xv) if applicable, invoices for independent loan processors or underwriters;

(xvi) if the originator or the mortgage banker or mortgage company sponsoring the originator acts in a dual capacity as the loan originator and real estate broker, sales agent, or attorney in the transaction, the disclosure of multiple roles in a consumer real estate transaction, signed and dated by each mortgage applicant, as required by Finance Code §156.303(a)(13) and §157.024(a)(10);

(xvii) the initial privacy notice required by Regulation P, 12 C.F.R. §1016.4 or 16 C.F.R. §313.4;

(xviii) the mortgage applicant's written authorization to receive electronic documents;

(xix) records reflecting compensation paid to employees or independent contractors in connection with the transaction;

(xv) any other agreements, notices, disclosures, or affidavits required by federal or state law in connection with the transaction; _____ and

(xvi) any written agreements or other records governing the origination of the loan or prospective loan;

(B) Lender Transactions. For transactions where the mortgage banker or mortgage company sponsoring the originator acted as the lender, the following records:

(i) the promissory note, loan agreement, or repayment agreement, signed by the borrower;

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document, signed by the borrower;

(iii) any verifications of income, employment, or deposits obtained in connection with the loan;

(iv) copies of any title insurance policies with endorsements or title search reports obtained in connection with the loan, and receipts/invoices for the title insurance policy or title search report; and

(v) if applicable, the flood determination certificate obtained in connection with the loan and receipts/invoices for the flood determination certificate;

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(C) Truth in Lending Act (TILA). For transactions that are subject to the requirements of TILA (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.), the following records:

(i) the initial Truth-in-Lending statement for home equity lines of credit and reverse mortgage transactions required by Regulation Z, 12 C.F.R. §1026.19;

(ii) if the transaction is an adjustable rate mortgage transaction, the adjustable rate mortgage program disclosures;

(iii) records relating to the mortgage applicant's ability to repay the loan, as required by Regulation Z, 12 C.F.R. §1026.43(c);

(iv) if the mortgage applicant is permitted to shop for a settlement service, the written list of providers required by Truth-in-Lending, 12 C.F.R. §1026.19(e)(1)(vi)(C);

(v) the notice of intent to proceed with the transaction required by Regulation Z, 12 C.F.R. §1026.19(e)(2)(i)(A);

(vi) if applicable, records related to a changed circumstance required by Regulation Z, 12 C.F.R. §1026.19(e)(3)(iv);

(vii) the notice of right to rescission required by Regulation Z, 12 C.F.R. §1026.15 or §1026.23;

(viii) for high-cost mortgage loans, the disclosures required by Regulation Z, 12 C.F.R. §1026.32(c);

(ix) for high-cost mortgage loans, the certification of counseling required by Regulation Z, 12 C.F.R. §1026.34(a)(5)(i); and

(x) any other notice or disclosure required by TILA or Regulation Z;

(D) Real Estate Settlement Procedures Act (RESPA). For transactions that are subject to the requirements of RESPA (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.), the following records:

(i) records reflecting delivery of the special information booklet required by Regulation X, 12 C.F.R. §1024.6;

(iii) any affiliated business arrangement disclosure statement provided to the borrower in accordance with Regulation X, 12 C.F.R. §1024.15;

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(iv) records reflecting delivery of the list of homeownership counseling organizations required by Regulation X, 12 C.F.R. §1024.20; and

(v) any other notice or disclosure required by RESPA or Regulation X;

(E) Equal Credit Opportunity Act - Transactions Not Resulting in Approval. For residential mortgage loan applications where a notice of incompleteness is issued, a counteroffer is made, or adverse action is taken, as provided by Regulation B (12 C.F.R. §1002.1 et seq.), the following records, as applicable:

(i) the notice of incompleteness required by Regulation B, 12 C.F.R. §1002.9(c)(2);

(ii) the counteroffer letter sent to the mortgage applicant in accordance with Regulation B, 12 C.F.R. §1002.9; and

(iii) the adverse action notification (a/k/a turndown letter) required by Regulation B, 12 C.F.R. §1002.9(a);

(F) Home Equity Transactions. For home equity loan or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 refers to Article XVI, Section 50, Texas Constitution):

(i) the preclosing disclosures required by Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii); as provided by such section, the closing disclosure or account-opening disclosures required by Regulation Z fulfills this requirement);

(ii) the consumer disclosure required by Section 50(g) and §153.51 of this title (relating to Consumer Disclosure: Section 50(g));

(iii) if an attorney-in-fact executes the closing documents on behalf of the owner or owner's spouse, a copy of the executed power of attorney and any other documents evidencing execution of such power of attorney at the permanent physical address of an office of the lender, an attorney at law, or a title company, as required by §153.15 of this title (relating to Location of Closing: Section 50(a)(6)(N));

(iv) if the borrower uses the proceeds of the loan to pay off a non-homestead debt with the same lender, a written statement, signed by the borrower, indicating the proceeds of the home equity loan were voluntarily used to pay such debt (see Section 50(a)(6)(Q)(i));

(v) notice of the right of rescission required by Section 50(a)(6)(Q)(viii) (as provided by §153.25 of this title (relating to Right of Rescission: Section

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50(a)(6)(Q)(viii), the notice of right of rescission required by TILA and Regulation Z fulfills this requirement);

(vi) the written acknowledgement as to the fair market value of the homestead property, as required by Section 50(a)(6)(Q)(ix) and §153.26 of this title (relating to Acknowledgement of Fair Market Value: Section 50(a)(6)(Q)(ix)); and

(vii) if the home equity loan is refinanced into a non-home equity loan, the Texas Notice Concerning Refinance of Existing Home Equity to Non-Home Equity Loan, as required by Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f));

(G) Wrap Mortgage Loans. For wrap mortgage loan transactions subject to the requirements of Finance Code Chapter 159, the following records:

(i) the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), signed and dated by each mortgage applicant, and any foreign language disclosure statement required by Finance Code §159.102;

(ii) the disclosure statement required by Tex. Prop. Code §5.016 provided to each existing lienholder (the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure) referenced in clause (i) of this subparagraph fulfills this requirement if it was provided to each existing lienholder); and

(iii) documents evidencing that the wrap mortgage loan was closed by an attorney or a title company, as required by Finance Code §159.105;

(H) Home Improvement Loans. For home improvement transactions (including repair, renovation, and new construction), the following records:

(i) the mechanic's lien contract;

(ii) documents evidencing the transfer of lien from the contractor to the lender;

(iii) the residential construction contract;

(iv) notice of the right of rescission required by Article XVI, Section 50(a)(5)(C), Texas Constitution (the Truth-in-Lending Notice of Right to Cancel fulfills this requirement); and

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Chapter 53; (v) any other notice or disclosure required by Texas Property Code

(l) Reverse Mortgages. For reverse mortgage transactions, the following records:

(i) the disclosure required by Article XVI, Section 50(k)(9), Texas Constitution;

(ii) the certificate of counseling required by Article XVI, Section 50(k)(8), Texas Constitution;

(iii) the servicing disclosure statement required by Regulation X, 12 C.F.R. §1024.33(a);

(iv) the disclosures required by Regulation Z, 12 C.F.R. §1026.33(b);
and

(v) any other notice or disclosure required by federal or state law to originate a reverse mortgage;

(J) Other Records Required by Federal Law. An originator must maintain such other books and records as may be required to evidence compliance with applicable federal laws and regulations, including, but not limited to:

(i) the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(ii) the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.), and Regulation P (12 C.F.R. §1016.1 et seq.) and the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.);

(iii) the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and

(iv) Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.);

(K) Other Records of an Originator Designated by the Commissioner. An originator must maintain such other books and records as the Commissioner or the Commissioner's designee may, from time to time, specify in writing.

(c) Required Records of a Mortgage Banker. A mortgage banker must maintain the following records:

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

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

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

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

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

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

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

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

(H) policies and procedures related to the origination of residential mortgage loans by the mortgage banker and its sponsored originators, including, but not limited to:

(i) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));

(ii) anti-money laundering program (31 C.F.R. §1029.210);

(iii) information security program (16 C.F.R. §314.3(a));

(vii) ability-to-repay underwriting policies, if any (Regulation Z, 12 C.F.R. §1026.43(c));

(iv) quality control policy, if any;

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(v) compliance manual, if any; and

(vi) personnel administration/employee policies, if any;

(2) Records Concerning Administrative Offices. A mortgage banker must create and maintain a list reflecting any office constituting an “administrative office” of the mortgage banker for purposes of §80.206 of this title (relating to Office Locations; Remote Work); and

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

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