



Navigating the Complaint Process and Enforcement Process



DEPARTMENT OF
**SAVINGS AND
MORTGAGE LENDING**

Part One: the Complaint Process



Background

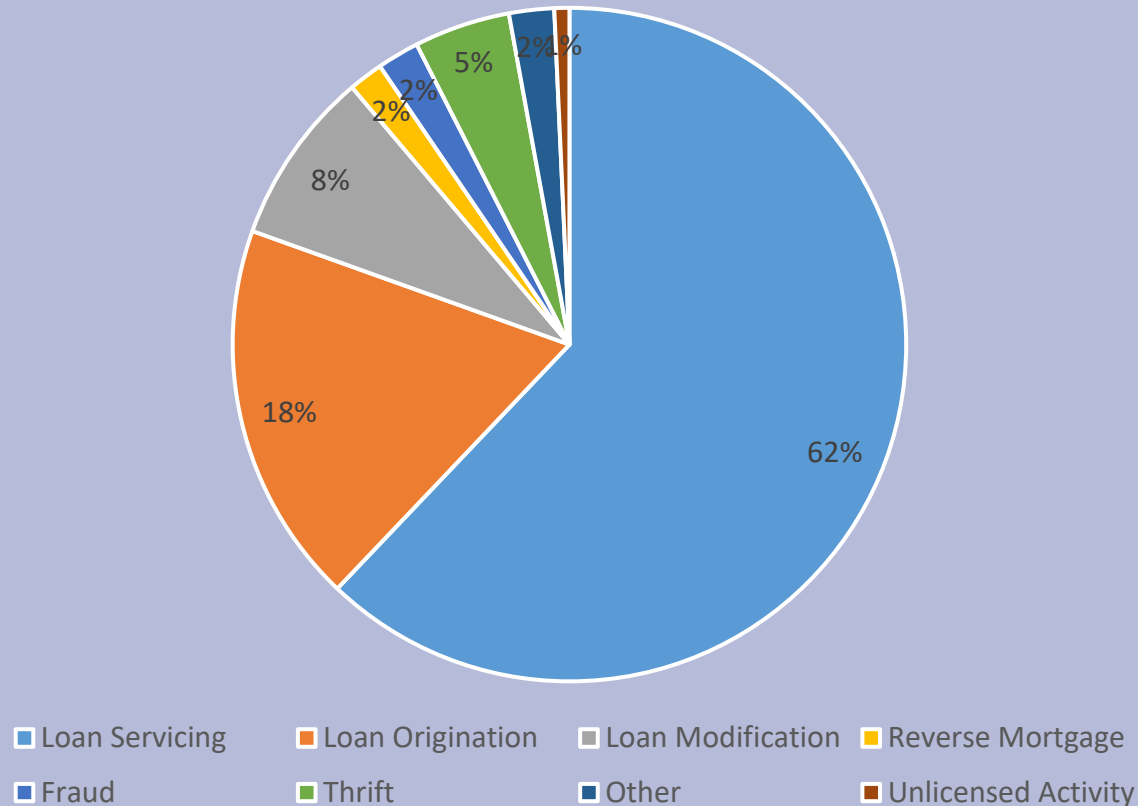
- Finance Code § 13.011: “[t]he Department . . shall maintain a system to promptly and efficiently act on complaints.”
- Mortgage companies: Finance Code § 156.301 (Inspections; Investigations)
- Mortgage Bankers: Finance Code § 157.0022 (Complaints)
- RMLOs: Finance Code § 157.021 (Inspection; Investigations)
- Mortgage Servicers: Finance Code § 158.102 (Investigation of Complaints Against Registrant; Surcharge)

Staff

- Complaints are investigated by the Consumer Responsiveness section, within the Legal division
- The Consumer Responsiveness Section is staffed by team of five Investigators (currently two vacancies)
- Experience: 1-2 years (1); 5-10 years (1); 15-20 years (1)
- Investigators are required to take a minimum of 40 hours of training each year

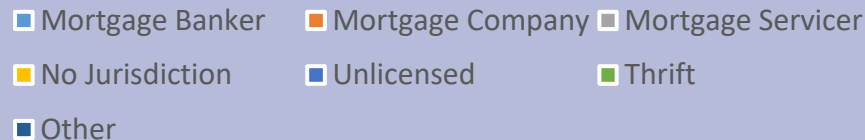
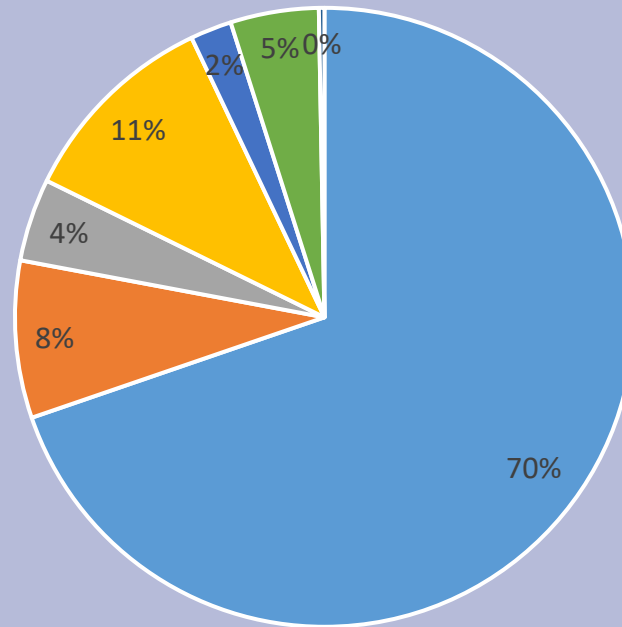
Complaint Statistics: by Alleged Violation

- In FY2023, the Department received 1,388 complaints, compared to 1,485 in FY2022 (6.53% decrease)



Complaint Statistics: by Respondent

- In FY2023, the Department received 1,388 complaints, compared to 1,485 in FY2022 (6.53% decrease)



Complaint Process

- Step 1: Determine jurisdiction (if no jurisdiction, letter sent to Complainant (CMP) referring CMP to authority having jurisdiction)
- Step 2: Acknowledgement letter sent to CMP
- Step 3: Response request letter sent to Respondent (RSP) (unless it would jeopardize the investigation)
- Step 4: Investigation
- Step 5: File closure – disposition letter sent to CMP and RSP (if no enforcement referral)
- Step 6: Enforcement Referral (if applicable)

Respondent's Response

- Request typically includes a request for supporting documentation or a complete copy of the loan file
- Due within 14 days, unless an extension of time is granted (7 TAC § 51.2(d))
- If timely response is not received, factual matters may be construed against the RSP
- Response should be in the form of a signed, written letter that addresses the issues raised in the complaint

Respondent's Response: Dos and Don'ts

Do:	Don't:
Respond timely, without delay, if possible	Ignore the complaint (<u>facts will be construed against the RSP</u>); OR habitually request extensions of time
Provide a thorough response with supporting documents	Rely on the Investigator to advocate for RSP's position, even if the situation seems clear
Address the issues raised in the complaint	Merely portray the Complainant as unreasonable
If RSP does not want the response shared with CMP, indicate as such; OR, directly provide a copy to the CMP	If RSP is silent, don't be surprised when the response is shared with CMP
Mention any efforts or offers to resolve the complaint	Stay silent on this issue
Mention any litigation related to the complaint	Stay silent on this issue

Confidentiality

- Complaints “are generally considered public information” (7 TAC § 51.2)
- Information obtained by the Department during an investigation is generally deemed to be confidential by law
 - Mortgage Companies – Finance Code § 156.301(f)
 - RMLOs – Finance Code § 157.021(f)
 - Mortgage Servicers – Finance Code § 158.102(c)
 - Wrap Lenders – Finance Code § 159.252(e)

Complaint Disposition

Disposition:	Description:
No Jurisdiction	The Department does not have jurisdiction. CMP referred to the authority having jurisdiction.
Repeat Complaint	Complaint similar to a previous complaint. Unless good cause exists to open the complaint (new evidence), it will be closed.
Litigation	Either resolved by litigation or actively being litigated. If litigation is pending, CMP is advised to refile the complaint if not resolved.
Resolved by Agreement	Actually resolved by agreement or addressed by RSP to the satisfaction of the Department.
No Violation	Findings definitively rule out a violation occurred.
Insufficient Evidence	Insufficient evidence to meet burden at hearing. Sometimes used so as to not jeopardize or prejudice CMP's ability to file suit.
Enforcement Referral	Violation found for which enforcement action is deemed appropriate. Can be overruled by Legal Enforcement.

Complaint Disposition Appeals

- 7 TAC § 51.3(d):
 - “A complainant who disagrees with the disposition of a complaint may appeal by sending a written appeal request . . . within 90 calendar days after the date the closing notice was issued.”
 - “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.”



Part Two: the Enforcement Process

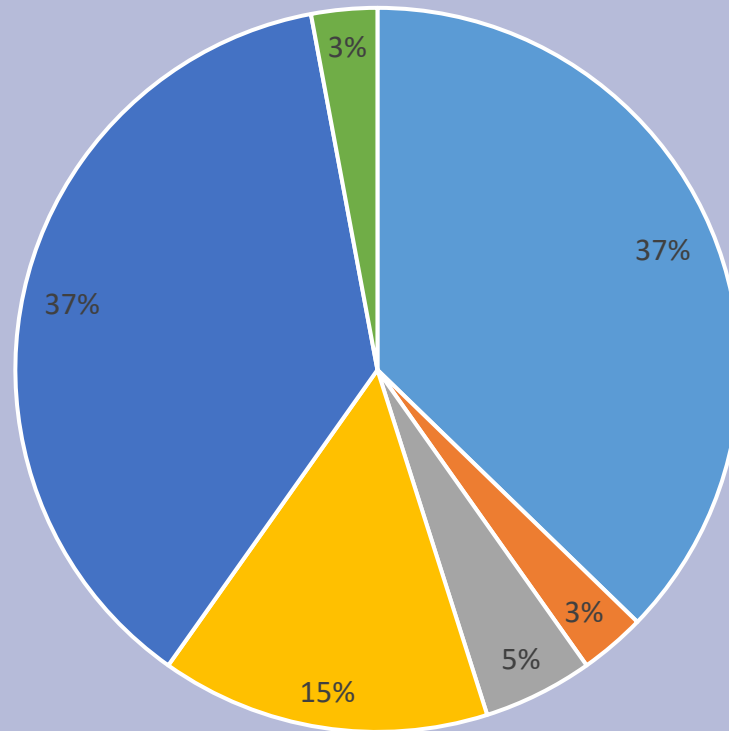
Enforcement Statistics

- In FY2023, the Department took 102 enforcement actions, compared to 114 in FY2022 (11.76% decrease)

Enforcement Action	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Advisory Letter	14	7	17	0
Agreed Order to Take Affirmative Action	1	1	0	0
Agreed Order – Other	0	0	1	0
Notice of Suspension/Revocation	3	0	1	1
Order to Cease and Desist	10	3	2	0
Order to Take Affirmative Action	19	8	9	2
Order of Suspension/Revocation	0	0	0	3
Total	47	19	30	6

Enforcement Statistics: by Type

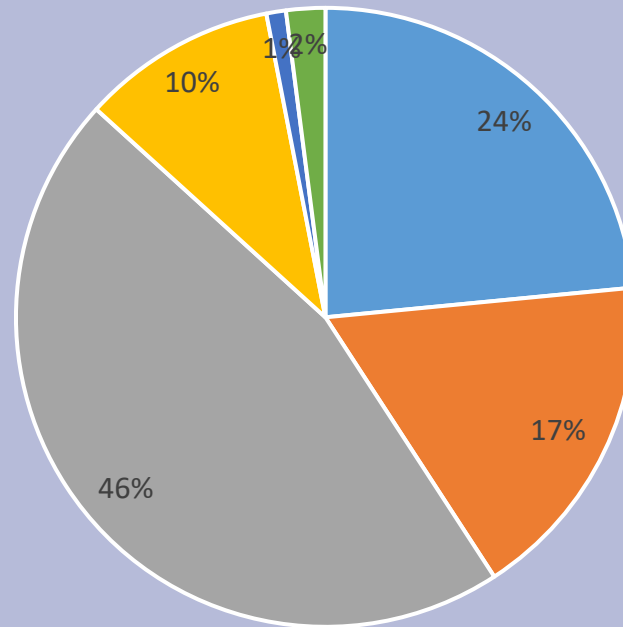
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■ Advisory Ltr ■ Agreed Order ■ Ntc of Susp./Rev. ■ C&D ■ OTTA ■ Ord to Susp/Rev.

Enforcement Statistics: by Respondent

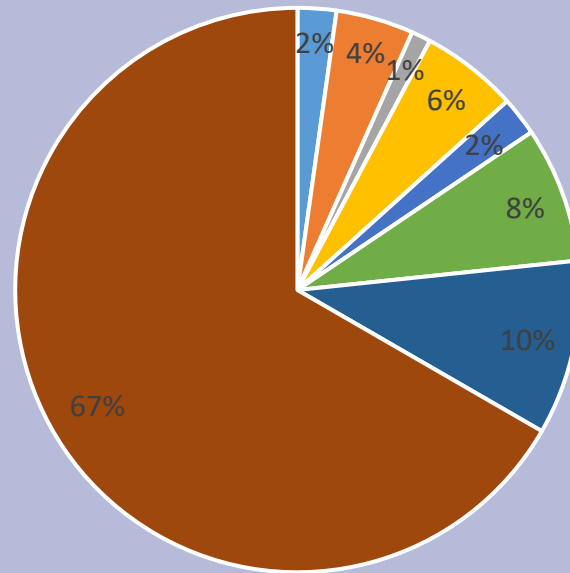
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- RMLO (licensed)
- RMLO (unlicensed)
- Mortgage Company (licensed)
- Mortgage Banker
- Mortgage Servicer (registered)
- Processing Company (licensed)

Enforcement Statistics: by Violation

- In FY2023, the Department took 102 enforcement actions, compared to 114 in FY2022 (11.76% decrease)



Enforcement Types

Advisory Letter	Order (OTTA or C&D)
Treated as confidential (not posted to NMLS)	Publicly posted to NMLS
No right to appeal or administrative hearing	Respondent has 30 days to appeal and request hearing
In lieu of disciplinary action, demands future compliance and sometimes corrective action	Compels action (administrative penalty, restitution, etc.)
Contains factual allegations and applicable law	Contains findings of fact and conclusions of law
Provides notice of violation and applicable law – future violations are knowing, but no subsequent action is contemplated	Failure to comply with the order will result in further adverse action

Hearings Process

- Conducted by an administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH)
- Operates much as a court does (evidence, witnesses)
- Governed by the Administrative Procedure Act, SOAH's rules, the Texas Rules of Civil Procedure, and the Texas Rules of Evidence
- Burden of proof is generally on the agency by a "preponderance of the evidence"

Hearings Process Cont'd

- Notice of Hearing is served on RSP that contains “a reference to the particular sections of the statutes and rules” and “a short, plain statement of the factual matters asserted”
- Often includes discovery (admissions, disclosures, requests for production, interrogatories, depositions)

Hearings Process: Proposal for Decision

- ALJ issues a “Proposal for Decision” (PFD). However, the final decision rests with the Department
- Following the PFD, parties may file exceptions (15 days after PFD) and replies to exceptions (15 days).
- Following the exceptions period, the Department issues its Final Order.
- Following issuance of the Final Order, RSP may file a Motion for Rehearing (25 days after order signed; if filed, overruled by operation of law 55 days after order).
- After the rehearing timeline has run, RSP has 30 days to file for judicial review in District Court.



Questions and Comments