



NOTICE OF PRECOMMENT DRAFT AND STAKEHOLDERS WEBINAR

SML Rulemaking – 7 TAC Chapters 51 and 52 Rule Review March 17, 2022 Pre-comment Draft

The Department of Savings and Mortgage Lending (SML or the Department) is considering changes to its rules in 7 Texas Administrative Code (TAC) Chapter 51, concerning Charter Applications, and affecting the thrift industry (savings and loan associations only); and Chapter 52, concerning Department Administration, which governs the Department's administrative processes and procedures. The rule changes were identified during the Department's periodic review of its rules conducted pursuant to Texas Government Code § 2001.039.

The Department will hold a stakeholders webinar on March 23, 2022 at 9:00 a.m. to discuss the pre-comment draft of the rule changes.

The Department will also accept informal written pre-comments until March 28, 2022 at 5:00 p.m.

The Department plans to present the rules for consideration by the Finance Commission at its April 22, 2022 meeting.

Participating in the Webinar

The webinar will be conducted using 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. **Informal pre-comments must be received by 5:00 p.m. on March 28, 2022.**

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Overview of Changes:

Changes Concerning the Relocation (Swapping) of Chapters 51 and 52. The Department's rules in 7 TAC Chapters 51, 53, 57, 61, 64, 65, 67, 69, 71 and 73 affect savings and loan associations regulated by the Department. 7 TAC Chapter 52, governing the administrative processes and procedures of the Department, is therefore located among the rule chapters concerning savings and loan associations which may tend to create confusion for the reader. The Department further asserts that Chapter 51 – the first chapter of the Department's rules – is a more appropriate chapter for Department's rules concerning the administrative processes and procedures to reside. As a result, the Department has determined it should relocate the rules in Chapters 51 and 52 by essentially swapping the rules in such chapters. Specifically, the rule changes, if adopted, would:

- repeal the existing rules in 7 TAC Chapter 51 and insert new rules largely patterned after the existing rules in 7 TAC Chapter 52;
- repeal the existing rules in 7 TAC Chapter 52 and insert new rules largely patterned after the existing rules in 7 TAC Chapter 51; and
- rename each of 7 TAC Chapters 51 and 52 to reflect the new rules inserted in each chapter.

Changes Concerning Complaint Processing Rules. The rule changes, if adopted, would make changes to the Department's existing rules in 7 TAC Chapter 52, Subchapter A, concerning Complaint Processing including:

- changes to existing §52.10, concerning Definitions, to: add definitions for the terms "Commissioner" and "Department"; and clarify that the Department will attempt to collect appropriate information to facilitate analysis or investigation of a complaint but will not treat such complaint as an inquiry for failure to include all such information;
- changes to existing §52.11, concerning Complaint Processing, to: clarify that a person filing a complaint who wishes to remain anonymous must request such treatment; clarify that an inquiry concerning a person or activity that the Department does not regulate will be referred to the appropriate regulatory authority, if known; clarify that a complaint may not be forwarded to the entity or individual that is the subject of the complaint if notice of the complaint would jeopardize analysis or investigation of the complaint by the Department; and clarify when the Department provides status updates to the complainant concerning their complaint (no less often than quarterly); and
- changes to existing §52.12, concerning Complaint Resolution and Disposition, to: clarify the Department's process to close a complaint if it is outside the Department's jurisdiction; clarify that, if an enforcement action is deemed to be warranted in order to address the complaint, the party to such action will be notified of the complaint being

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closed through such enforcement action and will not receive a separate notice; and establish a time limit of 90 days for a complainant to appeal the Department's disposition of their complaint, and clarify that the Department will provide written notice to the complainant of the results of a timely appeal request.

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; and updating terminology.

<rule>

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 51 DEPARTMENT ADMINISTRATION [~~CHARTER APPLICATIONS~~]

{{All existing sections in Chapter 51 will be repealed and replaced with new rules. Specifically, the following rules sections will be repealed:

§51.1. Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business

§51.2. Use of Approved Forms

§51.3. Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications

§51.4. Publication of Notice of Charter Application

§51.5. Notice to Associations

§51.6. Filing Proof of Publication

§51.7. Hearing When Application Not Protested

§51.8. Purpose of Hearing; Post-Hearing Investigation

§51.9. Time of Decision on Charter Applications

§51.10. Motions for Rehearing

§51.11. Definition of Community.

§51.12. Identification of Office Site; Temporary Location.

§51.13. Qualifying Management.

§51.14. Notice to Applicants.

§51.15. Appeals.}}

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SUBCHAPTER A COMPLAINTS

§51.1. Definitions.

The following terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(2) "Complainant" means a person who files a complaint with the Department.

(3) "Complaint" means a signed, written communication received by the Department's division for consumer assistance that expresses dissatisfaction with a transaction or alleges wrongful conduct. The Department will collect the following items and information regarding a complaint, if available:

(A) the complainant's name and contact information;

(B) the name of the entity or individual against whom the complaint is submitted;

(C) the date and place of the alleged misconduct, violation, or transaction;

(D) a description of the facts or conduct alleged to violate applicable statutes or rules; and

(E) any written documentation supporting the complaint.

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

(5) "Inquiry" means a written communication received by the Department's division for consumer assistance that is not a complaint.

§51.2. Complaint Processing.

(a) Complaints and inquiries filed with the Department are generally considered public information, unless a specific statutory exception applies.

(b) The Department, at the request of the complainant, will make a good faith effort to protect the complainant's identity to the extent possible.

(c) The Department will determine if a complaint or inquiry relates to an activity that the Department regulates, and:

(1) if the Department does not regulate the activity that is the subject of the complaint or inquiry, the Department will close the complaint or inquiry and refer the person making the complaint or inquiry to the appropriate regulatory authority, if known; or

(2) if the Department regulates the activity that is the subject of a complaint, the Department will send a copy or summary of the complaint and appropriate supporting documentation to the entity or individual that is the subject of the complaint to request a

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response, unless notice of the complaint would jeopardize analysis or investigation of the complaint or the Commissioner or his or her designee otherwise determines an undercover or covert investigation is warranted.

(d) A regulated entity or individual that receives a complaint forwarded by the Department must respond within 14 calendar days from the date the request was sent by the Department.

(e) The Department will prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(g) The Department will monitor how long each complaint is open, and will make all reasonable efforts to resolve complaints within 90 calendar days of receipt of actionable information. The Department will notify the complainant of their complaint status at least quarterly until final disposition, unless such notice would jeopardize an ongoing complaint analysis or investigation.

§51.3. Complaint Resolution and Disposition.

(a) If the Department determines the complaint is not supported by the evidence, is not within the Department's jurisdiction, contains no violation, or is resolved to the satisfaction of the parties, the complaint will be closed.

(b) If the Department determines the complaint is sufficiently supported by the evidence and justifies disciplinary/enforcement action, the complaint will be closed and referred for an enforcement action.

(c) The Department will notify all parties to the complaint within 10 business days of closing the complaint (closing notice). However, if the complaint is closed with a referral for an enforcement action, the respondent in such enforcement action will be notified by and through the enforcement action only, and will not receive a separate closing notice.

(d) A complainant who disagrees with the disposition of a complaint may appeal by sending a written appeal request to the Department's division for consumer assistance within 90 calendar days after the date the closing notice was issued. Upon receipt of a timely appeal request, a senior member of the Department's division for consumer assistance, or other qualified employee designated by the Commissioner, will review all information and make a determination regarding the complaint. Unless such review results in a new determination, this review will be considered final and may not be appealed further with the Department. The Department will provide the complainant with written notice concerning the results of a review performed in accordance with this subsection.

§51.4. Complaint Review and Reporting.

(a) The Department will maintain records of all complaints received in accordance with its retention policy. Such records will include the information required by Finance Code §13.011.

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(b) At least quarterly, a senior investigator in the Department's division for consumer assistance, or other qualified employee designated by the Commissioner, will review a sample of complaints closed administratively, due to lack of jurisdiction, lack of a violation, or for evidentiary reasons.

(c) At least quarterly, the Department will submit to the Finance Commission of Texas a report of the sources, subjects, types, and dispositions of complaint activity during the preceding period.

(d) The Department will make available on its website information describing procedures for complaint receipt, investigation, and disposition.

SUBCHAPTER B HEARINGS AND APPEALS

§51.100. Appeals, Hearings, and Informal Settlement Conferences.

(a) Alternative Resolution of Appeal. If legal or enforcement staff determines resolution of an appeal without a hearing is appropriate and possible, legal or enforcement staff may pursue settlement through negotiation, mediation, agreed order, consent order, informal settlement conference, alternative dispute resolution, or other appropriate means.

(b) Informal Settlement Conference. Informal settlement conferences:

(1) are conducted at the discretion of legal or enforcement staff;

(2) may not be used as a delay tactic;

(3) may be primarily conducted remotely, including solely over the phone or by email; and

(4) a request for an informal settlement conference does not create any new or additional rights or obligations.

(c) Mediation. As applicable under Finance Code §13.017, the Department may, at the discretion of the Commissioner or his or her designee, arrange for the services of a qualified mediator or subject matter expert to assist in resolving complaints or other matters.

(d) Hearing. Hearings may be conducted in accordance with Chapter 9 of this title, with Texas Government Code Chapter 2001, and may be conducted by the State Office of Administrative Hearings (SOAH).

SUBCHAPTER C ADVISORY COMMITTEES

§51.200. Advisory Committees and Informal Conferences.

(a) Advisory Committees. The mortgage industry advisory committee referenced in Finance Code §§157.0024 and 156.104, as well as any advisory committees which may be created under Finance Code §13.018, shall continue in existence, and unless continued further, shall be automatically abolished on September 1, 2031.

(b) Informal Conferences. The Commissioner, in addition to obtaining advice and guidance from an advisory committee, may use informal conferences and consultations with other

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interested persons to obtain advice and guidance and assist the Commissioner in carrying out his or her duties.

SUBCHAPTER D RECOVERY FUND

§51.300. Purpose and Applicability.

The rules contained in 7 TAC Chapter 52, Subchapter D govern the Commissioner's administration of the recovery fund the Commissioner is required to establish, administer and maintain in accordance Finance Code §13.016 and Chapter 156, Subchapter F.

§51.301. Definitions.

The following terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

(2) "Claimant" means a mortgage applicant making or seeking to make a claim on the recovery fund in accordance with Finance Code §156.504.

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

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

(5) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator in response to a solicitation) 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 has submitted financial information constituting an application as provided by paragraph (1) of this section.

(6) "Originator" has the meaning assigned by Finance Code §180.002 in defining the term "residential mortgage loan originator."

(7) "Recovery fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code §13.016 and Chapter 156, Subchapter F.

(8) "Residential mortgage loan" has the meaning assigned by Finance Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a dwelling, but is used for a commercial purpose

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such as a professional office, salon, or other non-residential use, and is not used as residence.

§51.302. Claims.

(a) Application Required. As provided by Finance Code §156.504, a claimant seeking to recover from the recovery fund must file a sworn written application with the Department which must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim made on the recovery fund, the Commissioner will issue an order disbursing funds from the recovery fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Finance Code §156.504(d), or if the Department's preliminary determination under Finance Code §156.504(c)(2) was disputed and an adjudicative hearing required, for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the recovery fund. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§51.303. Administrative Penalty Against Originator.

If the Commissioner approves a claim made under Finance Code §156.504, the Commissioner may impose an administrative penalty on the originator whose acts or omissions caused the claim.

§51.304. Liability for Unpaid Claims.

(a) No Liability. The recovery fund, the Commissioner, and the Department are not liable to a claimant for a claim approved by the Commissioner under Finance Code §156.504 if the assets of the recovery fund are insufficient to pay such claim.

(b) Payment of Unpaid Claims. If the recovery fund contains insufficient assets to pay a claim approved by the Commissioner under Finance Code §156.504, the Commissioner will:

(1) record the time and date the claim was approved; and

(2) pay approved but unpaid claims for which a recordation was made under paragraph (1) as funds in the recovery fund become available, in the order of the recorded time and date of such claims.

SUBCHAPTER E MORTGAGE GRANT FUND

§51.400. Purpose and Applicability.

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The rules contained in 7 TAC Chapter 52, Subchapter E govern the Commissioner's administration of the Mortgage Grant Fund as provided by Finance Code Chapter 156, Subchapter G other than claims made against the Mortgage Grant Fund in accordance with Finance Code §156.555 which are governed by the rules contained in 7 TAC Chapter 51, Subchapter F (relating to Mortgage Grant Fund: Recovery Claims for Unlicensed Activity).

§51.401. Definitions.

The following terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Auxiliary mortgage loan activity company" has the meaning assigned by Finance Code §156.002.

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

(3) "Department" means the Department of Savings and Mortgage Lending.

(4) "Finance Commission" means the Finance Commission of Texas.

(5) "Grant Coordinator" means the individual appointed as the Grant Coordinator for purposes of §51.403 of this title (relating to Grant Coordinator).

(6) "Mortgage Grant Advisory Committee" or "MGAC" means the Mortgage Grant Advisory Committee formed to advise the Commissioner concerning administration of the fund, as provided by §51.404 of this title (relating to Mortgage Grant Advisory Committee).

(7) "Mortgage Grant Administration Manual" means the manual created by the Commissioner to reflect the various policies and procedures governing administration of the Mortgage Grant Fund grant program as provided by §52.202 of this title (relating to Commissioner as Manager).

(8) "Mortgage Grant Fund" or "fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.

§51.402. Commissioner as Manager.

(a) Manager. As provided by Finance Code §156.553, the Commissioner serves as manager of the fund and administers all aspects of the fund.

(b) Periodic Reports to the Finance Commission. Unless the Finance Commission directs otherwise, the Commissioner or his or her designee (including but not limited to the Grant Coordinator) will report to the Finance Commission audit committee concerning the status and activities of the fund at each regularly called meeting of the Finance Commission audit committee, or otherwise at the request of the Finance Commission or its audit committee.

(c) Mortgage Grant Administration Manual. The Commissioner will develop and create a manual reflecting the Commissioner's policies and procedures governing administration of the fund and the Mortgage Grant Fund grant program to be known and referred to as the

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Mortgage Grant Administration Manual (MGAM). The MGAM, and any amendments to the MGAM, must be approved by the Finance Commission audit committee.

§51.403. Grant Coordinator.

The Commissioner may appoint an employee of the Department to serve as grant coordinator to assist the Commissioner in discharging his or her duties related to the fund. The Grant Coordinator serves under the direction of the Commissioner and acts as liaison between grantees and the Mortgage Grant Advisory Committee (MGAC). The Commissioner may delegate any authority of the Commissioner to act as manager of the fund to the Grant Coordinator, including any specific duties listed under Finance Code §156.553 except the authority to appear at hearings or judicial proceedings related to the fund.

§51.404. Mortgage Grant Advisory Committee.

(a) Formation. The Mortgage Grant Advisory Committee (MGAC) is created to serve in an advisory role and makes program recommendations to the Commissioner and Grant Coordinator regarding administration of the fund and the grant awards to be made from the fund. MGAC will continue in existence until the abolishment date set by §51.200 of this title (relating to Advisory Committees and Informal Conferences).

(b) Governance. MGAC will be governed by the provisions of the Mortgage Grant Administration Manual, including composition, eligibility, appointment, and membership terms.

(c) Reporting. MGAC will make and report written recommendations to the Commissioner and Grant Coordinator for review and consideration concerning all aspects of administering the fund including:

(1) evaluating grant applications to determine whether the application should be approved, and if so, a specific grant amount to award;

(2) monitoring ongoing grant awards to determine compliance;

(3) considering potential amendments to the Mortgage Grant Administration Policy Manual; and

(4) evaluating potential candidates for appointment to MGAC.

§51.405. Grant Program.

(a) Scope. This section governs the administration of and disbursements from the fund (each of which is considered a grant disbursement) for purposes of:

(1) Finance Code §156.554(b)(1), concerning grants to an auxiliary mortgage loan activity company or another nonprofit organization to promote financial education relating to mortgage loans; and

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(2) Finance Code §156.554(b)(3), concerning disbursements to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, or for the purposes provided by Finance Code §393.628(c).

(b) Grant Cycle. The fund may have one competitive grant cycle every two years.

(1) Funding Determination. The grant funding determination is made by the Commissioner by December 31 of each odd-numbered year. The Commissioner will determine the separate funding available and allocated to each of the purposes of Finance Code §156.554(b)(1) and (3).

(2) Programming Cycle. A new fund grant programming cycle may open on January 1 of every even-numbered year. An applicant may choose to apply for a one-year grant programming cycle, or a two-year grant programming cycle. The grant programming cycle for a one-year grantee begins on January 1 and ends on December 31 of the even-numbered year for the applicable cycle. The grant programming cycle for a two-year grantee begins on January 1 of the even-numbered year and ends on December 31 of the following odd-numbered year for the applicable cycle.

(c) Eligibility. A grant made under Finance Code §156.554(b)(1) and subsection (a)(1) of this section may only be given to a company licensed by the Department as an auxiliary mortgage loan activity company, or a nonprofit organization. A grant made under Finance Code §156.554(b)(3) and subsection (a)(2) of this section may be given to a nonprofit organization, school, or for-profit entity. Grant funding is not available to entities licensed or registered by the Department other than auxiliary mortgage loan activity companies in accordance with Finance Code §156.554(b)(1) and subsection (a)(1) of this section.

(d) Grant Application. To be considered for the grant program, an applicant must complete and submit the grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be accepted. Meeting eligibility criteria and timely submission of a grant application does not guarantee award of a grant in any amount.

(e) Review and Approval. The Commissioner, upon receipt of advice from MGAC and the Grant Coordinator, will review timely and complete applications and determine the grants to be awarded.

(f) Grant Agreement. To participate in the grant program, a grantee approved by the Commissioner to receive a grant must execute the grant agreement approved by the Commissioner for the applicable grant cycle (grant agreement).

(g) Grantee Compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over grant program funds. A grantee must use awarded funds in compliance with the following in effect for the applicable grant cycle:

(1) all applicable state laws and regulations;

(2) all applicable federal laws and regulations;

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(3) the Mortgage Grant Administration Manual;

(4) the grant application, including all application guidelines and instructions at the time of application;

(5) the grant agreement signed by the Commissioner or the Commissioner's designee and the grantee;

(6) all reporting and monitoring requirements, as outlined in the grant agreement;
and

(7) any other guidance documents posted on the Mortgage Grant Fund website for the applicable grant cycle.

(h) Reporting and Monitoring.

(1) General reporting requirements. To receive reimbursement of grant expenses a grantee must:

(A) submit periodic grant reports as provided by the grant agreement;

(B) maintain satisfactory compliance with the grant agreement and the grant activities as proposed by the grantee in its grant application;

(C) identify, track and report performance measures; and

(D) track and report participant demographic information.

(2) Progress Reports. A grantee must submit progress reports that demonstrate performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

(3) Six-month Longitudinal Report. A grantee must submit a six-month longitudinal report after program completion to demonstrate program objectives.

(4) Monitoring. The Grant Coordinator or MGAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk Review. The Grant Coordinator or MGAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process; or

(B) Site Visits and Inspection Reviews. The Grant Coordinator or MGAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(i) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with all terms of the grant agreement, as well as all other items provided in subsection (g) of this section. To ensure that grant funds are used for a public purpose as provided by Finance Code §156.556(1), grant funds will only be awarded on a cost reimbursement basis for all actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement.

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Expenses that were incurred before the beginning or after termination of the grant agreement are not eligible for reimbursement.

(2) Procedure. To request reimbursement for work performed on grant activities, a grantee must submit a grant reimbursement report in accordance with and by the deadlines set forth in the grant agreement. A grantee must submit a detailed expense report with supporting documentation to justify the reimbursement request. The Department will review and approve requests for reimbursement that satisfy the requirements and promptly disburse funds in response to approved requests.

(j) Misuse of Grant Funds. The Commissioner may require a refund of grant funds already disbursed to the grantee and may cancel the grant agreement or disqualify the grantee from receiving future grants from the fund if:

(1) grant funds are not used for a public purpose allowable under Finance Code §156.554;

(2) grant funds are used in an illegal manner;

(3) the grantee violates the terms or conditions of the grant agreement or otherwise violates the requirements of subsection (g) of this section; or

(4) the Commissioner discovers the grantee made any material misrepresentations in obtaining the grant or in seeking reimbursement of grant funds.

SUBCHAPTER F MORTGAGE GRANT FUND: RECOVERY CLAIMS FOR UNLICENSED ACTIVITY

§51.500. Purpose and Applicability.

The rules contained in 7 TAC Chapter 52, subchapter F govern the Commissioner's administration of Finance Code §156.555, allowing for claims to be made against the Mortgage Grant Fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the required license issued under Finance Code Chapter 157.

§51.501. Definitions.

The following terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Application" 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.

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(2) "Claimant" means a mortgage applicant making or seeking to make a claim on the Mortgage Grant Fund in accordance with Finance Code §156.555.

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

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

(5) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator or an individual acting or attempting to act in the capacity of an originator in response to a solicitation) 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 has submitted financial information constituting an application as provided by paragraph (1) of this section.

(6) "Mortgage Grant Fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.

(7) "Originator" has the meaning assigned by Finance Code §180.002 in defining the term "residential mortgage loan originator."

(8) "Recovery fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code §13.016 and Finance Code Chapter 56, Subchapter F.

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

§51.502. Claims.

(a) Application Required. As provided by Finance Code §156.555, adopting by reference the procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F, a claimant must file a sworn written application with the Department and must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim on the Mortgage Grant Fund for purposes of Finance Code §156.555, the Commissioner will issue an order disbursing funds from the Mortgage Grant Fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Finance Code §156.504(d) (by application of Finance Code §156.555), or if the Department's preliminary determination letter under §156.504(c)(2) was

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disputed and an adjudicative hearing required, for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the Mortgage Grant Fund for purposes of Finance Code §156.555. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§51.503. Consequences for Unlicensed Individual.

(a) Administrative Penalty. If the Commissioner approves a claim made under Finance Code §156.555, the Commissioner may impose an administrative penalty on the unlicensed individual whose fraudulent acts caused the claim.

(b) Grounds for Denial. As provided by Finance Code §180.201(1), failure by the unlicensed individual to pay the administrative penalty imposed by this section is a violation of an order of the Commissioner and therefore constitutes grounds for denial of an application from such individual for a residential mortgage loan originator license under Finance Code Chapter 157.

§51.504. Liability for Unpaid Claims.

(a) No Liability. The Mortgage Grant Fund, the Commissioner, and the Department are not liable to a claimant for a claim approved by the Commissioner under Finance Code §156.555 if the assets of the Mortgage Grant Fund are insufficient to pay such claim.

(b) Payment of Unpaid Claims. If the Mortgage Grant Fund contains insufficient assets to pay a claim approved by the Commissioner under Finance Code §156.555, the Commissioner will:

(1) record the time and date the claim was approved; and

(2) pay approved but unpaid claims for which a recordation was made under paragraph (1) as funds in the Mortgage Grant Fund become available, in the order of the recorded time and date of such claims; and, provided, the Commissioner determines in his or her sole discretion that disbursement from the Mortgage Grant Fund will not injure, hamper, or impede the Commissioner's administration of and disbursements from the Mortgage Grant Fund for purposes of Finance Code §156.554.

§51.505. Eligibility.

(a) Application of Finance Code Chapter 156, Subchapter F. Finance Code §156.555(b), adopts by reference the eligibility and procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F. This section clarifies how certain of such requirements apply to a claim made on the Mortgage Grant Fund in accordance with Finance Code §156.555.

(b) Actions by an Unlicensed Individual Acting as an Originator. To be eligible to recover from the Mortgage Grant Fund, the individual alleged to have caused harm to the claimant

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must have been acting or attempting to act in the capacity of an originator - actions for which a license under Finance Code Chapter 157 was required as provided by Finance Code §157.012 and §81.100 of this title (relating to Licensing - General).

(c) Fraudulent Acts. Recovery under Finance Code §156.555 is limited to acts of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the license required by Finance Code Chapter 157. Finance Code §156.501(b), applicable to claims made on the recovery fund, provides that recovery is limited to acts by a licensed originator that constitute a violation of specific, enumerated provisions of Finance Code §§157.024(a) and 156.304(b). As a result, in order to recover under Finance Code §156.555, a claimant must establish that the acts of the unlicensed individual, had he or she been licensed as a residential mortgage loan originator at the time of such acts, would have constituted fraudulent dealings for purposes of Finance Code §157.024(a)(3).

§51.506. Statute of Limitations at Inception.

Finance Code §156.555(b) adopts by reference the statute of limitations period for making claims on the recovery fund under Finance Code Chapter 156, Subchapter F and applies it to claims made against the Mortgage Grant Fund in accordance with Finance Code §156.555. Specifically, pursuant to Finance Code §156.503, a claim made on the recovery fund may not be filed after the fourth anniversary of the date the acts causing the actual damages occurred or should reasonably have been discovered. Finance Code §156.555 and the Mortgage Grant Fund came into existence effective September 1, 2021. As a result, the earliest possible date for a claim to have accrued for purposes of the limitations period applicable to claims made under Finance Code §156.555 is September 1, 2017, and any claim accruing prior to that date is barred.

CHAPTER 52 CHARTER APPLICATIONS [~~DEPARTMENT ADMINISTRATION~~]

{{All existing sections in Chapter 52 will be repealed and replaced with new rules. Specifically, the following rules sections will be repealed:

§52.10. Definitions.

§52.11. Complaint Processing.

§52.12. Complaint Resolution and Disposition.

§52.13. Complaint Review and Reporting

§52.20. Appeals, Hearings, and Informal Settlement Conferences.

§52.30. Advisory Committees and Informal Conferences.

§52.100. Purpose and Applicability.

§52.101. Definitions.

§52.102. Claims.

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§52.103. Administrative Penalty Against Originator.

§52.104. Liability for Unpaid Claims.

§52.200. Purpose and Applicability.

§52.201. Definitions.

§52.202. Commissioner as Manager.

§52.203. Grant Coordinator.

§52.204. Mortgage Grant Advisory Committee.

§52.205. Grant Program.

§52.300. Purpose and Applicability.

§52.301. Definitions.

§52.302. Claims.

§52.303. Consequences for Unlicensed Individual.

§52.304. Liability for Unpaid Claims.

§52.305. Eligibility.

§52.306. Statute of Limitations at Inception.}}

~~[SUBCHAPTER A COMPLAINTS]~~

~~[SUBCHAPTER B HEARINGS AND APPEALS]~~

~~[SUBCHAPTER C ADVISORY COMMITTEES]~~

~~[SUBCHAPTER D RECOVERY FUND]~~

~~[SUBCHAPTER E MORTGAGE GRANT FUND]~~

~~[SUBCHAPTER F MORTGAGE GRANT FUND: RECOVERY CLAIMS FOR UNLICENSED ACTIVITY]~~

§52.1. Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business.

(a) When the Certificate of Formation of a new association is presented to the savings and mortgage lending commissioner for approval, such Certificate of Formations shall be accompanied by an application which conforms to the statutory requirements provided in the Texas Savings and Loan Act, §62.001, and states the proposed location of the principal office of the new association and the identity and qualifications of the proposed managing officer. There shall also be submitted with the application a detailed description of each proposed loan instrument and such additional information as may be required by the proposed bylaws of the association together with such statements, exhibits, maps, plans,

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photographs, and other data, sufficiently detailed and comprehensive to enable the commissioner to pass upon matters set forth in the Texas Savings and Loan Act, §62.007. Such information must show that the proposed association will have and maintain independent quarters as considered appropriate by the commissioner with a ground floor location or its equivalent. The Certificate of Formation and all statements of fact tendered to the commissioner shall be verified as required by the Texas Savings and Loan Act, §62.001.

(b) No application to incorporate a new association shall be approved unless the application and evidence produced at hearing satisfy the commissioner that the proposed association has received subscriptions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation, if applicable, or the amount required of a national bank.

(c) No association with an approved charter shall open or do business as a savings and loan association until the commissioner certifies receipt of proof satisfactory to him or her that the above-required dollar amounts of capital stock and paid-in surplus, or the savings liability and expense fund, as applicable, have been received by the association in cash, free of encumbrance.

(d) No application to incorporate as an association for an acquisition or merger under the Texas Savings and Loan Act, §62.051, shall be approved unless the application and evidence produced at hearing satisfy the commissioner that the proposed association will be capitalized in an amount sufficient to accomplish the purposes for which incorporation is requested, which shall be an amount sufficient to insure that, after the proposed acquisition or merger, the resulting association will meet and continue to meet applicable minimum net worth requirements.

§52.2. Use of Approved Forms.

The commissioner shall furnish approved forms of application, and other information to aid in the filing of the application. After the application and its supporting data have been received by the commissioner, the commissioner shall make or cause to be made an investigation or onsite review of the application. The application form is available from the Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

§52.3. Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications.

Within 10 days after the filing of a proper application, the commissioner shall set a date for a hearing on the application, which date shall not be more than 90 days after the date the application is deemed substantially complete. If an application for charter is filed at least 10 days before the date set for hearing of a pending charter application, for a location which, in the opinion of the commissioner, is for the same community as the pending application,

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such applications may be heard in one hearing to be held upon the date set for the pending application. In such cases, the proposed incorporators named in any such subsequent application shall cause the first two paragraphs of the notice required by §52.4 (relating to Publication of Notice of Charter Application) of this title to be published at least five days before the date of such hearing, and shall file proof of such publication at the hearing. In addition, the commissioner shall mail notice of such joint hearing to the parties set out in §52.5 of this title (relating to Notice to Associations). If any material change occurs in the facts set forth in, or if the applicant files any amendment of, the application filed with the commissioner under the provisions of this chapter, the amendment setting forth such change, together with copies of documents or other material relevant to such change shall be filed with the commissioner no less than 10 days prior to the date of hearing. Any amendment filed fewer than 10 days prior to the date of hearing shall be accepted only at the discretion of the hearing officer and the hearing officer may, upon motion of any interested party having filed notice of intention to appear at said hearing, postpone or delay the hearing to a later date if it appears that such amendment materially alters the application on file. Provided, however, no additional publication of the date of such hearing shall be required.

§52.4. Publication of Notice of Charter Application.

The proposed incorporators shall publish at least 20 days before the date of the hearing, in a newspaper printed in the English language of general circulation in the county where the proposed association will have its principal office, a notice in a format acceptable to the commissioner.

§52.5. Notice to Associations.

The commissioner shall mail notice of such hearing to at least all state and federal savings and loan associations with offices in the county of the proposed location or in any adjoining or adjacent counties within a proximity that might be served or affected by the proposed association.

§52.6. Filing Proof of Publication.

At least 10 days before the hearing date the proposed incorporators shall file proof of publication in the manner provided in §52.4 of this title (relating to Publication of Notice of Charter Application) with the commissioner and if 10 days before the hearing date the commissioner has received no written statements of intention to appear in person or by attorney to protest the application from one or more parties, the hearing may be dispensed with by the commissioner. The commissioner shall notify the proposed incorporators at least five days before the date of the hearing in the event the hearing has been dispensed with.

§52.7. Hearing When Application Not Protested.

When requested by the proposed incorporators, a hearing may be held at the commissioner's discretion on the application even though no person has indicated a desire to be heard against it.

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§52.8 Purpose of Hearing; Post-Hearing Investigation.

The purpose of the hearing shall be to accumulate a record of all pertinent information, testimony, records, reports, and other data in favor of or opposed to the application upon which the commissioner shall make a determination of whether the application should be granted or denied. The commissioner may, in his or her discretion, make an independent investigation of matters raised in the hearing and, in the event the commissioner desires to base his or her decision on any evidence disclosed by such investigation which is not a part of the official record, the commissioner shall make the results of such investigation a part of the official record of the hearing and permit all parties to the hearing an opportunity to be heard in respect thereto by reopening the hearing, if necessary. This shall be done within 30 days after the date of the original hearing.

§52.9 Time of Decision on Charter Applications.

The commissioner shall render a decision within 60 calendar days after the date the hearing is finally closed if the hearing was held in accordance with §52.3 of this title (relating to Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications), or after the date on which the hearing is dispensed with, as the case may be. Provided, however, in cases of conflicting applications meeting the requirements of §62.008 of the Texas Savings and Loan Act, where one or more subsequent applications are filed before the first application is heard, the commissioner may delay his or her decision on all such competing applications until 60 days after the last such application has been heard.

§52.10 Motions for Rehearing.

In the event a motion for rehearing is filed pursuant to §61.006 of the Texas Savings and Loan Act, as a condition precedent thereto, copies of such motion shall be sent to all parties who have appeared and participated in the hearing, and certification of such fact shall be made to the commissioner at the time of filing said motion; replies to such motions for rehearing must be filed with the commissioner within 25 days after the day the decision or order is entered, and the commissioner's action upon such motion for rehearing shall be taken within 45 days after the date of the original order or decision. If the commissioner's action is not taken within 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the original order or decision.

§52.11 Definition of Community.

In connection with any application for charter or for an additional office, the term "community" as used in the Texas Savings and Loan Act shall be considered to mean that geographical area so situated with respect to the proposed location that persons residing in such area could patronize the proposed office in the ordinary course of their business.

§52.12 Identification of Office Site; Temporary Location.

In connection with any application for charter or for an additional office, the proposed office site shall be identified with such particularity so as to exactly locate it within the community

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to be served. The commissioner may approve opening and operating a temporary facility for an approved charter or additional office, provided that such facility is within one-half mile radius of the approved permanent site and, further, provided that the operation of the temporary facility will cease immediately upon the permanent facility being completed for occupancy, but in any event no longer than 18 months, unless extended in writing by the commissioner.

§52.13 Qualifying Management.

In determining the question of "qualified full-time management" of a proposed or new association:

(1) a person shall be prima facie qualified if currently managing a savings and loan association in this state, or if at the date of filing an application shall have had, next preceding such date, at least three consecutive years of practical experience in the executive management of a savings and loan association in this state; and

(2) a person shall be prima facie disqualified if they have less than three years active experience in real estate mortgage lending or has filed for bankruptcy; has made a voluntary assignment for benefit of creditors; has been convicted of a felony; defaulted on a fidelity bond; or has had a license revoked under The Real Estate License Act, The Securities Act, or the Insurance Code of this state.

§52.14 Notice to Applicants.

Within 30 days of receipt of an application for any form of authorization to be granted by the commissioner pursuant to this title, and for which a filing fee is charged pursuant to Chapter 63 of this title, the commissioner shall issue a written notice to the applicant informing the applicant either that the application is complete and accepted for filing, or that the application is deficient and that specific additional information is required.

§52.15 Appeals.

(a) An applicant may appeal directly to the commissioner for a timely resolution of a dispute arising from a violation of the time periods set forth in this title. An applicant shall perfect an appeal by filing a written request therefor within 30 days of the date a decision is made on the application by the commissioner, addressed to the commissioner, requesting review of the application to determine whether the established period for the granting or denying of the application was exceeded. The commissioner shall base his decision on the written appeal filed by the applicant, the application and all data, correspondence and other information related thereto, and the record of any hearing held on such application.

(b) The commissioner shall decide the appeal in the applicant's favor if he determines that the time periods set forth in this title were exceeded without good cause. The commissioner shall issue a written decision to the applicant within 60 days of the filing of an appeal. If an appeal is decided in the applicant's favor, the applicant shall be reimbursed all of its application fees.