



DERIVATION TABLE AND REDLINE DRAFT
MORTGAGE REGULATION RULE REVIEW (JUNE 2024)

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 57 MORTGAGE BANKERS

NEW SECTION	OLD SECTION	REDLINE
57.1	81.1	<p><u>Purpose and Applicability Scope</u></p> <p>This chapter governs <u>SML's administration and enforcement of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act (other than Subchapter D), concerning the licensing, registration, and operations conduct of residential mortgage loan originators and mortgage bankers under Finance Code, Chapter 157 and Chapter 180, except for individuals engaged in authorized activity subject to the authority of a regulatory official under Tex. Fin. Code §180.251(c). This chapter applies to persons registered with SML as a mortgage banker or those required to be registered.</u></p>
57.2	81.2	<p>Definitions</p> <p><u>For purposes of As used in</u> this chapter, and in <u>SML's the Commissioner's</u> administration and enforcement of Finance Code, Chapter 157 <u>(other than Subchapter D) and Chapter 180,</u> the following <u>definitions apply, unless the context clearly indicates otherwise terms have the meanings indicated:</u></p> <p>(1) "Application," as used in <u>Finance Tex. Fin. Code §§157.002(6) and §180.002(19) paragraphs (8) paragraph and (20) (16)</u> of this section means a request, in any form, for an offer (or a response to a solicitation <u>of for</u> 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,</p>

social security number to obtain a credit report, property address, an estimate of the value of the real estate, or and/or the mortgage loan amount.

(2) "Commissioner" means the savings and mortgage lending commissioner ~~Savings and Mortgage Lending Commissioner~~ appointed under Finance Code, Chapter 13.

~~(3) "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.~~

~~(3)~~ (4) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

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

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

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

(C) in the case of a limited liability company, is a manager or managing member; or

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

~~(5) "Department" means the Department of Savings and Mortgage Lending.~~

~~(5)~~ (6) "Dwelling" means a residential structure that contains one to four units and is attached to residential real estate. The term includes an individual condominium unit, cooperative unit, or manufactured home, if it is used as a residence.

(6) "E-Sign Act" refers to the federal Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001 et seq.).

(7) "Making a residential mortgage loan," or any similar derivative or variation of that term, means when a person determines the credit decision to provide the residential mortgage loan, or the act of funding the residential mortgage loan or transferring money to the borrower. A person whose name appears on the loan documents as the payee of

the note is considered to have "made" the residential mortgage loan.

(8) (7) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a mortgage banker or 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.

(9) (8) "Mortgage banker" has the meaning assigned by Finance Code §157.002.

(10) (9) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as ~~that term is~~ defined by Finance Tex. Fin. Code §157.002.

(11) (10) "Nationwide Multistate Mortgage Licensing System ~~and Registry~~" or "NMLS" has the meaning assigned by Finance Tex. Fin. Code §157.002 in defining "Nationwide Mortgage Licensing System and Registry." and §180.002."

(12) (11) "Offers or negotiates the terms of a residential mortgage loan," as used in Finance Tex. Fin. Code §157.002(6) ~~and §180.002(19)~~ means, among other things, when an individual:

(A) arranges or assists a mortgage applicant or prospective mortgage applicant in obtaining or applying to obtain, or otherwise secures an extension of consumer credit for another person, in connection with obtaining or applying to obtain a residential mortgage loan;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs); or

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.

(13) (12) "Originator" has the meaning assigned by Finance Tex. Fin. Code §157.002 ~~and §180.002~~ in defining "residential mortgage loan originator." Paragraphs (12) (11) and (20) (16) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Finance Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Finance Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Finance Tex. Fin. Code §180.051.

(14) "Person" has the meaning assigned by Finance Code §180.002.

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

(16) ~~(14)~~ "Residential real estate" has the meaning assigned by Finance Tex. Fin. Code §180.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

(17) ~~(15)~~ "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage banker or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage banker or sponsored originator posts commercial messages or other content designed to solicit business.

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

(19) "State Examination System" or "SES" means an online, digital examination system developed by the Conference of State Bank Supervisors that securely connects regulators and regulated entities on a nationwide basis to facilitate the examination process.

(20) ~~(16)~~ "Takes a residential mortgage loan application," as used in Finance Tex. Fin. Code §157.002(6) ~~and §180.002(19)~~ in defining "residential mortgage loan originator" means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

(21) "Trigger Lead" means information concerning a consumer's credit worthiness (consumer report) compiled by a credit reporting agency (consumer reporting agency), obtained in accordance with the federal Fair Credit Reporting Act (15 U.S.C. §1681b(c)(1)(B)), that is not initiated by the consumer but, instead, instead triggered by an inquiry to a consumer reporting agency in response to an application for credit initiated by the consumer in a separate transaction. The term does not include a consumer report obtained by a mortgage company licensed by SML or a mortgage banker registered with SML in response to an application for credit made by a consumer with that mortgage company or mortgage banker or that is otherwise authorized by the consumer.

(22) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.

		<p><u>(23) "Wrap lender" has the meaning assigned by Finance Code §159.001.</u></p> <p><u>(24) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.</u></p>
57.3	New	<p><u>Formatting Requirements for Notices</u></p> <p><u>Any notice or disclosure (notice) required by Finance Code Chapter 157, or this chapter, must be made in at least 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 157 or this chapter prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):</u></p> <p><u>(1) Arial;</u></p> <p><u>(2) Aptos;</u></p> <p><u>(3) Calibri;</u></p> <p><u>(4) Century Schoolbook;</u></p> <p><u>(5) Garamond;</u></p> <p><u>(6) Georgia;</u></p> <p><u>(7) Lucinda Sans;</u></p> <p><u>(8) Times New Roman;</u></p> <p><u>(9) Trebuchet; and</u></p> <p><u>(10) Verdana.</u></p>
57.4	New	<p><u>Electronic Delivery and Signature of Notices</u></p> <p><u>Any notice or disclosure required by Finance Code Chapter 157, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.</u></p>

57.5	New	<p><u>Computation of Time</u></p> <p><u>The calculation of any time period measured in days by Finance Code Chapter 157, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.</u></p>
57.6	81.4	<p>Enforceability of Liens</p> <p>A violation of <u>Finance Code Chapter 157, or this chapter,</u> does not render an otherwise lawfully taken lien <u>invalid or unenforceable.</u></p>
57.100	New	<p><u>Registration Requirements</u></p> <p><u>(a) Registration Required. A person, unless exempt as provided by Finance Code §157.004, is required to be registered with SML as a mortgage banker under Finance Code Chapter 157 if the person engages in or conducts the business of a mortgage banker or advertises or holds that person out to the public as engaging in or conducting the business of a mortgage banker concerning a loan or prospective loan secured or designed to be secured by residential real estate located in Texas, including, but not limited to:</u></p> <p style="padding-left: 40px;"><u>(1) representing or holding that person out to the public through advertising or other means of communication as a mortgage banker; and</u></p> <p style="padding-left: 40px;"><u>(2) receiving compensation for engaging in or conducting the business of a mortgage banker (a person must be registered at the time it receives compensation even if the compensation relates to services provided when the person was registered).</u></p> <p><u>(b) Branch Office Registration Required. A mortgage banker must register each office constituting a branch office of the mortgage banker for purposes of §57.206 of this title (relating to Office Locations; Remote Work).</u></p>
57.101	New	<p><u>Applications for Registration</u></p> <p><u>(a) NMLS. Applications for registration must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.</u></p> <p><u>(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation</u></p>

		<p><u>deemed necessary or appropriate to determine that the registration requirements of Finance Code Chapter 157 are met.</u></p> <p><u>(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.</u></p>
57.102	New	<p><u>Fees</u></p> <p><u>(a) Registration Fees. The registration fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §157.006, exclusive of fees charged by NMLS, as described in subsection (b) of this section. The Commissioner may establish different fee amounts for a new registration versus renewal of the registration versus reinstatement of the registration. The current fee is set in NMLS and posted on SML's website (sml.texas.gov). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The registration fee must be paid in NMLS.</u></p> <p><u>(b) NMLS Fees. NMLS charges a separate fee to process the application. Such fee is determined by NMLS and must be paid by the applicant at the time it files the application. The current fee is set in NMLS and posted on the NMLS website (nationwidelicensingsystem.org).</u></p> <p><u>(c) All fees are nonrefundable and nontransferable.</u></p>
57.103	New	<p><u>Renewal of the Registration</u></p> <p><u>(a) A registration may be renewed on:</u></p> <p style="padding-left: 40px;"><u>(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees; and</u></p> <p style="padding-left: 40px;"><u>(2) a determination by SML that the mortgage banker continues to meet the minimum requirements for registration, including the requirements of Finance Code §157.003(b).</u></p> <p><u>(b) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in her or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the mortgage banker to continue conducting regulated activities while the mortgage banker works diligently to resolve</u></p>

		<p><u>the deficiencies. A renewal request approved by the Commissioner under this subsection will be assigned the NMLS license status "Approved - Deficient." Approval under this subsection does not relieve the mortgage banker of the obligation to resolve the deficiencies. A mortgage banker approved under this subsection must resolve the deficiencies within 30 days after the date the license is approved, unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the registration.</u></p> <p><u>(c) Reinstatement. This section applies to a person seeking reinstatement of an expired registration (bearing the registration status "Terminated - Failed to Renew") described by Finance Code §157.0062 and must be construed accordingly. A mortgage banker registration cannot be renewed beyond the reinstatement period; instead, the person must apply for a new registration and comply with all current requirements and procedures governing issuance of a new registration.</u></p>
57.104	New	<p><u>NMLS Records; Notices Sent to the Mortgage Banker</u></p> <p><u>(a) NMLS Registration Status. SML is required to assign a status to the registration in NMLS. The registration status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the registration status options available in NMLS. The NMLS Resource Center website (nationwidelicensingsystem.org) describes the available registration status options and their meaning.</u></p> <p><u>(b) Amendments to NMLS Records Required. A mortgage banker must amend its NMLS registration records (MU1 filing) within 10 days after the date of any material change affecting any aspect of the MU1 filing, including, but not limited to:</u></p> <ul style="list-style-type: none"> <u>(1) name (which must be accompanied by supporting documentation submitted to SML establishing the name change);</u> <u>(2) the addition or elimination of an assumed name (also known as a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);</u> <u>(3) the contact information under "Identifying Information";</u> <u>(4) the contact information under "Resident/Registered Agent";</u> <u>(5) the contact information under "Contact Employee Information"; and</u> <u>(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure,</u>

		<p><u>together with supporting documentation concerning such disclosure).</u></p> <p><u>(c) Amendments to MU2 Associations Required. A mortgage banker must cause the individuals who are required to register an association with the mortgage banker (control persons) to make the proper filings in NMLS using the current form prescribed by NMLS (MU2 filing) and must ensure such associations are amended within 10 days after the date of any material change affecting such associations.</u></p> <p><u>(d) Notices Sent to the Mortgage Banker. Any correspondence, notification, alert, message, official notice or other written communication from SML will be sent to the mortgage banker in accordance with this subsection using the mortgage banker's current contact information of record in NMLS unless another method is required by other applicable law.</u></p> <p><u>(1) Service by Email. Service by email is made using the email address the mortgage banker has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by email is complete on transmission of the email to mortgage banker's email service provider; provided, SML does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. A mortgage banker must monitor such email account and ensure that emails sent by SML are not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage banker is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. A mortgage banker is further deemed to have constructive notice of any NMLS system notifications sent to it by email.</u></p> <p><u>(2) Service by Mail. Service by mail is made using the address the mortgage banker has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is made using the address the mortgage banker has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage banker by mail and the document communicates a deadline by or a time during which the mortgage banker must perform some act, such deadline or time period for action is extended by 3 days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.</u></p>
57.106	New	<p><u>Surrender of the Registration</u></p> <p><u>(a) Surrender Request. A mortgage banker may seek surrender of the registration by filing a registration surrender request (request) in NMLS. The request must be made using the current form prescribed by NMLS. SML will review the request and determine whether to grant it. SML may not grant the request if, among other reasons:</u></p> <p><u>(1) the mortgage banker is the subject of a pending or contemplated investigation or enforcement action;</u></p>

		<p><u>(2) the mortgage banker is in violation of an order of the Commissioner;</u></p> <p><u>(3) the mortgage banker has failed to pay any fee, charge, or other indebtedness owed to SML; or</u></p> <p><u>(4) the mortgage banker has failed to file mortgage call reports required by §57.205 of this title (relating to Mortgage Call Reports).</u></p> <p><u>(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses. During this time, the mortgage banker's registration will be assigned the license status "Approved - Inactive" in NMLS.</u></p>
57.107	New	<p><u>Sponsorship of Originator; Responsibility for Originator's Actions</u></p> <p><u>(a) Sponsorship Required. A mortgage banker conducts origination activity through one or more originators who must be sponsored by the mortgage banker in NMLS. To sponsor an originator, the mortgage banker must first register a relationship with the originator in NMLS. When a relationship has been registered, the mortgage banker may then file a request in NMLS to establish sponsorship of the originator. An originator must make filings in NMLS to establish such sponsorship. Sponsorship is not effective until the sponsorship request has been reviewed and approved by SML. A mortgage banker must not allow an individual to act on its behalf in the capacity of an originator until such sponsorship has been established and is effective. Information about how to file for sponsorship is available on the NMLS Resource Center website (nationwidelicensingsystem.org).</u></p> <p><u>(b) Responsibility for Originator's Actions. By sponsoring an originator, or otherwise allowing an individual to act on its behalf in the capacity of an originator, the mortgage banker assumes responsibility for the actions of such originator or individual acting in the capacity of an originator. All violations of law by an originator or individual acting in the capacity of an originator are deemed to be attributable and imputed to the mortgage banker sponsoring the originator or for which the individual acting as an originator was allowed to act, and the Commissioner may take action against the mortgage banker under Finance Code §157.009 and seek disciplinary action against the originator simultaneously for the same conduct giving rise to the violation. As a result, a mortgage banker is charged with knowledge of and must ensure compliance by their sponsored originators with the requirements of Finance Code Chapters 157 and 180, and of SML's rules in Chapter 55 of this title (relating to Residential Mortgage Loan Originators).</u></p> <p><u>(c) Termination of Sponsorship. Sponsorship may be terminated by either the sponsoring mortgage banker or the sponsored originator. If sponsorship is terminated, the party terminating the sponsorship must immediately notify SML of the termination by making a filing in NMLS to terminate the sponsorship, as provided by Finance Code §157.019.</u></p> <p><u>(d) Failure to Maintain Sponsored Originator; Inactive Status. If a mortgage banker does not have any licensed and sponsored originators, the license will be assigned the status "Approved - Inactive," during which time the mortgage</u></p>

		<p><u>banker must not conduct regulated activities.</u></p>
57.200	81.200	<p>Required Disclosures</p> <p><u>(a) Purpose. This section clarifies and establishes requirements related to the disclosures a mortgage banker is required to make under Finance Code §157.0021.</u></p> <p><u>(b) (a) Specific Notice to Applicant (Origination Notice) by Mortgage Banker. A An originator sponsored by a mortgage banker under Finance Code, Chapter 157 must send written notice to a mortgage applicant concerning SML's regulatory oversight. The notice must be sent at the time the mortgage banker and its sponsored originator receives the initial application for a residential mortgage loan. The notice must be signed by the mortgage banker's sponsored originator that took the application and the mortgage applicant. The notice must in the following form provide the following notice to a residential mortgage loan application with an initial application for residential mortgage loan, and the mortgage banker and its sponsored originator must maintain in their records, evidence of timely delivery of such disclosure:</u></p> <p><u>Figure: 7 TAC §57.200(b)</u></p> <p><u>(b) Specific Notice to Applicant by Mortgage Company. An originator sponsored by a mortgage company under Finance Code, Chapter 156 must provide a residential mortgage loan applicant with the notice required by §80.200(a) of this title at the time of the initial application for a residential mortgage loan and must maintain or otherwise ensure the mortgage company maintains in its records, evidence of timely delivery of such disclosure.</u></p> <p><u>(c) Posted Notice on Mortgage Banker Websites and Social Media Sites. A mortgage banker or its sponsored originator must post a in conspicuous fashion the following notice concerning SML's regulatory oversight on each website and social media site of the mortgage banker or sponsored originator, other than a social media site, that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business by the mortgage banker or sponsored originator, or from which the mortgage banker or sponsored originator advertises to solicit such business, as provided by §57.203 §81.203 of this title: (relating to Advertising). The notice must be in the current form prescribed by SML and posted on its website (sml.texas.gov). The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked webpage with the link to such webpage displayed on the initial or home page.</u></p> <p><u>Figure: 7 TAC §81.200(b)</u></p> <p><u>(d) Posted Notice on Mortgage Company Websites and Social Media Sites. An originator sponsored by a mortgage company under Finance Code, Chapter 156 must comply with the requirements of §80.200(b) of this title.</u></p> <p><u>(d) (e) Disclosures in Correspondence. All correspondence sent to a mortgage applicant or borrower must include</u></p>

		<p>An originator must provide the following information on all correspondence sent to a mortgage applicant:</p> <p>(1) the <u>mortgage banker's name and name of the mortgage banker or mortgage company sponsoring the originator, followed by its NMLS ID identification number</u>; and</p> <p>(2) the <u>mortgage banker's website address, if it has a website the name of the originator, followed by the originator's NMLS identification number.</u></p> <p>(e) <u>Specific Notice to Borrower (Servicing Notice). A mortgage banker that acts as a residential mortgage loan servicer must send written notice to the borrower concerning SML's regulatory oversight within 30 days after the date it begins servicing a residential mortgage loan. The notice must be in the current form prescribed by the SML and posted on its website. The notice must be included in the first notice sent to the borrower that notifies the borrower of the mortgage banker's role in servicing the loan, including any notice required by Regulation X (12 C.F.R. §1024.33(b)). This subsection applies to the servicing of residential mortgage loans secured by real property located in Texas. Mortgage bankers servicing a residential mortgage loan not secured by real property located in Texas must not provide the notice described by this subsection.</u></p> <p>(f) <u>The determination of what constitutes a mortgage application for purposes of triggering the notice required by subsections (a) and (b) of this section will be made in accordance with applicable federal law determining what constitutes an application for purposes of the Truth in Lending Act, as implemented and defined by the Consumer Financial Protection Bureau in Regulation Z (12 C.F.R. §1026.2).</u></p> <p>(g) <u>The notice under subsection (c) of this section is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name), or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. The notice under subsection (c) of this section is deemed to be conspicuously posted on a social media site when it is readily apparent or otherwise easily accessible to the mortgage applicant or prospective mortgage applicant upon visiting the home page, profile page, account page, or similar, on such social media site, without the necessity to review various historical content posted by the mortgage banker or sponsored originator in order to derive the information required by the notice, which may include an interactive link to the information with such link prominently displayed on such home page, profile page, account page, or similar.</u></p>
57.201	81.201	<p><u>Conditional Pre-Qualification and Conditional Approval Letters Loan Status Forms</u></p> <p>(a) <u>Conditional Pre-Qualification Letter.</u> Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant, written confirmation of conditional pre-qualification (<u>conditional pre-qualification letter</u>) must shall include the information in Form A, Figure: 7 TAC <u>§57.201(a) §81.201(a)</u>. The This information must can be provided using by utilizing Form A or an alternate form approved by the mortgage banker that includes all of the information found on Form A. There is no requirement to issue a written confirmation of conditional pre-qualification letter letter. Form A or an alternate form may be modified by adding any</p>

		<p>of the following as needed:</p> <p><u>Figure: 7 TAC §57.201(a)</u></p> <p>(1) Any additional aspects of the loan as long as not misleading;</p> <p>(2) Any additional items that the originator has reviewed in determining conditional qualifications; or</p> <p>(3) Any additional terms, conditions, and requirements.</p> <p>(b) <u>Conditional Approval Letter</u>. When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan approval on the basis of credit worthiness, but not on the basis of collateral (<u>conditional approval letter</u>), must shall include the information in Form B, Figure 7: TAC <u>§57.201(b) §81.2019(b)</u>. The This information can be provided <u>using by-utilizing</u> Form B or an alternate form <u>approved by the mortgage banker</u> that includes all of the information found on Form B. There is no requirement to issue a written notification of conditional loan approval letter. Form B or an alternate form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or <u>a</u> disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional loan approval <u>letter must should</u> not be issued unless the <u>mortgage banker company</u> or <u>its sponsored</u> originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts. Verification may be conducted manually or by electronic means.</p> <p><u>Figure: 7 TAC §57.201(b)</u></p> <p>(c) <u>Firm Offers of Credit</u>. Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined by 15 U.S.C. §1681a(l).</p> <p><u>(d) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the mortgage banker's sponsored originator acting on behalf of the mortgage banker to originate the prospective residential mortgage loan.</u></p>
57.202	81.202	<p><u>Prohibition on False, Fraudulent, Misleading, or Deceptive Practices and Improper Dealings</u></p> <p>(a) <u>Fraudulent, False,</u> Misleading, or Deceptive Practices. The following conduct by a mortgage banker or <u>its sponsored originators an-originator</u> constitutes fraudulent and dishonest dealings for purposes of <u>Finance Tex. Fin. Code §157.009(d) and §157.024(a)(3),</u> deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1):</p>

(1) knowingly misrepresenting the mortgage banker's or sponsored originator's relationship to a residential mortgage loan applicant or any other party to a residential mortgage loan transaction ~~an actual~~ or prospective proposed residential mortgage loan transaction;

(2) knowingly misrepresenting or understating any cost, fee, interest rate, or other expense to a mortgage applicant or prospective mortgage applicant in connection with a residential mortgage loan ~~applicant's applying for or obtaining a residential mortgage loan~~;

(3) knowingly overstating, inflating, altering, amending or disparaging any source or potential source of residential mortgage loan funds in a manner which disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly misrepresenting the lien position of a residential mortgage loan or prospective residential mortgage loan;

(5) (4) knowingly participating in or permitting the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether ~~or not~~ to make or acquire a residential mortgage loan;

(6) (5) as provided ~~for~~ by ~~the Real Estate Settlement Procedures Act and~~ Regulation X, (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan ~~for in~~ which the mortgage banker or sponsored originator ~~retains fees or~~ receives other compensation for services ~~which are~~ not actually performed or where the ~~fees or other~~ compensation received bears bear no reasonable relationship to the value of the services actually performed;

(7) (6) recommending or encouraging default or delinquency or ~~the~~ continuation of an existing default or delinquency by a residential mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(8) (7) altering any document produced or issued by SML the Department, unless otherwise permitted by statute or a rule of SML the Department;

(9) allowing a licensed originator to act on behalf of the mortgage banker when the originator is not sponsored by the mortgage banker or otherwise holds his or her license in an inactive status (which is deemed to constitute unlicensed activity);

(10) using the services of mortgage company or mortgage banker to provide loan processing services when the mortgage company or mortgage banker providing the services holds its license in an inactive status (which is deemed to constitute unlicensed activity);

(11) using a trigger lead in misleading or deceptive manner by, among other things:

(A) failing to state in the initial communication with the consumer:

(i) the mortgage banker's name;

(ii) a brief explanation of how the mortgage banker obtained the consumer's contact information to make the communication (i.e., an explanation of trigger leads);

(iii) that the mortgage banker is not affiliated with the creditor to which the consumer made the credit application that resulted in the trigger lead; and

(iv) that the purpose of the communication is to solicit new business for the mortgage banker;

(B) contacting a consumer who has opted out of prescreened offers of credit under the federal Fair Credit Reporting Act (FCRA; 12 U.S.C. §1681b(e)); or

(C) failing in the initial communication with the consumer to make a firm offer of credit as provided by the FCRA (12 U.S.C. §1681a(l) and §1681b(c));

(12) ~~(8)~~ engaging in any other practice which the Commissioner, by published interpretation, has determined is fraudulent, to be false, misleading, or deceptive.

(b) Improper or and Unfair Dealings. The following conduct by a mortgage banker or its sponsored originators an originator constitutes improper dealings for purposes of Finance Tex. Fin. Code §157.009(d) and §157.024(a)(3) and unfair practices for purposes of Tex. Fin. Code §180.153(2):

(1) acting Acting negligently in performing an act requiring a registration under Finance Code Chapter 157 or a license for which a person is required under Finance Code, Chapters Chapter 157 and 180 to hold a license;

(2) violating Violating any provision of a local, State of Texas, or federal constitution, statute, rule, ordinance, regulation, or final court decision that governs the same or a closely related activity, transaction, or subject matter that is governed by the provisions of Finance Code Chapters 156, Chapter 157, or 180, or this chapter, including, but not limited to:

(A) Consumer Credit Protection Act, Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.);

(B) 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.);

(C) Regulation N (12 C.F.R. §1014.1 et seq.);

(D) Gramm-Leach-Bliley Act (GLBA; 15 U.S.C. §6801 et seq.), Regulation P (12 C.F.R. §1016.1 et seq.), and the Federal Trade Commission's (FTC) Privacy of Consumer Financial Information rules (16 C.F.R. §313.1 et seq.);

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

(F) (A) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.); and (B) Regulation X (12 C.F.R. 1024.1 et seq.);

(G) (C) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.); and (D) Regulation Z (12 C.F.R. §1026.1 et seq.);

(H) the FTC's Standards for Safeguarding Customer Information rule (16 C.F.R. §314.1 et seq.);

(I) Finance Code Chapter 158 and Chapter 58 of this title;

(J) Finance Code Chapter 159 and Chapter 59 of this title; and

(E) Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.);

(F) Regulation B (12 C.F.R. §10020 et seq.) and

(K) (G) Texas Constitution, Article XVI, §50 and Chapter 153 of this title;

(3) soliciting by phone a consumer who has placed his or her contact information on the national do-not-call registry maintained by the Federal Trade Commission (FTC), unless otherwise allowable under the FTC's Telemarketing Sales Rule (16 C.F.R. §310.4(b)(iii)(B));

(4) Issuing a conditional pre-qualification letter or conditional approval letter under §57.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters) that does not comply with the required form for the letter or is inaccurate, erroneous, or negligently-issued;

(5) (3) Representing to a mortgage applicant that a charge or fee which is payable to the mortgage banker or sponsored originator is a "discount point" or otherwise benefits confers a financial benefit on the mortgage applicant unless the loan closes and:

(A) the mortgage banker is making the residential mortgage loan (lender) or mortgage company sponsoring the originator in the lender in the transaction. For purposes of this paragraph, ~~the mortgage banker or mortgage company sponsoring the originator is deemed to be the lender if such entity is the payee as evidenced on the face of the note or other written evidence of indebtedness;~~ or

(B) the mortgage banker ~~or mortgage company sponsoring the originator~~ is not the lender but demonstrates by clear and convincing evidence that the lender has charged or collected discount points point(s) or other fees which the mortgage banker ~~or mortgage company sponsoring the originator~~ has actually paid to the lender on behalf of the mortgage applicant; to buy down the interest rate on the a residential mortgage loan.

~~(6)~~ (4) Failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant concerning the scope and nature of the mortgage banker's ~~or originator's~~ services and any costs.

(c) Related Transactions. A mortgage banker ~~or originator~~ engages in fraudulent and dishonest dealings for purposes of Finance Tex. Fin. Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of Tex. Fin. Code §180.153(2), and a scheme to defraud a person for purposes of Tex. Fin. Code §180.153(1) if, when, in connection with the origination of a residential mortgage loan:

(1) The mortgage banker or sponsored originator;

(A) offers other goods or services to a mortgage applicant in a separate but related transaction; and

(B) the mortgage banker or sponsored originator engages in fraudulent, a false, misleading, or deceptive acts practice in the related transaction; or

(2) The mortgage banker or sponsored originator;

(A) affiliates with another person that provides goods or services to a mortgage applicant consumer in a separate but related transaction; and

(B) the affiliated person engages in fraudulent, performs false misleading, or deceptive acts in that transaction; and

(C) the mortgage banker or sponsored originator ~~to the mortgage transaction~~ knew or should have known of the fraudulent, false, misleading, or deceptive acts of the affiliated person; and

(D) the mortgage banker or sponsored originator failed to take appropriate steps to prevent or limit the fraudulent, misleading, or deceptive acts.

		<p>(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage banker <u>and its sponsored originators or originator</u> must not offer or agree to share or split any loan origination fees with a mortgage applicant, rebate all or a part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing <u>residential</u> mortgage loan origination services unless otherwise allowable <u>under as provided by</u> Regulation X (<u>12 C.F.R. §1024.14</u>) and Regulation Z (<u>12 C.F.R. §1026.36(d)</u>). <u>A sponsored An</u> originator acting in the dual capacity of an originator and real estate <u>sales</u> broker or <u>sales</u> agent licensed under Occupations Code, Chapter 1101 may rebate <u>their his or her</u> fees legitimately earned and derived from <u>their his or her</u> real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described <u>by this subsection herein</u> occurs as a part of closing and is properly reflected in the closing disclosure <u>for the transaction</u>. If a payment or other transfer described <u>by this subsection herein by an originator acting in the dual capacity of an originator and real estate broker or sales agent</u> occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the originator's fees for residential mortgage <u>loan</u> origination services and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption <u>created by this subsection</u> may only be overcome by clear and convincing evidence established by the mortgage banker or <u>sponsored</u> originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection (d) <u>is</u> be deemed to constitute improper dealings for purposes of <u>Finance Tex. Fin. Code §157.009(d)</u> <u>and § 157.024(a)(3);</u> <u>and unfair practices for purposes of Tex. Fin. Code §180.153(2)</u>.</p>
57.203	81.203	<p>Advertising</p> <p><u>(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:</u></p> <p><u>(1) "Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a residential mortgage loan transaction or is otherwise designed to solicit residential mortgage loan origination business for the mortgage banker or its sponsored originators. The term includes "flyers," business cards, or other handouts, and messages or posts made on a social media site. The term does not include:</u></p> <p><u>(A) any advertisement which indirectly promotes a residential mortgage loan transaction and contains only the name of the mortgage banker or sponsored originator and not any contact information with the exception of a website address, such as on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value;</u></p> <p><u>(B) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or</u></p> <p><u>(C) signs located on or adjacent to the mortgage banker's registered office as provided by §57.206 of this title</u></p>

(relating to Office Locations; Remote Work).

(2) “Team logo” means a logo, symbol, or other graphic used to identify the group using a team name.

(3) “Team name” means a name other than the mortgage banker’s legal name or a properly registered assumed name typically used by a geographically or administratively distinct group of employees working for the mortgage banker as a division or team within the larger organization (e.g., the employees of a branch office).

(b) ~~(a)~~ **Compliance with Federal Law.** A mortgage banker or sponsored originator that advertises rates, terms, or conditions must comply with the requirements of Regulation N (12 C.F.R. §1014.1 et seq.) and Regulation Z (12 C.F.R. §1026.24).

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

~~(1) a mortgage company or sponsored originator may only advertise for such products and terms as are actually available and, if availability is subject to any material requirements or limitations, the advertisement must specify those requirements or limitations;~~

(c) ~~(2)~~ **Required Content.** Except as provided by subsections (d) ~~(e)~~ and (e) ~~(d)~~ of this section, an advertisement must contain:

(1) the mortgage banker’s name and ~~name of the mortgage banker or mortgage company followed by its~~ NMLS ID ~~identification number~~; and

(2) the mortgage banker’s website address, if it has a website; and

(3) ~~(2)~~ the ~~name of the sponsored originator followed by the~~ sponsored originator’s name and NMLS ID ~~identification number~~.

(d) Advertising Directly by a Mortgage Banker. ~~Δ The provisions of subsection (b) of this section notwithstanding,~~ mortgage banker may advertise directly to the public and is not required to advertise by and through a sponsored originator, ~~and the requirements of subsection (b)(2)(B) of this section do not apply to such advertisements.~~ The requirements of subsection (c)(3) of this section do not apply to an advertisement made directly by a mortgage banker. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage banker will not be considered an advertisement made directly by a mortgage banker for purposes of this subsection.

(e) Advertising on Social Media Sites. If the mortgage banker or sponsored originator advertises on a social media

		<p><u>site, the requirements of subsection (c) of this section may be met by prominently displaying the required information on the home page, profile page, or similar, on such social media site so that the viewer can quickly discern the information without reviewing various historical content posted by the mortgage banker or sponsored originator on the social media site.</u></p> <p><u>(f) Use of Team Names and Team Logos. A mortgage banker and its sponsored originators may use team names and team logos in advertisements if the following requirements are met:</u></p> <p><u>(1) Team names and team logos are permitted for advertising purposes only. A team name or team logo may not be used to conduct residential mortgage loan origination business. For clarity, a team name or team logo may not appear on any documentation sent to the mortgage applicant in connection with a residential mortgage loan or on any documentation in the residential mortgage loan file a mortgage banker is required to maintain under §57.204(c)(2) of this title (relating to Books and Records).</u></p> <p><u>(2) The mortgage banker’s legal name or an assumed name of the mortgage banker and its NMLS ID must be used with the team name or team logo, in substantially equivalent prominence, and must be connected with an explanatory word or phrase that clearly links the two (e.g., “(team name) of (mortgage banker name and NMLS ID)” or “(team name) powered by (mortgage banker name and NMLS ID”). The information must be presented in a manner that makes it readily apparent to the viewer what mortgage banker is making the advertisement. The mortgage banker may not obscure the information by, among other things, using graphics, shading, or coloration to deemphasize or mask the appearance of the mortgage banker’s name and NMLS ID. If the advertisement is made on a social media site, the requirements of this paragraph may be met by prominently displaying the information on the home page, profile page, or similar, on such social media site so that the viewer can quickly discern the information without reviewing various historical content posted by the mortgage banker or sponsored originator on the social media site.</u></p> <p><u>(3) If a team logo is used, it must be used with the team name, unless the team name is contained in the team logo, and if so, the team logo may be used without the team name.</u></p>
57.204	81.204	<p>Books and Records</p> <p><u>(a) Purpose and Applicability. This section clarifies and establishes requirements related to the books and records a mortgage banker and its sponsored originators are required to keep under Finance Code §157.021. Subsection (c) of this section applies to a mortgage banker and its sponsored originators in connection with the origination of residential mortgage loans. Subsection (d) of this section applies to a mortgage banker and its sponsored originators in connection with the provision of third-party loan processing or underwriting services.</u></p> <p><u>(b) (a) Maintenance of Records, Generally. In order to ensure a mortgage banker and its sponsored originators or an originator will have all records necessary to facilitate an inspection (including an examination) by SML of the mortgage banker’s sponsored originators, of an originator, enable <u>SML</u> the Commissioner or the Commissioner’s designee to investigate complaints against a mortgage banker or <u>its sponsored originators, an originator,</u> and otherwise ensure</u></p>

compliance with the requirements of Finance Code ~~Chapter Chapters~~ 157 and 180, and this chapter, a mortgage banker and its sponsored originators ~~an originator~~ must maintain records as prescribed by this section in connection with the mortgage banker's origination of residential mortgage loans or the provision of third-party loan processing or underwriting services by the mortgage banker.

(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 and its sponsored originators 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 must ensure the records required by this section (or true and correct copies thereof are maintained at or are otherwise readily 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 as designated in its MU1 filing under "Books and Records Information" in NMLS.~~ (For purposes of this section "main office" has the meaning assigned by ~~§57.206 §84.206~~ 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 to SML for the Commissioner or the Commissioner's designee upon request. Failure by a mortgage banker's sponsored ~~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 SML 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. If a mortgage banker terminates operations, the mortgage banker, within 10 days after the date the mortgage banker terminates operations, must provide SML with written notice of where the records required by this section will be maintained for the required period. If such records are transferred to another mortgage banker registered with SML, the transferee must provide SML with written notice within 10 days after the date it receives such records.

(5) Maintenance by the Mortgage Banker. A mortgage banker is required to maintain records on behalf of the originators it sponsors in connection with work performed by the originator for that mortgage banker.

(6) (5) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage banker or its sponsored originators ~~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.~~

~~(c) (b) Required Records (Origination) of an Originator. A mortgage banker and its sponsored originators are An originator is required to maintain the following items in connection with the origination of residential mortgage loans by the mortgage banker:~~

(1) Mortgage Transaction Log. A mortgage transaction log maintained on a current basis (~~meaning which means~~ all entries must be made within ~~no more than~~ 7 days ~~after from~~ the date on which the ~~events matters~~ they relate to occurred, ~~and updated as the information changes~~) setting forth, at a minimum (~~the log may include additional information, provided, the information is readily sortable as required by subsection (b)(1) of this section~~):

(A) ~~full the name and contact information~~ of each mortgage applicant (~~last name, first name~~);

~~(B) application/loan identification number assigned by the mortgage banker;~~

~~(C) loan identification number assigned by the lender, if different than subparagraph (B) of this paragraph;~~

~~(D) (B) date of the initial loan application;~~

~~(E) address of the subject property (street address, city, state, zip code);~~

~~(F) interest rate;~~

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

~~(H) loan product (conventional, FHA, VA, reverse, etc.);~~

~~(I) (H) if the loan is closed, the full name of the lender that identity of the person who initially funded or and/or acquired the loan and their NMLS ID, if applicable;~~

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

(K) closing date;

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

(M) (E) description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (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)); and

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

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction, a residential mortgage loan file containing, at a minimum:

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

(i) the initial and any 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 any 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 §57.200(b) §81.200(a) of this title (relating to Required Disclosures); ~~or, for an originator sponsored by a mortgage company, the disclosure 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 Conditional Pre-Qualification Letter, or similar, as specified by Finance Code §157.02012 and §57.201 §81.204 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters Loan Status Forms), ~~with respect to an originator sponsored by a mortgage banker, or 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;~~

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the conditional approval letter ~~Conditional Approval Letter~~, or similar, as specified by Finance Code §157.02012 and §57.201 of this title ~~(relating to Loan Status Forms), with respect to an originator sponsored by a mortgage banker, or 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;~~

(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) if the loan is a "home loan" as defined by Finance Code §343.001, 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 sales contract or real estate purchase agreement for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the residential mortgage loan or prospective residential mortgage loan, and if a fee is paid by or imposed on the mortgage applicant for such consumer report or credit report, invoices and proof of payment invoices/receipts

(xi) appraisal reports or written valuation reports used to determine the value of the residential real estate secured or designed to be secured by the loan, and if a fee is paid by or imposed on the mortgage applicant for such appraisal report or written valuation report, invoices and proof of payment for the appraisal report or written valuation report;

(xii) invoices and proof of payment for any third-party third-party fees paid by or imposed on the mortgage applicant;

(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);

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

(xvi) if the ~~originator or the~~ mortgage banker or ~~sponsored 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 §157.024(a)(10) ~~and §156.303(a)(13)~~;

(xvii) the initial privacy notice required by Regulation P; ~~(12 C.F.R. §1016.4)~~ or the Federal Trade Commission's Privacy of Consumer Financial Information rules (16 C.F.R. §313.4);

(xviii) the mortgage applicant's written authorization to receive electronic documents as required by the E-Sign Act and Regulation Z (12 C.F.R. §1026.17(a)(1));

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

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

(xxi) any written agreements or other records governing the origination of the residential mortgage loan or prospective residential mortgage loan;

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

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

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

(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 if a fee is paid by or imposed on the mortgage applicant for such title insurance policies or title search reports, invoices and proof of payment for the title insurance policy or title search report; and

(v) if applicable, the flood determination certificate obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such flood certificate, invoices and proof of payment for the flood determination certificate;

(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 ~~line 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 Regulation Z, (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) for home equity line of credit transactions:

(I) the account-opening disclosure required by Regulation Z (12 C.F.R. §1026.6(a));

(II) the early disclosure statement required by Regulation Z (12 C.F.R. §1026.40(d));

(III) the Home Equity Line of Credit Brochure required by Regulation Z (12 C.F.R. §1026.40(e)); and

(xi) ~~(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);

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

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

(iv) 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 transactions or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 refer refers to Article XVI, Section 50, Texas Constitution; see also subparagraph (C)(x) of this paragraph):

(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 (mortgage applicant) uses the proceeds of the loan to pay off a non-homestead debt with the same lender, a written statement, signed by the mortgage applicant, 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 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) any discount point acknowledgement form used by the lender to substantiate that the discount points are bona fide as required by §153.5 of this title (relating to Two Percent Fee Limitation: Section 50(a)(6)(E));

(viii) the Texas Home Equity Affidavit and Agreement (Fannie Mae Form 3185), or similar;

(ix) for home equity line of credit transactions, the Texas Home Equity Line of Credit Agreement or repayment agreement;

(x) (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 Property 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 notice of right of rescission required by TILA and Regulation Z fulfills this requirement); and

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

(I) 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;

(d) Required Records (Loan Processing and Underwriting). A mortgage banker and its sponsored originators must maintain the following items in connection with the provision of third-party loan processing and underwriting services by the mortgage banker to a mortgage company licensed by SML or a mortgage banker registered with SML:

(1) Loan Processing and Underwriting Log. A loan processing and underwriting log, maintained on a current basis (meaning all entries must be made within 7 days after the date on which the events they relate to occurred, and updated as the information changes) setting forth, at a minimum (the log may include additional information, provided, the information is readily sortable as required by subsection (b)(1) of this section):

(A) full name of each mortgage applicant (last name, first name);

(B) application/loan identification number assigned by the mortgage banker;

(C) application/loan identification number assigned by the mortgage company or mortgage banker to which

the mortgage banker is providing loan processing or underwriting services, if different than subparagraph (B) of this paragraph;

(D) loan identification number assigned by the lender, if different than subparagraphs (B) or (C) of this paragraph;

(E) address of the subject property (street address, city, state, zip code);

(F) full name and NMLS ID of the mortgage company or mortgage banker to which the mortgage banker is providing loan processing or underwriting services;

(G) the name, NMLS ID, and employment status (e.g., W-2 or 1099) of each individual loan processor or underwriter performing loan processing or underwriting services on behalf of the mortgage banker;

(H) closing date;

(I) description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (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));

(J) description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied);

(K) dollar amount invoiced, assessed, charged, collected, or paid for the loan processing or underwriting services provided by the mortgage banker; and

(L) description of whether the fee for the loan processing or underwriting services was included on the Closing Disclosure as a fee paid directly to the mortgage banker at closing (e.g., on CD, or not on CD).

~~(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.~~

(e) (3) Other Records Required by Federal Law. A mortgage banker and its sponsored originators 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:

~~(1) (A) the~~ Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

~~(2) (B) 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.);

~~(3) (C) 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~~

~~(4) (D)~~ Regulation N (~~Mortgage Acts and Practices Advertising (MAP Rule)~~; 12 C.F.R. §1014.1 et seq.); and

~~(5) the FTC's Standards for Safeguarding Customer Information Rule (16 C.F.R. §314.1 et seq.).~~

~~(f) (e) General Business Records Required Records of a Mortgage Banker.~~ A mortgage banker and its sponsored originators must capture and maintain the following records generated in the normal course of doing business:

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

~~(1) (A)~~ all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to residential mortgage loan origination business;

~~(2) (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;

~~(3) (C)~~ all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all ~~employees of the~~ mortgage banker employees, independent contractors, and all others compensated by the mortgage banker in connection with residential mortgage loan origination business;

~~(4) (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;

~~(5) (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;

~~(6) (F)~~ all reports of audits, examinations, inspections, reviews, investigations, or similar, performed by any third party, including any regulatory or supervisory authorities;

~~(7) (G)~~ all advertisements in the medium (e.g., recorded audio, video, Internet or social media site posting, or

		<p>print) in which they were published or distributed; and</p> <p>(8) (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:</p> <ul style="list-style-type: none"> (A) (i) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d)); (B) (ii) anti-money laundering program (31 C.F.R. §1029.210); (C) (iii) information security program (16 C.F.R. §314.3(a)); (D) (iv) ability-to-repay underwriting policies, if any, <u>under</u> Regulation Z, (12 C.F.R. §1026.43(c)); (E) (v) quality control policy, if any; (F) (vi) compliance manual, if any; and (G) (vii) personnel administration/employee policies, if any; <p>(g) (2) Records Concerning Administrative Offices. A mortgage banker must maintain a list reflecting any office constituting an "administrative office" of the mortgage banker for purposes of §57.206 §80.206 of this title (relating to Office Locations; Remote Work); and</p> <p>(h) (3) Records Concerning Remote Work. A mortgage banker must maintain records reflecting its compliance with the requirements for remote work, as provided by §57.206 §80.206 of this title (relating to Office Locations; Remote Work);</p> <p>(i) Records Concerning Voluntary Corrective Action. A mortgage banker must maintain records showing compliance with §57.303 of this title (relating to Corrective Action);</p> <p>(j) Records Concerning Unclaimed Funds. A mortgage banker must maintain records showing compliance with §57.304 of this title (relating to Unclaimed Funds);</p> <p>(k) (4) Other Records of an Originator Designated by SML the Commissioner. A mortgage banker and its sponsored originators An originator must maintain such other books and records as SML the Commissioner or the Commissioner's designee may, from time to time, specify in writing.</p>
57.205	81.205	Mortgage Call Reports

(a) Purpose. This section clarifies and establishes requirements related to the mortgage call reports a mortgage banker is required to file under Finance Code §157.020.

(b) NMLS Filing Requirements. Mortgage call reports must be filed in NMLS by the deadlines established by NMLS. The mortgage call report must be filed using the current form prescribed by NMLS. Information about how to file the mortgage call report and applicable filing deadlines is available on the NMLS Resource Center website (nationwidelicensingsystem.org).

(c) Components. The mortgage call report consists of three components, all of which must be completed:

(1) Residential Mortgage Loan Activity (RMLA);

(2) State-Specific Supplemental Form (SSSF); and

(3) Statement of Financial Condition.

(d) Partial Reporting Periods; Periods of Inactivity. A mortgage call report must be filed for all reporting periods during which the mortgage banker is registered, including partial periods, and periods during which the mortgage banker has no reportable activity.

(e) Extensions of Time. The Commissioner, in his or her sole discretion, may grant an extension of time to file the mortgage call report. A request for an extension of time must be made in writing and approved by the Commissioner or the Commissioner's designee.

(f) Duty to File Complete and Accurate Reports. The mortgage call report must contain complete and accurate information at the time it is filed. A mortgage call report containing incomplete or inaccurate information is deemed to be a failure to file the report. A mortgage banker must act diligently to compile the information necessary to complete the mortgage call report in advance of the deadline to file the mortgage call report. For clarity, the filing of incomplete or inaccurate information, even on a temporary basis with the intent to amend the filing with complete and accurate information, constitutes a violation of Finance Code §157.020, and this section, and may result in disciplinary action as described by subsection (g) of this section.

~~(a) Call Report.~~

~~(1) A mortgage banker must file a mortgage call report on a quarterly basis. The filing deadlines are set by NMLS.~~

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

		<p>(3) the call report must be submitted through and in the manner prescribed by NMLS.</p> <p>(b) Statement of Condition Report.</p> <p>(1) A mortgage banker must file a statement of condition on an annual basis.</p> <p>(2) A statement of condition report is required to be filed for each year a license is held, including partial years.</p> <p>(3) the statement of condition report must be submitted through and in the manner and form prescribed by NMLS.</p> <p>(c) Submission of a call report or statement of condition report, by a mortgage banker, satisfies the requirements of an originator sponsored by the mortgage banker to submit a mortgage call report, as required by Tex. Fin. Code §180.101 for the period of sponsorship, provided that the sponsored originator's information is included in the report.</p> <p>(g) (d) Failure to File; Disciplinary Action. Failure to file a mortgage call report or statement of condition report may result in disciplinary action, including, but not limited to, <u>denial, suspension, or revocation of the registration, or</u> the imposition of an administrative penalty.</p>
57.206	81.206	<p>Office Locations; Remote Work</p> <p>(a) Definitions. For purposes of The following terms, when used in this section, will have the following <u>definitions apply meanings</u>, unless the context clearly indicates otherwise:</p> <p>(1) "Administrative office" means any office of a mortgage banker that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage banker conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:</p> <p>(A) an office or location at which the employees of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by <u>Finance Tex. Fin.</u> Code §180.002;</p> <p>(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by <u>Finance Tex. Fin.</u> Code §180.002(19)(B)(i);</p> <p>(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees solely perform activities relating to residential mortgage loan servicing, including:</p>

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

(iv) administering or enforcing the terms of a residential mortgage loan; or

(v) administering the terms of an investor servicing agreement for a residential mortgage loan; or

(D) an office or location which conducts any combination of activities described by subparagraphs (A) - (C) of this paragraph.

(2) "Branch office" means any office a mortgage banker maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by ~~Finance Tex. Fin.~~ Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by ~~Finance Tex. Fin.~~ Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees solely perform activities relating to residential mortgage loan servicing, including:

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

(iv) administering or enforcing the terms of a residential mortgage loan; or

(v) administering the terms of an investor servicing agreement for a residential mortgage loan;

(D) an office or location which conducts any combination of activities described by subparagraphs (A) - (C) of this paragraph; or

(E) a "remote location" as defined by this section.

(3) "Main office" means the office the mortgage banker has listed in its NMLS registration (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore registered with SML the Department.

(4) "Registered office" means a physical office of the mortgage banker that is registered with SML the Department as its main office or a branch office.

(5) "Remote location" means a location other than a registered office or an administrative office of the mortgage banker from which the employees or sponsored originators of the mortgage banker conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage banker must register any office constituting the main office or a branch office of the mortgage banker. A mortgage banker must also register any office or location it advertises or promotes to the general public as an office or location at which the mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A registered office ~~of the mortgage banker~~ must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage banker ~~or mortgage company~~. A sponsored An originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section. A branch office must be registered with SML prior to conducting operations.

(c) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a remote location to the same extent as if such employee or originators were physically present at a licensed or registered office of the mortgage banker; provided, the mortgage banker:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

		<p>(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from remote locations authorized under this section, are accessible and available to SML the Commissioner or the Commissioner's designee on request;</p> <p>(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and</p> <p>(6) adopts, maintains, and follows written procedures to ensure that:</p> <p>(A) the mortgage banker and its employees and sponsored originators comply with this section; and</p> <p>(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker.</p>
57.207	New	<p><u>Periodic Statements</u></p> <p><u>A mortgage banker that acts a residential mortgage loan servicer and services a loan secured by a dwelling must comply with the requirements of Section 1026.41 of Regulation Z (12 C.F.R. §1026.41), governing the issuance, content, form, and layout of periodic statements sent to the borrower.</u></p>
57.210	New	<p><u>Reportable Incidents</u></p> <p><u>(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:</u></p> <p><u>(1) "Catastrophic event" means an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations (e.g., the destruction of a principal office or data center).</u></p> <p><u>(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage banker's operations or its customers. A reportable incident includes the following items, provided, it presents a material risk:</u></p> <p><u>(A) a "catastrophic event" as defined by this subsection</u></p> <p><u>(B) a "security event" as defined by this subsection;</u></p> <p><u>(C) the termination or curtailment of a line of credit or funding source; or</u></p> <p><u>(D) the termination or curtailment of a service provided to the mortgage banker by a third-party service</u></p>

provider.

(3) "Root cause analysis report" means a written report concerning the results or findings of an audit or investigation to determine the origin or root cause of a security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event.

(4) "Security event" means an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form. It includes information that is encrypted, if the person with unauthorized access to the information can decrypt the data.

(b) Incident Report. Except as provided by subsection (c) of this section, a mortgage banker must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage banker becomes aware of the reportable incident. The report must include:

(1) a detailed description of the nature and circumstances of the reportable incident;

(2) the number of Texas residents affected or potentially affected by the reportable incident;

(3) the measures taken by the mortgage banker to resolve or address the reportable incident;

(4) the measures the mortgage banker plans to take to resolve or address the reportable incident; and

(5) the point of contact designated by the mortgage banker for inquires by SML about the reportable incident.

(c) Incidents Reported to Other Agencies. A mortgage banker must provide SML with a copy of the following notifications sent to other agencies at the time it makes the notification. Except as provided by subsection (d) of this section, a notification provided to SML under this subsection satisfies the requirement to file a report under subsection (b) of this section:

(1) the notification to the Federal Trade Commission (FTC) required by Section 314.4(j) of the FTC's Standards for Safeguarding Customer Information rules (16 C.F.R. §314.4(j)); and

(2) the notification to the Office of the Attorney General of Texas required by Business and Commerce Code §521.053(i).

(d) Root Cause Analysis for Data Breaches. For any security event triggering a notification described by subsection (c) of this section (data breach), the mortgage banker must provide SML with a root cause analysis report within 120 days after the date the mortgage banker becomes aware that the data breach occurred.

		<p><u>(e) Supplemental Information.</u> SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.</p> <p><u>(f) Confidentiality.</u> Information reported under subsection (b) or (d) of this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §157.021 and §57.302 of this title (relating to Confidentiality of Examination, Investigation, and Inspection Information).</p>
57.300	81.300	<p>Examinations</p> <p><u>(a) Purpose.</u> This section clarifies and establishes requirements related to examinations of a mortgage banker's sponsored originators conducted by SML under Finance Code §157.021. The Commissioner or the Commissioner's designee(s), will conduct periodic examinations of an originator as the Commissioner deems necessary.</p> <p><u>(b) State Examination System (SES).</u> Examinations are conducted in SES. A mortgage banker must use SES to facilitate the examination.</p> <p><u>(c) Examinations by Other State Agencies.</u> SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority if that state agency's or regulatory authority's mortgage regulation program is accredited by the Conference of State Bank Supervisors.</p> <p><u>(d) (b) Notice of Examination.</u> Except when SML the Department determines that giving advance notice would impair the examination, SML the Department will give the primary contact person of the mortgage banker sponsoring the originator listed in NMLS or a person designated by the primary contact person advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which SML's the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made available to facilitate the examination.</p> <p><u>(e) (e) Examination Scope.</u> Examinations will be conducted to determine compliance with Finance Code Chapters 157 and 180, and this chapter, and will specifically address whether:</p> <ol style="list-style-type: none"> (1) all persons conducting residential mortgage loan origination activities are properly licensed and sponsored; (2) all office locations are properly licensed or registered, as provided by §80.206 (relating to Physical Office) and §57.206 §81.206 of this title (relating to Office Locations; Remote Work); (3) all required books and records are being maintained in accordance with §57.204 §81.206 of this title (relating

		<p><u>to Books and Records</u>);</p> <p>(4) legal and regulatory requirements applicable to the <u>mortgage banker and its sponsored originators</u> originator and the mortgage banker or mortgage company sponsoring the originator are being properly followed (including, but not limited to, the requirements described in <u>§57.202(b)(2)</u> of this title (relating to <u>Fraudulent, Misleading, or Deceptive Practices and Improper Dealings</u>)); and</p> <p>(5) other matters SML and its examiners as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapters 157 and 180.</p> <p>(f) (d) Loan Sample. The examiners will review a sample of residential mortgage loan files identified by the examiners and randomly selected from the <u>mortgage banker's originator's</u> mortgage transaction log <u>required by §57.204(c)(1) of this title or the loan processing or underwriting log required by §57.204(d)(1) of this title</u>. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.</p> <p>(e) The examiners may require an originator, at his or her own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.</p> <p>(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will be maintained as confidential except as required or expressly permitted by law.</p> <p>(g) Failure to Cooperate; Disciplinary Action. Failure by <u>a mortgage banker or sponsored</u> an originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in <u>action against the mortgage banker under Finance Code §157.009 and</u> disciplinary action <u>against the originator</u> including, but not limited to, imposition of an administrative penalty.</p> <p>(h) Reimbursement for Costs. <u>The examiners may require a mortgage banker, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate.</u> When <u>SML</u> the Department must travel outside of Texas to conduct an examination of <u>a mortgage banker's sponsored originators</u> an originator because the required records are maintained at a location outside of Texas, <u>SML</u> the Department will require reimbursement for the actual costs incurred by <u>SML</u> the Department in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs. <u>Costs assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.</u></p>
57.301	81.301	<p>Investigations</p> <p><u>(a) Purpose. This section clarifies and establishes requirements related to investigations SML conducts of a mortgage banker and its sponsored originators under Finance Code §157.009 and §157.021.</u></p>

		<p>(b) <u>Reasonable Cause.</u> SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has not reason to believe is other than credible indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate an action taken by SML to address a violation found during the course of an investigation. The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 157 and this chapter. (c) Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner has not reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 157.</p> <p>(c) (a) <u>Investigation Methods.</u> Investigations will be conducted as SML deems deemed appropriate based on in light of all the relevant facts and circumstances then known. An Such investigation may include any or all of the following:</p> <ul style="list-style-type: none"> (1) review of documentary evidence; (2) interviews with complainants, <u>respondents, licensees,</u> and third parties, <u>and the taking of sworn written statements;</u> (3) obtaining <u>information from reports, advice, and other comments and assistance of</u> other state <u>or and/or</u> federal <u>agencies,</u> regulatory, <u>authorities, enforcement,</u> or <u>self-regulatory organizations oversight bodies;</u> (4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and (5) (4) other lawful investigative <u>methods SML techniques as the Commissioner reasonably</u> deems necessary <u>or and/or</u> appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.
57.302	81.300(f)	<p><u>Confidentiality of Examination, Investigation, and Inspection Information.</u></p> <p>(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §157.021.</p> <p>(b) Confidential Information. All information obtained by SML during an examination, investigation, or inspection is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §157.021 (list is not exhaustive):</p> <ul style="list-style-type: none"> (1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or created during an examination, investigation, or

		<p><u>inspection;</u></p> <p><u>(2) information that is derived from or is the product of the confidential information described by paragraph (1) of this subsection, including any reports or other information chronicling or summarizing the results, conclusions, or other findings of an examination, investigation, or inspection, including assertions of an actual or apparent violation of law or any directives, mandates, or recommendations for action by the mortgage banker to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection; including, but not limited to, any corrective or remedial action directed by SML or taken by the mortgage banker under §57.303 of this title (relating to Corrective Action);</u></p> <p><u>(3) information that is derived from or is the product of the confidential information described by paragraphs (1) and (2) of this subsection, including any communications, documentary evidence, or other information concerning the mortgage banker's compliance with any directives, mandates, or recommendations for action by the mortgage banker and any corrective or remedial action taken by the mortgage banker to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection.</u></p> <p><u>(c) Loss of Confidentiality. Subsection (b) of this section notwithstanding, information described by that subsection is not confidential to the extent the information becomes publicly available in a disciplinary or enforcement action that is a contested case (i.e., information made part of the administrative record during an adjudicative hearing that is open to the public).</u></p> <p>(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will be maintained as confidential except as required or expressly permitted by law.</p>
57.303	New	<p><u>Corrective Action</u></p> <p><u>(a) Corrective Action, Generally; Purpose. During an examination, investigation, or inspection, SML may determine that violations, deficiencies, or compliance issues (collectively, violations) occurred. Within the confidential environment of the examination, investigation, or inspection, and typically in lieu of possible disciplinary or enforcement action against the mortgage banker or its sponsored originators that is not confidential, SML may direct the mortgage banker to take corrective action to address the violations identified during the examination, investigation, or inspection. This section clarifies and establishes requirements related to such corrective action.</u></p> <p><u>(b) Internal Reviews. If SML determines during an examination, investigation, or inspection that a violation may be systemic, SML may direct the mortgage banker to conduct its own internal review to self-identify any other violations, compile information concerning such violations, and report its findings to SML. SML may direct the mortgage banker to take corrective action for any violations identified during the review.</u></p> <p><u>(c) Policies and Procedures and Internal Controls. SML may direct the mortgage banker to develop and adopt policies</u></p>

and procedures and institutional controls designed to prevent or mitigate future violations.

(d) Refunds to Consumers. SML may direct the mortgage banker to make refunds to consumers affected by the violation. Any refund must comply with this subsection. The Commissioner, in his or her sole discretion, may waive or modify the requirements of this subsection to achieve appropriate, practical, and workable results. A refund must be made by one of the following methods:

(1) Certified Funds. The refund may be made by certified funds (cashier's check or money order) sent to the mortgage applicant or borrower at his or her last known address. The mortgage banker must use reasonable diligence to determine the last known address of the mortgage applicant or borrower. The payment must be sent in a manner that includes tracking information and confirmation of delivery (e.g., certified mail return receipt requested, or commercial delivery service with tracking). The mortgage banker must capture and maintain records evidencing the payment, including a copy of the payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation;

(2) Corporate Check. The refund may be made by issuing a check to the mortgage applicant or borrower. The check must be drawn on a bank account owned by the mortgage banker. The check must be sent to the mortgage applicant or borrower at his or her last known address. The mortgage banker must use reasonable diligence to determine the last known address of the mortgage applicant or borrower. The mortgage banker must capture and maintain records evidencing the payment, including a copy of the check, any correspondence accompanying the check, and evidence that the check was successfully negotiated (i.e., cancelled check). If the mortgage applicant or borrower fails to cash the check, the mortgage banker must comply with requirements of §57.304 of this title (relating to Unclaimed Funds);

(3) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the mortgage applicant's or borrower's verified bank account. The mortgage banker must capture and maintain records evidencing the payment, including any transaction receipt, confirmation page, or similar, reflecting:

(A) name of the sender and any relevant contact information;

(B) sender's bank information (institution, routing number, and account number);

(C) name of the recipient and any relevant contact information;

(D) recipient's bank information (routing number and account number); and

(E) the transaction reference number or confirmation code; or

(4) Credit Against Indebtedness. If the mortgage banker is the lender or holds the mortgage servicing rights to the residential mortgage loan related to the refund, the mortgage banker may issue a credit against the indebtedness

		<p><u>equal to the refund; however, if the refund is related to an improper charge or proceeds improperly held by the mortgage banker on which interest was charged, the credit must be applied to the unpaid principal balance as of the date of such improper charge or the date the mortgage banker began improperly holding the proceeds. The mortgage banker must capture and maintain records evidencing application of the credit, including the payment history reflecting application of the credit and any subsequent adjustments to principal and interest payments as a result of the credit being applied.</u></p>
57.304	New	<p><u>Unclaimed Funds</u></p> <p><u>(a) Escheat Suspense Account; Escheat Log. Funds owed to or held for the benefit of a mortgage applicant, borrower, or other customer of the mortgage banker for more than one year (i.e., unclaimed funds) must be transferred to an escheat suspense account. The mortgage banker must maintain a log of all transfers made to the escheat suspense account, including, at a minimum:</u></p> <p style="padding-left: 40px;"><u>(1) date of transfer to the escheat suspense account;</u></p> <p style="padding-left: 40px;"><u>(2) date the obligation to pay the funds arose;</u></p> <p style="padding-left: 40px;"><u>(3) full name and last known contact information of the mortgage applicant, borrower, or other customer to whom funds are owed; and</u></p> <p style="padding-left: 40px;"><u>(4) amount of unclaimed funds.</u></p> <p><u>(b) Required Records. The mortgage banker must maintain records reflecting bona fide attempts to pay the funds to the mortgage applicant, borrower, or customer.</u></p> <p><u>(c) Escheat to State. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts as provided by Property Code §72.101, or as provided by such other state law governing the unclaimed funds.</u></p> <p><u>(d) Records Retention. Records required by this section must be retained for 10 years beginning on the date the obligation to pay the unclaimed funds arose.</u></p>
57.310	81.302(c)	<p><u>Hearings and Appeals</u></p> <p><u>(a) Purpose. Finance Code Chapter 157 provides that certain decisions of the Commissioner adverse to the mortgage banker or other person may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which a mortgage banker or other person must appeal the</u></p>

		<p><u>decision before it becomes final and non-appealable.</u></p> <p><u>(b) The following appeal deadlines apply:</u></p> <p><u>(1) Registration Denials. A registration denial under Finance Code §157.003(e) must be appealed within 10 days after the date notice of the Commissioner’s decision is received by the person seeking the registration.</u></p> <p><u>(2) Notice of Revocation. A notice of revocation issued under Finance Code §157.009 must be appealed within 30 days after the date the notice is issued.</u></p> <p><u>(3) Other Deadlines. Any appeal not otherwise addressed by this section must be made within 30 days after the date notice or order is issued.</u></p> <p><u>(c) Requests for Appeal. An appeal must be made in writing and received by SML on or before the appeal deadline. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (enforcement@sml.texas.gov).</u></p> <p><u>(d) Effect of Not Appealing. A mortgage banker or other person that does not timely appeal the Commissioner’s decision is deemed to have irrevocably waived any right it had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to it for purposes of judicial review of the Commissioner’s decision under Government Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner’s decision means the Commissioner can issue a final, non-appealable order at any time without further notice or opportunity for a hearing to the mortgage banker or other person.</u></p> <p>(e) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final without further action and cannot be appealed.</p>
57.311	81.302(a) and (b)	<p>Hearings and Appeals</p> <p><u>(a) Adjudicative hearings conducted under Finance Code Chapter 157 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH’s rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings will be held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas. As determined by the Commissioner, hearings may be conducted in accordance with Chapter of this title including, but not limited to motions for rehearing, notices of appeal, and applications for review. All hearings shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner</u></p>

		<p>shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in Chapter 9 of this title are incorporated herein by reference for all purposes.</p> <p>(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.</p>
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