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**Finance Commission**

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## FINANCE COMMISSION OF TEXAS

**MEETING DATE** .....August 16, 2024

**MEETING LOCATION** .....Finance Commission Building  
William F. Aldridge Hearing Room  
2601 North Lamar Boulevard  
Austin, Texas 78705

**CONTACT INFORMATION**.....Phone: (512) 936-6222  
Website: [www.fc.texas.gov](http://www.fc.texas.gov)

**FUTURE MEETING DATES** .....October 25, 2024  
December 13, 2024  
February 21, 2025  
April 25, 2025  
June 20, 2025  
August 15, 2025  
October 24, 2025  
December 19, 2025

*\*\* The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. Finance Code §11.106*

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# FINANCE COMMISSION AGENDA

Friday, August 16, 2024  
9:00 a.m.

or Upon Adjournment of the Audit Committee Meeting  
Finance Commission Building  
William F. Aldridge Hearing Room  
2601 North Lamar Boulevard  
Austin, Texas 78705

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***Section A.3 will take up agenda items A1, A8, A9, B2, B3, C2-C5, and D3, with NO DISCUSSION as notated in bold and italicized.***

*Public comment on any agenda item or issue under the jurisdiction of the Finance Commission of Texas agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.*

## **A. FINANCE COMMISSION MATTERS**

### ***1. Review and Approval of the Minutes of the June 21, 2024 Finance Commission Meeting***

2. General Public Comment

3. Consent Agenda

4. Finance Commission Operations

5. Audit Committee Report

A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2024 Third Quarter Investment Officer Reports

1. Office of Consumer Credit Commissioner
2. Department of Savings and Mortgage Lending
3. Texas Department of Banking

B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:

1. Office of Consumer Credit Commissioner
2. Department of Savings and Mortgage Lending
3. Texas Department of Banking

C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2024 Third Quarter Financial Statements

1. Office of Consumer Credit Commissioner
2. Department of Savings and Mortgage Lending
3. Texas Department of Banking

D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2025 Operating Budgets

1. Office of Consumer Credit Commissioner
2. Department of Savings and Mortgage Lending
3. Texas Department of Banking

- E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Approve the Renewal of the Internal Auditor Contract for Garza/Gonzalez and Associates for Fiscal Year 2025
  - F. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's 2024 Annual Internal Audit and Follow-Up on Prior Year Recommendations Report as Prepared and Presented by Garza/Gonzalez and Associates
  - G. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's 2024 Annual Internal Audit and Follow-Up on Prior Year Recommendations Report as Prepared and Presented by Garza/Gonzalez and Associates
  - H. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2024 Trust Examinations Report and Follow-Up on Prior Year Recommendations as Prepared and Presented by Garza/Gonzalez and Associates
  - I. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking's 2024 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates
  - J. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Department of Savings and Mortgage Lending's Mortgage Grant Administration Manual Pursuant to 7 TAC, Part 4, § 51.402(c)
6. Strategic Planning Committee Report
- A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Finance Commission of Texas 2025-2029 Strategic Plan
7. Discussion of and Possible Vote to Take Action on the Agency Priorities for Fiscal Year 2025 for the Commissioners of the Agencies of the Finance Commission of Texas
- 1. Office of Consumer Credit Commissioner
  - 2. Department of Savings and Mortgage Lending
  - 3. Texas Department of Banking
8. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 1, Chapter 9, §§ 9.1 and 9.12, Concerning Rules of Procedure for Contested Hearings, Appeals and Rulemakings***
9. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 1, Chapter 10, § 10.40, Concerning Contract Procedures***
10. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to § 551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
11. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to § 551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
12. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to § 551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-client Privileged

Communications from our Attorneys, Including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation

13. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessment, or Security Assessments or Deployment Related to Information Resources Technology as Authorized by §§ 551.076 and 551.089, Texas Government Code
14. Discussion of Matters Made Confidential by Law Pursuant to § 551.0811, Texas Government Code, including Information Relating to the Financial Condition or Business Affairs of a Financial Institution

## **B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors*
3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review*
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

*Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 01-22-00712-CV, in the First Court of Appeals, Houston, Texas*

## **C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities
2. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 79, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review*
4. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 80, Concerning Residential Mortgage Loan Companies, Resulting from Rule Review*
5. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators, Resulting from Rule Review*
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication of New Rules in 7 TAC, Part 4, Chapter 55, Concerning Residential Mortgage Loan Originators, Resulting from Rule Review

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication of New Rules in 7 TAC, Part 4, Chapter 56, Concerning Residential Mortgage Loan Companies, Resulting from Rule Review
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication of New Rules in 7 TAC, Part 4, Chapter 57, Concerning Mortgage Bankers, Resulting from Rule Review
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication of New Rules in 7 TAC, Part 4, Chapter 58, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication of New Rules in 7 TAC, Part 4, Chapter 59, Concerning Wrap Mortgage Loans, Resulting from Rule Review
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication of Repeals in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans, Resulting from Rule Review
12. Discussion of and Possible Vote to Take Action on the Proposal and Publication of Repeals in 7 TAC, Part 4, Chapter 79, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review
13. Discussion of and Possible Vote to Take Action on the Proposal and Publication of Repeals in 7 TAC, Part 4, Chapter 80, Concerning Residential Mortgage Loan Companies, Resulting from Rule Review
14. Discussion of and Possible Vote to Take Action on the Proposal and Publication of Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators, Resulting from Rule Review
15. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

*Tim Schoenbauer v. Texas Department of Savings and Mortgage Lending; Cause No. JPC-23-02334-32, in the Justice Court, Precinct 3, Place 2, Dallas County, Texas*

#### **D. TEXAS DEPARTMENT OF BANKING**

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 2, Chapter 33, § 33.27, Concerning Fees to Obtain and Maintain a License
3. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 2, Chapter 33, § 33.51, Concerning How to Provide Information to Customers on How to File a Complaint***
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

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**NOTE: The Finance Commission of Texas may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.**

**Meeting Accessibility:** Under the Americans with Disabilities Act, the Finance Commission of Texas will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

**MINUTES OF THE  
FINANCE COMMISSION MEETING  
Friday, June 21, 2024**

The Finance Commission of Texas convened at 9:00 a.m., on Friday, June 21, 2024, with the following members present:

**Finance Commission Members in Attendance:**

Phillip Holt, Chairman	Marty Green	David Osborn
Hector Cerna	Troy Lambden	Miguel Romano, Jr.
Kathleen Fields	Sharon McCormick	Laura Warren

**Finance Commission Members Absent:**

Bob Borochoff	Roselyn “Rosie” Morris
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Commissioner Charles G. Cooper announced there was a quorum with nine (9) members present. (2:29 on audio file).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>A. Finance Commission Matters</b>		
1. Review and Approval of the Minutes of the April 19, 2024 Finance Commission Meeting	<b>On Consent Agenda – Item A1</b> This item Approved on the Consent Agenda.	n/a
2. General Public Comment	No Action Required.	3:03 Start of Discussion
3. Consent Agenda – Items A1, A11, and D4	Laura Warren made a motion to Approve Consent Agenda items A1, A11, and D4. Marty Green seconded, and the motion passed.	3:14 Start of Discussion  3:29 Vote
4. Recognition of Previous Finance Commission Members – Will Lucas, Cliff McCauley, and Vince Puente	No Action Required.	4:00 Start of Discussion
5. Finance Commission Operations	No Action Required.	4:27 Start of Discussion
6. Audit Committee Report		
A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Department of Banking’s 2024 Payroll and Human Resources Report as Prepared and Presented by Garza/Gonzalez and Associates	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking’s 2024 Payroll and Human Resources Report as Prepared and Presented by Garza/Gonzalez and Associates passed.	5:08 Start of Discussion  5:27 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
7. Strategic Planning Committee Report		
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2025-2029 Strategic Plans</p> <ol style="list-style-type: none"> <li>1. Department of Savings and Mortgage Lending</li> <li>2. Texas Department of Banking</li> <li>3. Office of Consumer Credit Commissioner</li> </ol>	<p>Marty Green made a motion to Approve the Department of Savings and Mortgage Lending's 2025-2029 Strategic Plan. Sharon McCormick seconded, and the motion passed.</p> <p>Marty Green made a motion to Approve the Texas Department of Banking's 2025-2029 Strategic Plan. Laura Warren seconded, and the motion passed.</p> <p>Laura Warren made a motion to Approve to the Office of Consumer Credit Commissioner's 2025-2029 Strategic Plan. Sharon McCormick seconded, and the motion passed.</p>	<p>5:44 Start of Discussion</p> <p>8:29 Vote</p> <p>8:47 Vote</p> <p>9:06 Vote</p>
<p>B. Discussion of the Finance Commission of Texas 2025-2029 Strategic Plan</p>	<p>No Action Required.</p>	<p>9:53 Start of Discussion</p>
<p>8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 1, Chapter 9, §§ 9.1 and 9.12, Concerning Rules of Procedure for Contested Hearings, Appeals and Rulemakings</p>	<p>Marty Green made a motion to Approve to the Proposal and Publication for Comment of Amendments in 7 TAC, Part 1, Chapter 9, §§ 9.1 and 9.12, Concerning Rules of Procedure for Contested Hearings, Appeals and Rulemakings. Laura Warren seconded, and the motion passed.</p>	<p>12:30 Start of Discussion</p> <p>14:47 Vote</p>
<p>9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 1, Chapter 10, § 10.40, Concerning Contract Procedures</p>	<p>Marty Green made a motion to Approve the Proposal and Publication for Comment of Amendments in 7 TAC, Part 1, Chapter 10, § 10.40, Concerning Contract Procedures. David Osborn seconded, and the motion passed.</p>	<p>15:17 Start of Discussion</p> <p>18:19 Vote</p>
<p>10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Resulting from Rule Review</p>	<p>Hector Cerna made a motion to Approve the Proposal and Publication for Comment of Amendments in 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures Resulting from Rule Review. Troy Lambden seconded, and the motion passed.</p>	<p>18:50 Start of Discussion</p> <p>22:34 Vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>11. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Chapter 152, Concerning Repair, Renovation and New Construction on Homestead Property, and Chapter 153, Concerning Home Equity Lending, Resulting from Rule Review</p>	<p><b>On Consent Agenda – Item A1</b>  This item Approved on the Consent Agenda.</p>	<p>n/a</p>
<p>12. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>13. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>14. Discussion of and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the Purpose of Seeking the Advice or Attorney-Client Privileged Communications from our Attorneys, including Matters Related to the Potential Financial Exposure of the Finance Commission Agencies and Their Officers, and the Finance Commission and its Officers and Including Matters of Pending and Contemplated Litigation</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>15. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessments or Deployment Related to Information Resources Technology as Authorized by §§ 551.076 and 551.089, Texas Government Code</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>16. Discussion of Matters Made Confidential by Law Pursuant to § 551.081, Texas Government Code, including Information Relating to the Financial condition or Business Affairs of a Financial Institution</p>	<p>No Discussion.</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<b>B. Department of Savings and Mortgage Lending</b>		
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities	No Action Required.	23:16 Start of Discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation  <i>Tim Schoenbauer v. Texas Department of Savings and Mortgage Lending; Cause No. JPC-23-02334-32, in the Justice Court, Precinct 3, Place 2, Dallas County, Texas</i>	No Discussion.	n/a
<b>C. Texas Department of Banking</b>		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department’s Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	44:43 Start of Discussion
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 2, Chapter 33, § 33.27, Concerning Fees to Obtain and Maintain a License	Marty Green made a motion to Approve the Proposal and Publication for Comment of Amendments in 7 TAC, Part 2, Chapter 33, § 33.27, Concerning Fees to Obtain and Maintain a License. Laura Warren seconded, and the motion passed.	1:14:24 Start of Discussion  1:27:20 Vote
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 2, Chapter 33, § 33.51, Concerning How to Provide Information to Customers on How to File a Complaint	Marty Green made a motion to Approve the Proposal and Publication for Comment of Amendments in 7 TAC, Part 2, Chapter 33, § 33.51, Concerning How to Provide Information to Customers on How to File a Complaint. Kathleen Fields seconded, and the motion passed.	1:28:03 Start of Discussion  1:29:28 Vote
4. Discussion and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, § 33.81, Concerning Report Requirements for Digital Asset Service Providers	Marty Green made a motion to Approve the Proposal and Publication for Comment of New 7 TAC, Part 2, § 33.81, Concerning Report Requirements for Digital Asset Service Providers. Sharon McCormick seconded, and the motion passed.	1:29:57 Start of Discussion  1:34:01 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a
<b>D. Office of Consumer Credit Commissioner</b>		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	1:34:32 Start of Discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 5, Chapter 83, Concerning Rules for Regulated Lenders	Laura Warren made a motion to Approve the Adoption of Amendments in 7 TAC, Part 5, Chapter 83, Concerning Rules for Regulated Lenders. Hector Cerna seconded, and the motion passed.	1:55:52 Start of Discussion 2:00:56 Vote
3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales	Laura Warren made a motion to Approve the Adoption of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales. Troy Lambden seconded, and the motion passed	2:01:20 Start of Discussion 2:04:52 Vote
4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 87, Concerning Tax Refund Anticipation Loans, Resulting from Rule Review	<b>On Consent Agenda – Item D4</b> This item approved on the Consent Agenda.	n/a
5. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation  <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 01-22-00712-CV, in the First Court of Appeals, Houston, Texas</i>	No Action Required.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 11:07 p.m. (2:07:22 on the audio file).

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Phillip Holt, Chairman  
 Finance Commission of Texas

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Charles G. Cooper, Executive Director  
Finance Commission of Texas

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Ruth Wright, Executive Assistant  
Finance Commission of Texas

# Finance Commission of Texas

## Consent Agenda

August 16, 2024

### A. Finance Commission Matters

1. Review and Approval of the Minutes of the June 21, 2024 Finance Commission Meeting
8. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 1, Chapter 9, §§ 9.1 and 9.12, Concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings
9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 1, Chapter 10, § 10.40, Concerning Contract Procedures

### B. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review

### C. Department of Savings and Mortgage Lending

2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 79, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 80, Concerning Residential Mortgage Loan Companies, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators, Resulting from Rule Review

### D. Texas Department of Banking

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 2, Chapter 33, § 33.51, Concerning How to Provide Information to Customers on How to File a Complaint

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# Office of Consumer Credit Commissioner

## Agency Priorities

FY 2025

### 1. LEGISLATIVE

#### 1.1. 89th Legislative Session.

**1.1.1. Objective:** Monitor legislation that affects industries regulated by the OCCC. Respond to new legislative issues and requests for information or testimony. Develop relationships with legislators and legislative staff. Review or draft legislation as appropriate.

**Measure:** Respond promptly to legislative requests for information. Provide regular weekly legislative reports to the Finance Commission.

### 2. REGULATORY ACTIVITIES

#### 2.1. Regulated Entities - Supervision.

**2.1.1. Objective:** Examine, investigate, and monitor the jurisdictionally appropriate industry segments for compliance with state and federal law. Investigate illegal activity. Achieve overall weighted average acceptable level of compliance of 85% through examinations and industry education efforts. Monitor restitution instructions for licensees with outstanding examination issues.

**Measure:** Reporting on compliance by regulated industry segment. Number of examinations completed. Report the rate of satisfactory compliance. Report the amount of restitution returned to consumers as a result of examinations.

**2.1.2. Objective:** Actively participate in regulatory activities, conferences, and scheduled meetings relating to consumer finance, auto finance, and payday lending. Engage in and respond as appropriate to developing issues that impact the OCCC or its regulated entities.

**Measure:** Maintain active contact with other state and federal regulators, independently and through regulatory associations to keep abreast of trends and emerging issues that may impact the OCCC's regulatory responsibilities or the regulated industries. Report on participation and attendance at regulatory conferences.

**2.1.3. Objective:** Utilize the State Examination System (SES) for all mortgage exams. Continue to expand usage of SES for other types of examinations.

**Measure:** Report on the number of exams and exam types completed in SES.

**2.1.4. Objective:** Take appropriate enforcement actions to ensure compliance with state and federal law.

**Measure:** Report number of enforcement actions for each regulated industry.

## **2.2. Licensing.**

**2.2.1. Objective:** Maintain a focus on ensuring compliance of regulatory and agency standards. Process 80% of license applications within 60 days from received date to completion date.

**Measure:** Report on license activities, benchmarks and application processing status.

**2.2.2 Objective:** Provide quality customer service to licensees and registrants. Ensure timely and responsive customer inquiry processing. Provide professional development and training opportunities to licensing staff once a quarter.

**Measure:** Report on call abandonment rate and professional development training provided to staff.

## **3. POLICY AND RULE DEVELOPMENT**

### **3.1. Rulemaking.**

**3.1.1. Objective:** Complete the rule review for 7 TAC Chapter 7 (relating to the Texas Financial Education Endowment Fund).

**Measure:** Present rules to the Finance Commission for readoption according to schedule. Propose appropriate rule amendments to the Finance Commission. Request feedback from stakeholders on whether rules should be updated.

**3.1.2. Objective:** Prepare any rule proposals necessary to implement 2025 legislation. Work with stakeholders to seek feedback on proposed rules.

**Measure:** Present rules to the Finance Commission for proposal and adoption. Request feedback from stakeholders on proposed rules.

## **4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES**

### **4.1 Texas Financial Education Endowment Fund (TFEE).**

**4.1.1. Objective:** Administer the 2024-2025 TFEE grant cycle, including monitoring and reporting on the progress and impact of grant award recipient performance. Review reimbursement submissions, reports, and publish semi-annual reports. Launch the application process for the 2026-2027 TFEE grant cycle, including expanding outreach, reviewing forms, manuals, and reimbursement procedures to ensure best practices.

**Measure:** Reporting on fund activities, investment earnings, grant request submissions, grants awarded, and grantee reporting highlights. Identify and implement ways in which to improve and expand the grant program based on report findings and program needs.

### **4.2 Financial Education**

**4.2.1. Objective:** Provide and support financial education by conducting events to empower Texans to improve their financial health through sound financial decisions. Conduct outreach to community organizations, state agencies, non-profit organizations, and consumer advocacy groups that may benefit from financial education events. Identify traditionally underserved populations and locations in need of financial education. Offer financial education content via remote and in person learning opportunities.

**Measure:** Report on number of people and programs reached.

#### **4.3. Industry and Stakeholder Outreach**

**4.3.1. Objective:** Communicate and build relationships with industry and interested stakeholders on matters of supervisory and industry interest. Monitor emerging issues in the agency's areas of regulation and communicate the impact to regulated and licensed entities. Develop publications that address topics of interest and share with regulated and licensed entities. Participate in or attend industry meetings or seminars.

**Measure:** Report to the Finance Commission on the content and frequency of communications.

### **5. AGENCY MANAGEMENT**

#### **5.1. Performance Measures.**

**5.1.1. Objective:** Performance Targets. Meet or exceed 80% of key performance targets within  $\pm 5\%$  of the projected target.

**Measure:** Continue to meet or exceed the strategic planning goals for key performance measures, including attainment of at least 9 out of 11 key performance targets. Report results to Finance Commission on a quarterly basis.

#### **5.2. Human Resources.**

**5.2.1. Objective:** Recruit and retain qualified personnel with the appropriate skill set necessary to meet short and long-term needs. Continue efforts to right size staffing, based on performance requirements, with an emphasis on employee retention and diversity. Ensure administrative staff receives adequate training to minimize institutional knowledge loss due to work separation or retirement. Maintain competitive compensation schedules. Continue efforts to be proactive in competitive salary administration.

**Measure:** Report on turnover ratio, training initiatives and retention efforts. Maintain competitive financial examiners career development and progression path.

**5.2.2. Objective:** Ensure that Financial Examiners receive a minimum of 40 hours of continuing education and training. Build examiner professional development through progressive

certifications through the career ladder within the Financial Examiner series. Develop an examiner enrollment and training plan for SES.

**Measure:** Report on the Financial Examiner training opportunities, attainment of minimum training hours, examiner certification progression, and SES training events.

**5.2.3. Objective:** Conduct review of Human Resources policies and update as appropriate. Enhance supervisory resources and training.

**Measure:** Report on completion of review and progress on supervisor resources.

### **5.3. Financial and Self-Directed, Semi-Independent Status.**

**5.3.1. Objective:** Ensure that the agency's revenues and expenditures are appropriate and balanced and maintain a cash reserve or fund balance in compliance with Finance Commission policies. Provide greater data reliability, more efficient transactional processing, and enhanced reporting.

**Measure:** Review internal financial statements and variances on a monthly basis. Submit quarterly financial data relating to the agency's financial position and fund balance for review by the Finance Commission.

**5.3.2 Objective:** Continue to work towards permanent relocation, in collaboration with the other Commission agencies and the Office of the Governor.

**Measure:** Report on activities related to the relocation of the Finance Commission agencies.

**5.3.3. Objective:** Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency. Coordinate with the Department of Banking and Savings and Mortgage Lending Department, when possible, to minimize duplication of duties and processes.

**Measure:** Report on improvements identified and implemented.

### **5.4. Information Technology.**

**5.4.1 Objective: ALECS Maintenance, NMLS Migration and Functionality Development.** Maintain the ALECS platform, upgrade structural components as needed and mitigate vulnerabilities in the aging application. Develop and implement a strategy to begin a phased process of migrating industry groups to the Nationwide Multistate Licensing System & Registry (NMLS). Using gap analysis, identify unmet functionality needs and develop applications to manage functions not supported in NMLS or SES.

**Measure:** Reporting on ALECS activities, NMLS migration activities, and development of additional applications or features.

**5.4.2 Objective: Technology Modernization and Security Enhancements.** Continuously evaluate OCCC's technology posture, keeping resources up-to-date and deploying modern technology improvements and security enhancements. Migrate the agency to Microsoft Windows 11 as exclusive endpoint operating system in CY'25. Update the OCCC internal network stack, which is reliable yet but aging. Finalize the comprehensive overhaul of IT policies, procedures, and other operational documentation, capturing and codifying established and emerging knowledge. Deploy other projects and enhancements as appropriate.

**Measure:** Reporting on the update of endpoint computer fleet to Windows 11. Successful integration of new network component units with no loss of operations or communications. Reporting on other technology modernization efforts and security enhancements.

FY 25 Performance Measures		FY 25 Target	FY 24 Target
<b>Office of Consumer Credit Commissioner</b>			
<b>Consumer Protection:</b>			
Outcome Measures (Annual)			
Key	Monies returned to consumers	\$4,000,000	\$6,000,000
Key	Percentage of written complaints closed within 90 days <sup>1</sup>	85%	85%
Key	Percentage of examinations reporting acceptable level of compliance <sup>2</sup>	85%	85%
	Percentage of licensed locations and registered offices examined annually	17%	18%
	Percentage of enforcement actions closed within targeted timeframe	75%	75%
Output Measures (Quarterly)			
Key	Number of complaints closed <sup>1</sup>	1750	1750
Key	Number of examinations completed <sup>1</sup>	2700	3000
	Number of investigations completed	75	75
	Number of enforcement actions taken	150	150
	Number of contested cases docketed at SOAH	3	4
	Number of compliance aids and tools published	30	45
	Number of industry stakeholder and outreach events hosted or attended by OCC staff	30	30
Efficiency Measures (Annual)			
	Average number of days for all complaints to reach final disposition	60	60
	Average number of days to close a complaint	45	45
	Average direct cost per complaint <sup>2</sup>	\$160	\$145
	Average direct cost per examination	\$1,600	\$1,500
Key	Average number of days to close an enforcement action	100	100
<b>Effective Licensing &amp; Registration:</b>			
Outcome Measures (Annual)			
Key	Percentage of business license applications processed within 60 days	80%	80%
Output Measures (Quarterly)			
Key	Number of business license applications processed <sup>1</sup>	1200	1175
	Number of pawnshop employee license applications processed	250	300
	Number of residential mortgage loan originator licenses processed <sup>1</sup>	225	125
Efficiency Measures (Annual)			
Key	Average processing time (days) for business license applications	58	45
	Average processing time (days) for pawnshop employee applications	38	30
	Average processing time (days) for residential mortgage loan originators	30	30
<b>Efficient and Effective Agency Operation:</b>			
Outcome Measures (Annual)			
Key	Percentage of regular employees separated from the agency <sup>1</sup>	15%	15%
	Percentage of public information requests addressed within 5 business days	80%	80%
	Percentage of actual expenditures to budgeted expenditures <sup>1</sup>	94%	94%
Output Measures (Quarterly)			
	Number of public information requests closed	160	185
	Number of public information requests withdrawn	8	8
Efficiency Measures (Annual)			
	Average number of days to address a public information request	3	3
Explanatory Measures (Annual)			
	Number of public information requests received	168	193
<b>Financial Education:</b>			
Output Measures (Quarterly)			
Key	Number of people receiving direct educational services	650	650
	Percentage of TFEE award recipients who reached their consumer participation goal within the grant period	100%	100%

<sup>1</sup> These measures are comparable to similar measures with the Departments of Banking and Savings and Mortgage Lending

<sup>2</sup> These measures are comparable to similar measures with the Department of Savings and Mortgage Lending

## Agency Priorities for Fiscal Year 2025

### I. Legislative

**I.1 Objective:** Monitor the activities of the Texas Legislature during the 89th Legislative Session. Track legislation that may affect SML or its regulated industries.

**Measure:** Provide regular updates to the Finance Commission concerning the status of such legislation.

**Status:**

**I.2 Objective:** Serve as a resource for the Texas Legislature and other members of state leadership by responding promptly and accurately to any information requests and providing comprehensive resource materials.

**Measure:** Report any testimony given by SML to the Finance Commission.

**Status:**

### II. Regulatory Activities

**II.1 Objective:** Monitor and analyze the agency's actual performance against the performance measures targets to assess the agency's regulatory and administrative efforts to effectively and efficiently meet SML's goals.

**Measure:** Meet or exceed performance measures. Report performance measures quarterly to the Finance Commission.

**Status:**

**II.2 Objective:** Monitor the savings banks' risk profile to understand how economic environment changes may impact overall conditions. Take supervisory action when necessary and ensure supervisory action is appropriate to address risk within the portfolio.

**Measure:** Complete off-site monitoring of savings banks on a quarterly basis to identify changes in the risk profile of savings banks. Report the overall condition of the portfolio and supervisory actions taken to the Finance Commission.

**Status:**

**II.3 Objective:** Monitor emerging issues in the financial services industry and bring awareness to the thrift industry as appropriate.

**Measure:** Participate in meetings, webinars, and other training events to stay apprised of topics of interest. Report on emerging issues to the Finance Commission and the thrift industry.

**Status:**

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**SAVINGS AND MORTGAGE LENDING**

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**II.4 Objective:** Evaluate processes, procedures, and new technologies for added efficiencies in thrift supervision and examination.

**Measure:** Continue assessing, documenting, and communicating updates to Thrift Supervision and Examination staff.

**Status:**

**II.5 Objective:** Continue compliance examinations of mortgage companies and residential mortgage loan originators to ensure licensees comply with applicable laws and regulations when conducting business with Texas consumers. Analyze recurring examination findings and take steps to communicate best practices to the mortgage industry.

**Measure:** Prioritize the examination schedule to focus on non-compliant, multi-state, and complaint-driven examinations and initiate appropriate regulatory enforcement actions for violations, as necessary.

**Status:**

**II.6 Objective:** Take enforcement action against mortgage companies and residential mortgage loan originators when appropriate to ensure compliance with applicable law for which SML is charged with administration and enforcement.

**Measure:** Report enforcement actions taken by SML to the Finance Commission.

**Status:**

**II.7 Objective:** Resolve consumer complaints timely.

**Measure:**

- a. Report the aging of complaints to the Finance Commission.
- b. Conduct a management review of any complaint open over 120 days to identify issues preventing closure.
- c. Conduct customer satisfaction surveys of complainants regularly.

**Status:**

**II.8 Objective:** Process complete licensing applications and registrations timely.

**Measure:**

- a. Monitor the timeliness of the licensing process.
- b. Conduct customer satisfaction surveys of license applicants regularly.

**Status:**

**II.9 Objective:** Remain active and involved at the national level on supervisory issues affecting savings banks and the mortgage industry.

**Measure:**

- a. Maintain contact with state regulators from other states, regulatory associations (e.g., ACSSS, CSBS, and AARMR), trade associations, (e.g., TBA, IBAT, TMBA, ATMP, TLTA, and TAR), and federal regulators (e.g., CFPB, FDIC, FRB), to stay current on events, decisions, other state and federal policies and other areas of the actual and potential impact on SML's regulatory functions or

# DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

the industries. Take proactive steps to respond to issues affecting the industries or supervisory duties.

- b. Continue working with the FDIC, FRB, and other federal agencies, as appropriate, on examinations, supervision, and consumer complaint resolution issues.
- c. Report interactions concerning the above-listed activities to the Finance Commission.

## **Status:**

**II.10 Objective:** Participate in two multi-state mortgage committee (MMC) origination examinations in the CSBS State Examination System (SES).

## **Measure:**

- a. Develop knowledge and understanding of the multi-state examination process to recommend updates to policies, processes, and procedures as necessary.
- b. Report participation in MMC origination examinations to the Finance Commission.

## **Status:**

### **III. Policy and Rule Development**

**III.1 Objective:** Conduct rule review of 7 TAC Chapter 51 (Department Administration).

**Measure:** Complete the rule review process. Present rule changes identified during rule review to the Finance Commission.

## **Status:**

**III.2 Objective:** Adopt rule changes necessary to implement legislation enacted by the 89<sup>th</sup> Legislature.

**Measure:** Present rule changes to the Finance Commission.

## **Status:**

### **IV. Outreach and Communications**

**IV.1 Objective:** Communicate with regulated industries on matters of supervisory and industry interest, including emerging issues, through a variety of means, both virtual and in person, as deemed appropriate and efficient.

**Measure:** Provide regular updates to the Finance Commission regarding activities conducted in these areas by reporting the number of communications sent and event participation.

## **Status:**

**IV.2 Objective:** Administer the Mortgage Grant Fund (MGF) grant program. Conclude the MGF 2023-2024 grant cycle, including processing reimbursement requests, tracking grantee performance, and monitoring compliance with program requirements. Prepare for and initiate the MGF 2025-2026 grant cycle, including revising program materials, initiating the grant application process, selecting grantees, processing reimbursement requests, tracking grantee performance, and monitoring compliance with program requirements.

DEPARTMENT OF  
**SAVINGS AND MORTGAGE LENDING**

**Measure:** Provide periodic reports to the Finance Commission Audit Committee concerning the activities of the MGF.

**Status:**

## V. Agency Operations

**V.1 Objective:** Recruit well-qualified personnel, and maintain a competent, engaged, and effective workforce. Train and cross-train employees as needed to minimize knowledge loss due to employee departure and to prepare for business needs due to changes in regulated industries and/or technology. Provide and promote opportunities for professional development through individual training plans.

**Measure:** Report on staffing activity, actions to retain staff, and turnover ratios to the Finance Commission.

**Status:**

**V.2 Objective:** Periodically review internal controls and processes to improve the agency's efficiency and effectiveness. When possible, coordinate with the Office of Consumer Credit Commissioner and the Department of Banking to minimize duplication of duties and processes.

**Measure:** Report on identified and implemented improvements.

**Status:**

**V.3 Objective:** Monitor SML's budgeted and actual revenues, expenditures, and reserve balances, as approved by the Finance Commission, to maximize the responsiveness and flexibility allowed by SML's Self-Directed, Semi-Independent status. Make decisions relating to finances in a fiscally prudent manner.

**Measure:** Report to the Finance Commission Audit Committee on revenue and expenditure variances to the budget at least quarterly.

**Status:**

**V.4 Objective:** Ensure information technology is kept current to maintain SML's effectiveness and quality of work product. Safeguard the integrity of data and information technology networks and systems.

**Measure:** Report activities in this area to the Finance Commission.

**Status:**

**V.5 Objective:** Work with TxDOT and the Office of the Governor on relocation of the Finance Commission agencies.

**Measure:** Report periodically on activities related to the relocation of the Finance Commission agencies.

**Status:**

**Department of Savings and Mortgage Lending  
FY25 Performance Measures**

			<b>FY25 Target</b>	<b>FY24 Target</b>
<b>01-01 Thrift Safety and Soundness</b>				
<b>Outcome Measures (Annual)</b>				
<b>Key</b>	01	Percentage of State Chartered Savings Institutions Receiving Examination within the Required Timeframes <sup>1</sup>	100%	100%
<b>Key</b>	02	Percentage of Savings Institutions Classified Safe and Sound <sup>1</sup>	80%	80%
<b>Non-Key</b>	03	Percentage of State Chartered Savings Institution Applications Processed within Statutory Timeframes <sup>1</sup>	100%	100%
<b>Output Measures (Quarterly)</b>				
<b>Key</b>	01	Number of State Chartered Savings Institution Examinations Performed <sup>1</sup>	17	19
<b>Non-Key</b>	02	Number of State Chartered Savings Institution Applications Processed. <sup>2</sup>	10	15
<b>Efficiency Measures (Annual)</b>				
<b>Non-Key</b>	01	Assets Examined Per Examiner Day (in Millions)	\$122.30	\$151.5
<b>Non-Key</b>	02	Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	7
<b>Explanatory Measure (Annual)</b>				
<b>Key</b>	01	Number of State-Chartered Savings Institutions	20	21
<b>Key</b>	02	Dollar Amount of Assets under Regulation (in Billions)	\$281.10	\$340.0
<b>02-01 Mortgage Regulation</b>				
<b>Outcome Measures (Annual)</b>				
<b>Key</b>	01	Percentage of Satisfactory Levels of Compliance Reported Through Examination <sup>3</sup>	85%	90%
<b>Key</b>	02	Percentage of Examinations Initiated within Established Timeframes	20%	75%
<b>Key</b>	03	Percentage of Applications Processed within Established Timeframes <sup>3</sup>	85%	80%
<b>Output Measures (Quarterly)</b>				
<b>Key</b>	01	Number of Applications Processed <sup>2</sup>	9,350	9,350
<b>Key</b>	02	Number of Examination Reports Issued <sup>2</sup>	400	575
<b>Efficiency Measures (Annual)</b>				
<b>Non-Key</b>	01	Average Cost Per Application Processed	\$130	\$125
<b>Explanatory Measures (Annual)</b>				
<b>Non-Key</b>	01	Total Number of Licensees/Registrants in an Approved Status	50,000	50,000
<b>Non-Key</b>	02	Number of Licensees Examined	5,000	5,500
<b>03-01 Consumer Responsiveness</b>				
<b>Outcome Measures (Annual)</b>				
<b>Key</b>	01	Percentage of Complaints Closed within Ten Business Days of Receipt of Complete Information	99%	99%
<b>Key</b>	02	Percentage of Written Complaints Closed within 120 Days	95%	95%
<b>Output Measures (Quarterly)</b>				
<b>Non-Key</b>	01	Number of Complaints Closed Within 120 days <sup>2</sup>	1,400	1,350
<b>Efficiency Measures (Annual)</b>				
<b>Non-Key</b>	01	Average Direct Cost Per Complaint Closed <sup>3</sup>	\$300	\$250
<b>04-01 Agency Administration</b>				
<b>Outcome Measures (Annual)</b>				
<b>Key</b>	01	Percentage of Employees Separated from the Agency <sup>2</sup>	10%	10%
<b>Key</b>	02	Percentage of Actual Expenditures to Budgeted Expenditures <sup>2</sup>	95%	95%

<sup>1</sup> These measures are comparable to similar measures with the Department of Banking

<sup>2</sup> These measures are comparable to similar measures with the Department of Banking and Office of Consumer Credit Commissioner

<sup>3</sup> These measures are comparable to similar measures with the Office of Consumer Credit Commissioner



Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

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### **MEMORANDUM**

TO: Finance Commission of Texas

FROM: Charles G. Cooper, Commissioner

DATE: August 8, 2024

RE: Department of Banking Priorities for Fiscal Year 2025

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#### **I. LEGISLATIVE – *State and National Legislative Issues***

I.1 **Objective:** Provide appropriate and comprehensive resource material as requested in a timely manner.

**Measure:** To the extent legally permissible, respond accurately and timely to all requests for resource information. Maintain contact with legislative committee chairs and staff. Testify at hearings as requested.

I.2 **Objective:** Maintain accurate, timely, and complete communication with Finance Commission members about significant state and federal issues, conditions, and trends, as well as significant events in the industries the agency supervises.

**Measure:** Provide Finance Commission members with information on significant federal laws and policy statements and the effect on supervised entities, if any. Provide sufficient information and materials to give members an overall assessment of our regulated industries.

I.3 **Objective:** Monitor the 89th legislative session and any legislation that may affect the Department or its regulated entities. Make recommendations for state legislative changes to address areas the law does not adequately address, correct technical errors, and modernize outdated statutes.

**Measure:** Monitor interim charges and aid legislative committees if requested. Provide proposals for legislative improvements as needed, or if requested by legislative committees. Monitor legislation and provide technical assistance and comprehensive resource materials when requested. Begin implementation of any new legislation that falls under the purview of the Department or affects the industries we regulate.

#### **II. REGULATORY ACTIVITIES – *Examination Activity and Enforcement Actions***

II.1 **Objective:** Strive to ensure the agency meets the highest standards for regulatory agencies in the country.

**Measure:** Successfully obtain reaccreditation from the Conference of State Bank Supervisors (CSBS) for the Bank and Trust and Non-Depository Supervision Divisions.

- II.2 **Objective:** Strive to ensure performance measure goals are met while working through the labor market challenges. (See Attachment A for all performance measures).

**Measure:** Meet or exceed the strategic planning goals for key performance measures. Report performance measure results to the Finance Commission quarterly.

- II.3 **Objective:** Remain active and involved at the national level regarding supervisory issues affecting areas of supervisory oversight in Texas.

**Measure:** Maintain active contact with other states directly, and through regulatory associations (CSBS and MTRA) and trade associations (IBAT and TBA), as well as frequent contact with members of Congress and federal regulators to be aware of actions and decisions, and areas of actual or potential impact to the Department's regulatory functions or the industries to proactively respond as needed.

- II.4 **Objective:** Maintain an ongoing awareness of the risk profiles of our regulated entities and the condition of the economy in which they operate. Monitor individual or systemic conditions, including economic pressures, cybersecurity threats, and other high-risk activities which present risks to their financial stability. Ensure that supervisory activities remain appropriate and take necessary actions against institutions exhibiting unacceptable risk profiles.

**Measure:** Perform research, maintain ongoing dialogue with regulatory counterparts, and attend training to maintain an understanding of conditions in which our entities operate. Maintain a leadership role in the effort to combat cybersecurity threats. Maintain an offsite monitoring program of the bank and trust industries while initiating appropriate regulatory responses and actions when appropriate. Research and take required actions against institutions with heightened or unacceptable risk profiles to minimize the adverse impact on depositors, shareholders, and the banking system in general.

- II.5 **Objective:** Monitor emerging issues in our areas of regulation including technological advances. Determine and communicate the impact of these issues to the regulated entities.

**Measure:** Report on emerging issues to the Finance Commission and regulated industries. Provide publications that address topics of interest. Participate in industry meetings, seminars, committees, and workgroups. Participate in speaking opportunities with regulated industries to provide updates relating to ongoing supervisory issues.

- II.6 **Objective:** Monitor areas/industries we regulate for illegal activity.

**Measure:** Monitor and investigate potential illegal activity, and when necessary, initiate appropriate regulatory enforcement actions against licensed and/or unlicensed entities to ensure compliance with applicable statutes and rules to protect the rights and

interests of consumers and the industries. Refer cases as needed to local, state, or federal law enforcement agencies or the Texas Attorney General.

- II.7 **Objective:** Process consumer complaints/inquiries professionally, appropriately, and timely.

**Measure:** Maintain compliance with complaint processing, review, and reporting rules to meet or exceed the goals for consumer related performance measures. Report consumer assistance activity at each Finance Commission meeting.

- II.8 **Objective:** Continue to develop and refine examination procedures, reference materials, and internal guidance to enhance the examination process.

**Measure:** Monitor regulatory changes and new technologies, and update examination materials and guidance in a timely manner. Continue to perform internal reviews of examination procedures by seeking examiner feedback to ensure proper intent and applicability. Timely and regularly communicate updates/changes to examiners. Refine examination procedures and processes for better effectiveness and efficiency.

### III. POLICY AND RULE DEVELOPMENT – *Policies, Rules, and Financial Education Activities*

- III.1 **Objective:** Issue formal communications to regulated entities to clarify and/or promote best practices to assist in complying with laws and policy statements.

**Measure:** Issue Supervisory Memorandums, Regulatory Guidance, Interpretive Statements, and Legal Opinions in a timely manner as needed.

- III.2 **Objective:** Monitor and suggest amendments to the Texas Administrative Code as necessary to reflect changes in state and federal laws, clarify existing laws, and address the dynamics of the changing industries. Perform periodic reviews of fee rules to ensure each regulated area covers its cost of regulation.

**Measure:** Draft amendments and new rules for potential adoption by the Finance Commission to timely effect necessary changes. Conduct reviews of all rules every four years to evaluate their continued necessity and applicability.

- III.3 **Objective:** Maintain participation in financial education and outreach efforts.

**Measure:** Periodically update the Department’s financial education web page and brochure. Periodically participate in financial education webinars throughout the fiscal year.

### IV. AGENCY MANAGEMENT – *Staffing, Recruiting, Fiscal Responsibility, and Technology*

- IV.1 **Objective:** Actively recruit qualified personnel while strengthening the diversity of the workforce whenever possible. Maintain compliance with all state and federal employment laws.

**Measure:** Actively recruit entry level positions at state universities and colleges by attending career fairs (if available) and support banking programs at Texas universities.

Utilize recruiting platforms that reach a wide talent pool for all positions. Promptly post vacancies and review applications. Periodically review and update personnel policies and procedures with changes required due to legislation or judicial decisions as well as to reflect current agency practices.

- IV.2 **Objective:** Strive to attain full staffing, with an emphasis on employee retention and staff diversity. Provide and promote opportunities for professional development for junior staff and offer opportunities in new responsibilities to minimize the loss of institutional knowledge as vacancies and retirements occur. Continue efforts to maintain a competitive salary structure. Obtain feedback from employees and implement changes where feasible.

**Measure:** Improve staff retention by addressing major issues that contribute to non-retirement resignations, with a goal to have the agency turnover rate (excluding retirements and intern separations) not exceed 10% for the fiscal year. Maintain a competitive examiner salary program comparable to the FDIC.

- IV.3 **Objective:** Up-to-date computer hardware and software to enhance the effectiveness, speed, and quality of agency work products. Provide timely technical support to staff.

**Measure:** Provide secure technology tools necessary for staff to perform their job functions efficiently and effectively. Provide technical support via the help desk. Maintain software in accordance with the Department of Information Resources guidelines. Ensure network, website, and databases function appropriately and with limited downtime.

- IV.4 **Objective:** Safeguard the integrity of data, information technology networks, and systems from unauthorized access or use, ensuring that access to critical systems is available during an emergency.

**Measure:** Perform a bi-annual external or internal information security risk assessment and initiate corrective actions to maintain data integrity and minimize the risk of unauthorized access or use. Perform annual intrusion testing by the Department of Information Resources and periodic vulnerability reviews for network and external facing web resources. Conduct an annual test of the Department's disaster recovery plan and initiate corrective actions to ensure operations will function appropriately. Periodically execute information security tabletop exercises to ensure staff are ready to respond to various incident types, when and if they occur.

- IV.5 **Objective:** Ensure financial examiners receive adequate and proper training to perform their duties and progress within the financial examiner series.

**Measure:** Provide core required training courses to financial examiners in the FE I – FE III series to progress in the financial examiner series. Adequately prepare assistant examiners to successfully complete the Bank and Trust Supervision commissioning process.

- IV.6 **Objective:** Host accelerated internal training program for newly hired examination staff to support and enhance their ability to perform their duties.

**Measure:** Provide the internal training course at least once in fiscal year 2025 to adequately prepare assistant examiners to successfully participate in an examination.

- IV.7 **Objective:** Ensure agency expenditures are necessary and prudent, and within budgetary constraints; revenues collected are adequate to cover expenditures; and provide a cash reserve or fund balance that complies with Finance Commission policies.

**Measure:** Review expenditure and revenue patterns monthly. Prepare quarterly financial statements to substantiate the agency's financial position and cash reserve.

- IV.8 **Objective:** Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency. Coordinate with the Finance Commission Agencies, when possible, to minimize duplication of duties and processes.

**Measure:** Report on improvements identified and implemented.

- IV.9 **Objective:** Work with the Office of the Governor on relocation of the Finance Commission agencies.

**Measure:** Report on activities related to the relocation of the Finance Commission agencies periodically.

- IV.10 **Objective:** Comply with the directives of the State Office of Risk Management (SORM) regarding the Continuity of Operations Plan.

**Measure:** Ensure that updates are made, and the Plan is exercised as determined by SORM.

The Department of Banking is considered to be one of the top financial regulators in the country by our regulatory peers. The staff has worked hard to achieve this posture and we will continue to improve our processes and techniques to properly supervise the industries under our jurisdiction and serve the citizens of Texas.

**Performance Measures for 2025**  
**Department of Banking**

**Bank and Trust:**

**K Outcome Measures (Annual)**

		Target 2025	Target 2024	
K	01-01.01	Percentage of Banks Receiving Examinations Within Required Timeframes <sup>1</sup>	95.00%	95.00%
	01-01.02	Percentage of Foreign Bank Organizations Receiving Examinations Within Required Timeframes	100.00%	100.00%
	01-01.03	Percentage of Trust Companies Receiving Examinations Within Required Timeframes	95.00%	90.00%
	01-01.04	Percentage of Problem Institutions with Appropriate Supervisory Actions in Place	100.00%	100.00%
	01-01.05	Certificate of Accreditation by CSBS Maintained in Good Standing	YES	YES

**K Output Measures (Quarterly)**

K	01-01.06	Number of Bank Examinations Performed <sup>1</sup>	101	103
K	01-01.07	# Foreign Bank Organization, Trust Co, Trust Dept, & IT Exams and Other Specialized Reviews Performed	194	229

**Efficiency Measures (Annual)**

	01-01.08	Bank and Trust Division Cost per Million in Assets Regulated	\$38.30	\$89,640.00
	01-01.09	Bank and Trust Division Cost per Million in Assets Regulated		
		Assets Examined Per Examiner Day (in millions)	\$9.30	\$10.50
		Assets Examined Per Examiner Day (in millions)		

**K Explanatory Measure (Annual)**

K	01-01.10	Percentage of Banks Classified Safe and Sound <sup>1</sup>	90.00%	95.00%
	01-01.11	Number of Texas State-Chartered Banks	210	210
	01-01.12	Total Assets in Texas State-Chartered Banks (in Billions)	\$456.30	\$457.90

**Non-Depository Supervision (NDS):**

**K Outcome Measures (Annual)**

K	01-02.01	Percentage of Money Services Business Licensees Examined By NDS Within Required Timeframes	90.00%	90.00%
K	01-02.02	Percentage of Prepaid Funeral Contract Licensees Examined By NDS Within Required Timeframes	95.00%	95.00%
K	01-02.03	Percentage of Perpetual Care Cemetery Licensees Examined By NDS Within Required Timeframes	95.00%	95.00%
	01-02.04	Percentage of PCC and PFC Applications Processed within Statutory Period	95.00%	95.00%

**K Output Measures (Quarterly)**

K	01-02.05	Number of NDS Licensees Examined <sup>2</sup>	490	500
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**Efficiency Measures (Annual)**

	01-02.06	Average Direct Cost Per Prepaid Funeral Contract and Perpetual Care Cemetery Licensee Examination.	\$3,200	\$3,000
	01-02.07	Average Direct Cost Per Money Services Business Licensee Examination	\$18,000	\$16,000

**Explanatory Measures (Annual)**

	01-02.08	Dollar Amount of Prepaid Funeral Contracts in Force (in Billions)	\$5.0	\$5.0
	01-02.09	Number of NDS Licensees	765	775
	01-02.10	Percentage of NDS Licensees Classified Safe and Sound	95.00%	95.00%

**Application Processing:**

**K Outcome Measures (Annual)**

K	01-03.01	Percentage of Applications and Notices for Banks, Trust Companies, Money Service Businesses, and Check Verification Companies Processed within Statutory Time Periods <sup>1</sup>	95.00%	95.00%
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**K Output Measures (Quarterly)**

K	01-03.02	Number of Applications and Notices Processed for Banks, Trust Companies, Money Service Businesses, and Check Verification Companies <sup>2</sup>	350	315
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**K Outcome Measures (Annual)**

K	01-04.01	Percentage of Written Complaints Closed Within 90 Days <sup>2</sup>	100.00%	100.00%
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**Output Measures (Quarterly)**

	01-04.02	Number of Written Complaints Closed <sup>2</sup>	240	250
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**Regulatory Oversight: (Finance Commission) (Reported Internally)**

**Output Measures (Quarterly)**

	01-04.03	Number of Meetings Convened	6.0	6.0
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**Operational Efficiency:**

**K Outcome Measures (Annual)**

K	01-05.01	Percentage of Regular Employees Separated from the Agency <sup>2</sup>	12.00%	11.00%
	01-05.02	Percentage of Regular Employees Separated from the Agency (Excluding Retirements)	10.00%	9.00%
K	01-05.03	Percentage of Actual Expenditures to Budgeted Expenditures <sup>2</sup>	95.00%	95.00%

<sup>1</sup> These measures are comparable to similar measures with the Department of Savings and Mortgage Lending

<sup>2</sup> These measures are comparable to similar measures with the Department of Savings and Mortgage Lending and Office of Consumer Credit Commissioner

8. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 1, Chapter 9, §§ 9.1 and 9.12, Concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings

**PURPOSE:** Amendments to 7 TAC §§ 9.1 and 9.12 to clarify the authority of the Texas Department of Banking to employ a hearings officer and to clarify the procedures used by the finance agencies to dispose of a contested case in the event of default.

**RECOMMENDED ACTION:** No comments were received regarding the proposed amendments to 7 TAC §§ 9.1 and 9.12. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt the amendments to 7 TAC §§ 9.1 and 9.12 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 1. Finance Commission of Texas***  
***Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings***

The Finance Commission of Texas (the finance commission) adopts amendments to §9.1, concerning Application, Construction, and Definitions; and §9.12, concerning Default in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings. The amended rules are adopted without changes to the proposed text as published in the July 5, 2024, issue of the Texas Register (49 TexReg 4863, 4864). The amended rules will not be republished.

The amendment to §9.1 clarifies the authority of the Texas Department of Banking (DOB) to employ a hearings officer by adding a reference to Texas Finance Code, §11.202 which provides the statutory authority for the DOB to employ a hearings officer to serve the finance agencies.

The amendments to §9.12 clarify the procedures used by the finance agencies to dispose of a contested case in the event of default. The finance agencies are the DOB, the Department of Savings and Mortgage Lending (SML), and the Office of Consumer Credit Commissioner (OCCC). The amendments ensure 9.12 conforms to the State Office of Administrative Hearings (SOAH) procedural default rule (1 TAC §155.501), which was updated November 20, 2020.

The finance commission received no comments regarding the proposed amendments.

The amendment to §9.1 is adopted pursuant to Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301, §31.003(a)(5), and 181.005(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §152.052(a) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 152. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or savings banks. Texas Finance Code, §66.002(3) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Texas Finance Code, Title 3, Subtitle B. Texas Finance Code, §96.002(a)(2)

authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Finance Code, Title 3, Subtitle C. Texas Finance Code, §11.306 authorizes the finance commission to adopt residential mortgage loan origination rules as provided by Texas Finance Code, Chapter 156; and, Texas Finance Code, §156.102(a) authorizes the finance commission to adopt rules to enforce such chapter. Texas Finance Code, §157.0023 authorizes the finance commission to adopt rules to enforce Chapter 157. Texas Finance Code, §158.003(b) authorizes the finance commission to adopt rules to enforce Chapter 158. Texas Finance Code, §159.108 authorizes the finance commission to adopt rules to enforce Chapter 159. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14, and Title 4. Texas Finance Code, §393.622 authorizes the finance commission to adopt rules to enforce Chapter 393. Texas Finance Code, §394.214 authorizes the finance commission to adopt rules to enforce Chapter 394. Texas Occupations Code, §1956.0611 authorizes the finance commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the adoption are contained in Texas Finance Code: Chapters 11, 14, 152, 154, 156-159, 180, 393, 394; Title 3, Subtitles A-C; Title 4; Texas Health and Safety Code, Chapter

712; and Texas Occupations Code, Chapter 1956.

<rule>

§9.1. Application, Construction, and Definitions.

(a) This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency under Texas Finance Code, §11.202. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code and §9.12(b) of this title (relating to Default).

(b) – (c) (No change.)

\*n

The amendments to §9.12 are adopted pursuant to Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301, §31.003(a)(5), and 181.005(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §152.052(a) authorizes the finance commission to adopt rules necessary to

implement and clarify Chapter 152. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or savings banks. Texas Finance Code, §66.002(3) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Texas Finance Code, Title 3, Subtitle B. Texas Finance Code, §96.002(a)(2) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Finance Code, Title 3, Subtitle C. Texas Finance Code, §11.306 authorizes the finance commission to adopt residential mortgage loan origination rules as provided by Texas Finance Code, Chapter 156; and, Texas Finance Code, §156.102(a) authorizes the finance commission to adopt rules to enforce such chapter. Texas Finance Code, §157.0023 authorizes the finance commission to adopt rules to enforce Chapter 157. Texas Finance Code, §158.003(b) authorizes the finance commission to adopt rules to enforce Chapter 158. Texas Finance Code, §159.108 authorizes the finance commission to adopt rules to enforce Chapter 159. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules

necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14, and Title 4. Texas Finance Code, §393.622 authorizes the finance commission to adopt rules to enforce Chapter 393. Texas Finance Code, §394.214 authorizes the finance commission to adopt rules to enforce Chapter 394. Texas Occupations Code, §1956.0611 authorizes the finance commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the adoption are contained in Texas Finance Code: Chapters 11, 14, 152, 154, 156-159, 180, 393, 394; Title 3, Subtitles A-C; Title 4; Texas Health and Safety Code, Chapter 712; and Texas Occupations Code, Chapter 1956.

§9.12. Default.

(a) (No change.)

(b) SOAH hearings. In a hearing conducted by the State Office of Administrative Hearings (SOAH), the agency may request that the administrative law judge make a finding of default under 1 TAC §155.501 (relating to Failure to Attend Hearings and Default Proceedings).

(1) Service of notice of hearing. A notice of hearing may be served to the party's last known address. Applicants and holders of licenses, registrations, charters, and permits shall keep the agency informed as to their correct current mailing addresses and may be served with initial process by registered or certified mail, return receipt requested, to the address provided to the agency.

(2) Adequate proof of notice of hearing. At the time of the request, the agency must present adequate proof to the administrative law judge that the agency properly served the party with the notice of hearing, as required by 1 TAC §155.501(b).

(3) Effect of default. If the administrative law judge receives the required showing of proof to support a default, the allegations contained in the notice of hearing may be deemed admitted, and the relief sought in the notice may be granted with respect to any party given proper notice of the hearing.

(4) Disposing of default case. The agency may request that the administrative law judge dismiss the case from the SOAH docket and remand it to the agency for informal disposition as permitted by Texas Government Code, §2001.056 and §2001.058(d-1).

(5) Final order after default. If the administrative law judge issues an [~~a conditional~~] order of default dismissal [~~and remand~~] that provides the defaulting party with adequate notice and opportunity to set aside the default under 1 TAC §155.501(e) and the case is remanded to the agency, [~~conditional order of dismissal and remand has become final,~~] the agency may issue a final order that:

(A) finds that the agency served the party with a notice of hearing stating that if the party failed to attend the hearing, then the allegations contained in the notice of hearing could be deemed admitted, and the relief sought might be granted;

(B) describes how the notice of hearing was served on the party;

(C) finds that the party failed to attend the hearing;

(D) finds that the allegations described in the notice are deemed admitted;

(E) concludes that the party has defaulted as a matter of law; and

(F) grants the relief described in the notice of hearing.

9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 1, Chapter 10, § 10.40, Concerning Contract Procedures

**PURPOSE:** Amendments to 7 TAC § 10.40 to remove a redundant provision of the rule and ensure § 10.40 conforms with Texas Government Code, § 2261.253.

**RECOMMENDED ACTION:** No comments were received regarding the proposed amendments to 7 TAC § 10.40. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt the amendments to 7 TAC § 10.40 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities  
Part 1. Finance Commission of Texas  
Chapter 10. Contract Procedures  
Subchapter C Contract Monitoring  
7 TAC §10.40***

The Finance Commission of Texas (the finance commission) adopts amendments to §10.40, concerning enhanced contract and performance monitoring, and the posting of certain contracts on commission supervised finance agency websites. The amendments are adopted without changes to the proposed text as published in the July 5, 2024, issue of the Texas Register (49 TexReg 4865). The amended rule will not be republished.

The amendments remove a redundant provision of the rule and ensure §10.40 conforms with Texas Government Code, §2261.253 by clarifying the full scope of the rule and implementing minimum risk assessment factors required in each agency's contract management handbook to identify contracts that require enhanced contract or performance monitoring.

The finance commission received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Texas Government Code, §2261.253(c), which requires each state agency to adopt rules establishing a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The statutory provisions affected by the adoption are contained in Texas Government Code, Chapter 2261.

§10.40. Enhanced Contract and Performance Monitoring; Website Posting.

(a) (No change.)

(b) Applicability.

(1) Finance agencies. This section applies to the agencies governed by the Finance Commission of the State of Texas: the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

~~[(2) Date of contracts subject to enhanced monitoring. This section applies to the following:]~~

~~[(A) contracts for which the request for bids or proposal is made public on or after September 1, 2015; and]~~

~~[(B) for contracts exempt from competitive bidding, contracts entered into on or after September 1, 2015.]~~

(2) ~~[(3)]~~ Documents not subject to this section. Documents not subject to this section include the following: ~~[enhanced monitoring. This section does not apply to:]~~

(A) memoranda of understanding;

(B) interagency contracts;

(C) interlocal agreements; and ~~[or]~~

(D) contracts that do not involve a cost.

(c) Contract evaluation and monitoring.

(1) Use of finance agency policies and contract management handbook. Contracts are evaluated and monitored in accordance with each respective finance agency's policies and contract management handbook. Each finance agency maintains a contract management handbook in accordance with Texas Government Code, §2261.256.

(2) Identifying contracts that require enhanced monitoring. Each finance agency will include risk assessment factors in its contract management handbook to identify contracts that require enhanced contract or performance monitoring. The risk assessment factors must include the following:

(A) the total contract amount;

(B) the type of contract purchase;

(C) the impact to the agency and its mission;  
and

(D) the compliance history of the contractor.

(3) [~~2~~] Finance Commission notice. If a finance agency identifies a contract that requires enhanced monitoring, the finance agency will notify the Finance Commission in accordance with its policies and contract management handbook. The finance agency will include in the notification any serious issues or risks identified with the contract.

(d) Website posting.

(1) Posting on finance agency website. Each finance agency will post on its website contracts that meet the posting requirements provided by Texas Government Code, §2261.253 [~~§2261.253(a)~~].

(2) Redaction of confidential information. Before posting the contracts under paragraph (1) of this subsection, each finance agency must redact information that is confidential by law, information excepted from public disclosure by the Texas Public Information Act (Texas Government Code, Chapter 552), and the social security number of any individual in accordance with Texas Government Code, §2261.253(e).

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**B.**

**Office of Consumer Credit  
Commissioner**



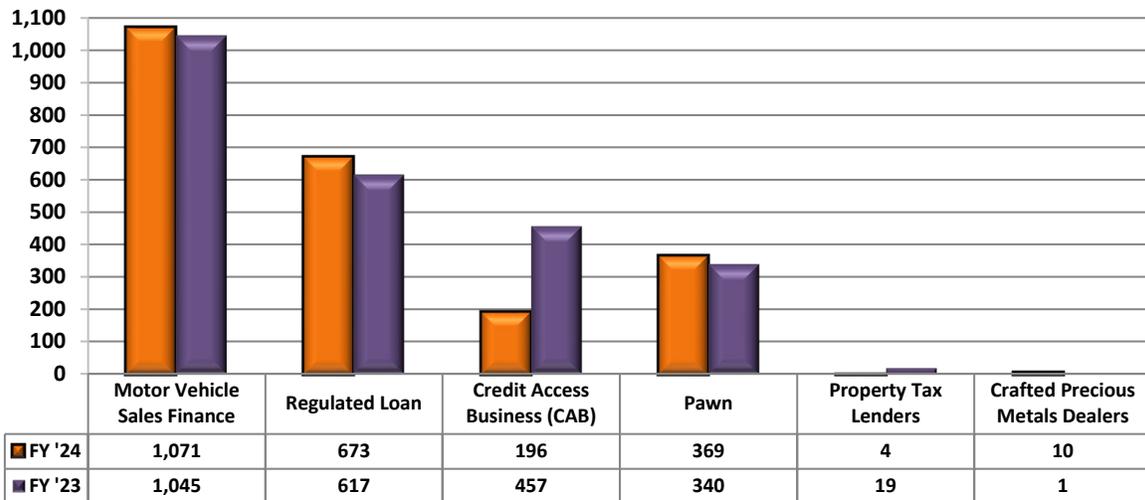
**Consumer Protection and Consumer Assistance Report**

As of June 30, 2024, the OCCC has completed 2,323 exams, which is 77.4% of the FY 2024 exam production goal of 3,000 exams. Average compliance ratings for all industry groups exceed the 85% performance measure, except Credit Access Businesses which are currently at 82.1% of satisfactory compliance. Credit Access Business satisfactory compliance is anticipated to finish at or above 85%.

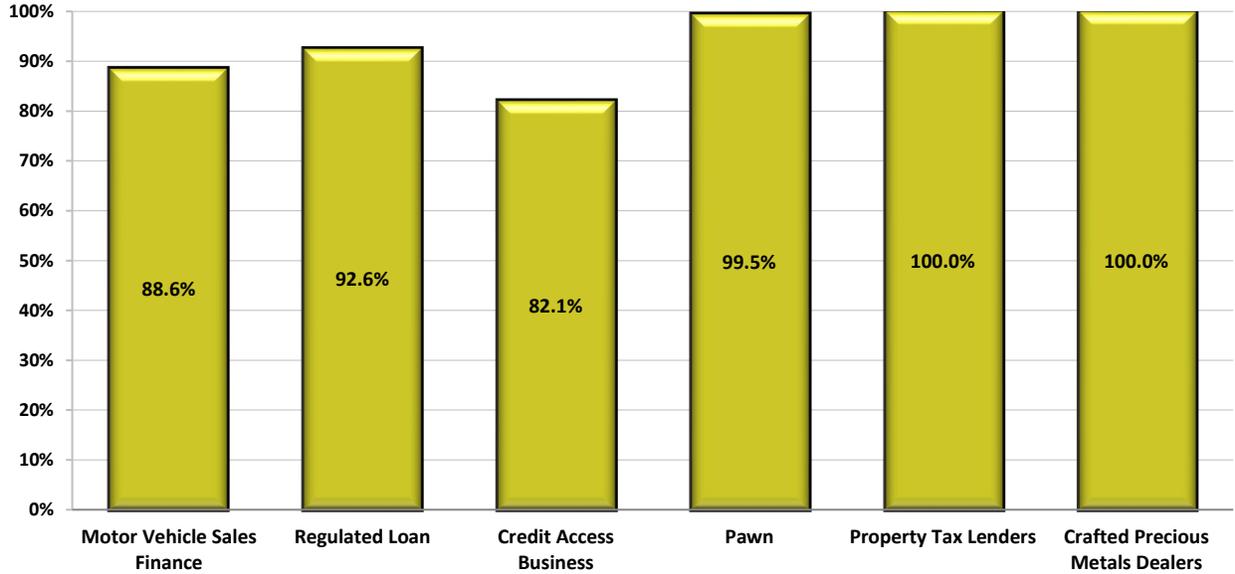
The OCCC has one remaining multi-state mortgage examination (covering exams of 12 licenses). This report remains in review by the Multi-State Mortgage Committee and is expected to be finalized by August 31, 2024. The OCCC is finalizing a joint examination with the Texas Department of Savings and Mortgage Lending expected to be completed by August 31, 2024.

The examination department continues to prioritize examiner training and development. The June 2024 examiner class is currently training in the field on Chapter 348 examinations. These examiners are anticipated to be certified in this examination type by August 31, 2024. Certification work in Chapter 342-E continues for certain examiners.

**Examinations Conducted: Sept - Jun  
Fiscal Year Comparison**

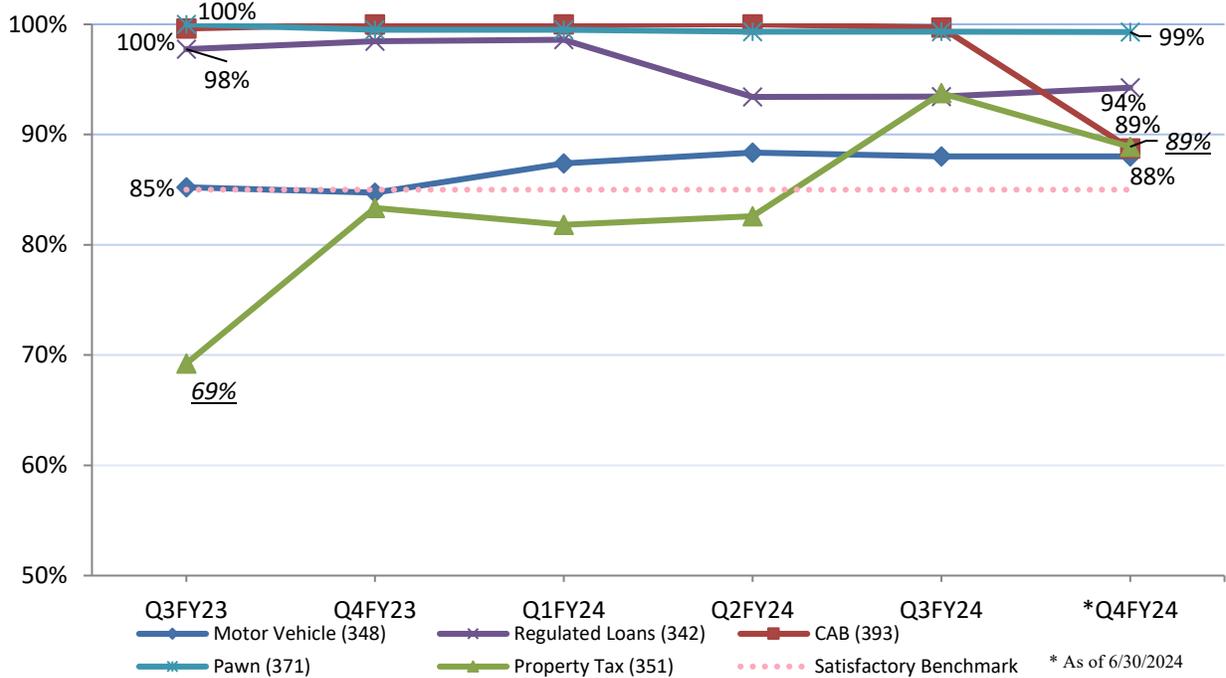


**Acceptable Level of Compliance FY '24  
(Sept 2023 - Jun 2024)**



The following chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of June 2024.

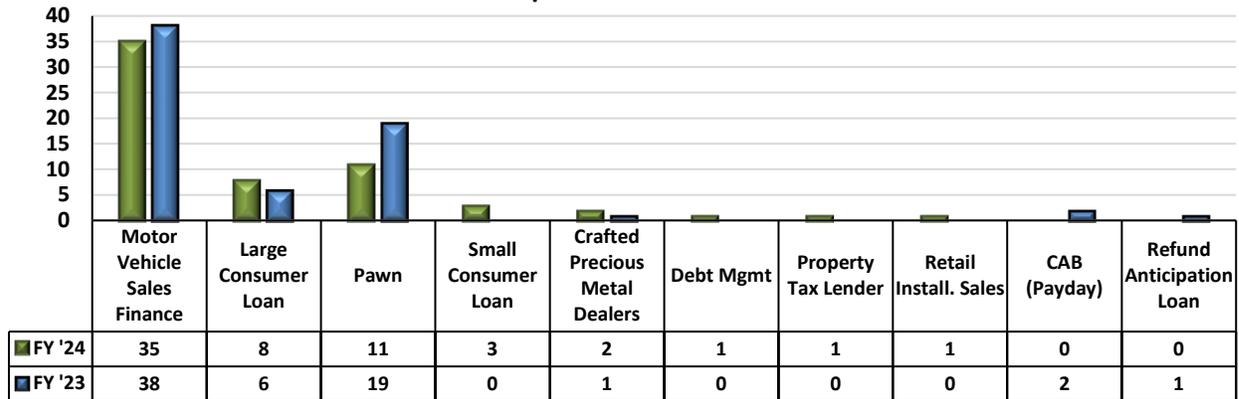
**Acceptable Compliance Levels - Trailing 12 Months  
(at quarter end)**



Investigations

For FY 2024 through June 30, 2024, the OCCC completed 62 investigations out of the annual goal of 75. Motor vehicle sales finance issues comprise 56.5% of the overall number of completed investigations.

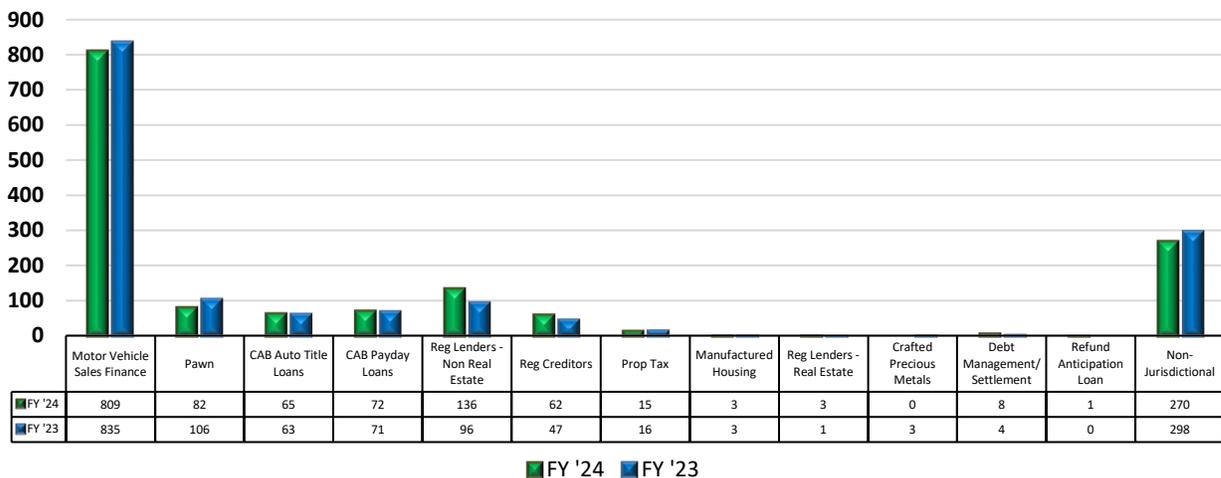
**Investigations Completed**  
**FY '24: Sept 2023 - Jun 2024 Total: 62**  
**FY '23: Sept 2022 - Jun 2023 Total: 67**



Consumer Assistance

From September 1, 2023, through June 30, 2024, 1526 complaints were closed, of which 270 were classified as non-jurisdictional. The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Businesses (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn. MVSF complaints were the largest complaint category at 53%. The second largest category was Credit Access Business complaints at 9% collectively, separately these are 4.7% for payday loans and 4.3% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 8.9%. The fourth largest category was Pawnshops at 5.4%.

**Complaints Closed**  
**FY '24: Sept 2023 - Jun 2024 Total: 1526**  
**FY '23: Sept 2022 - Jun 2023 Total: 1543**



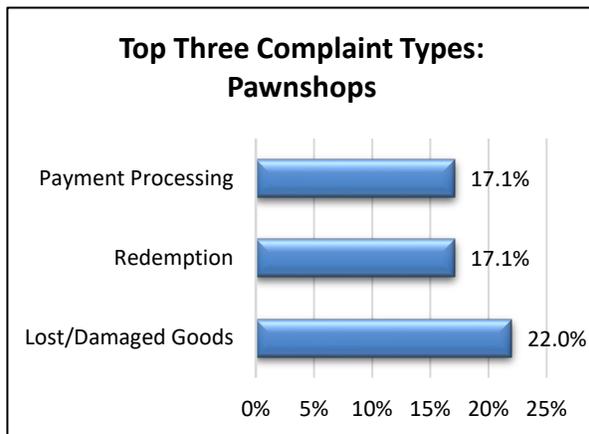
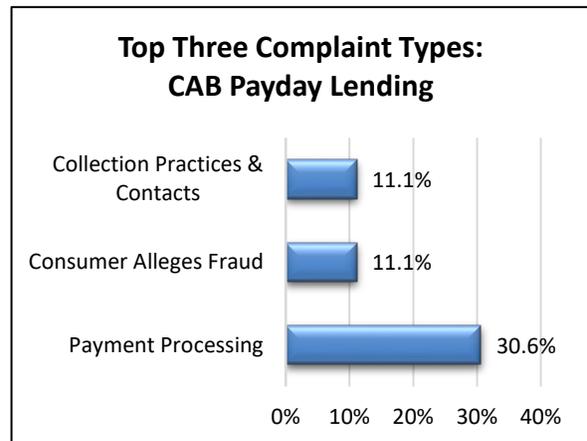
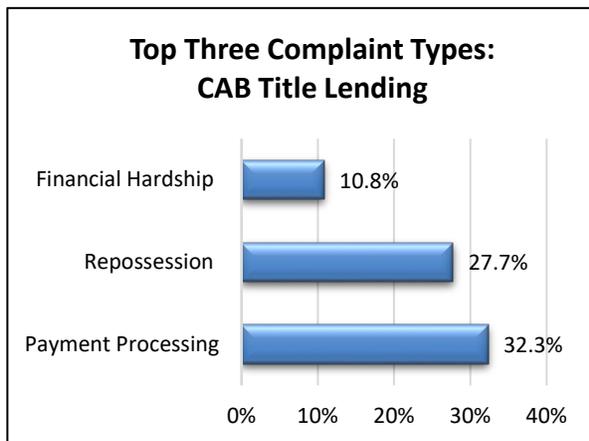
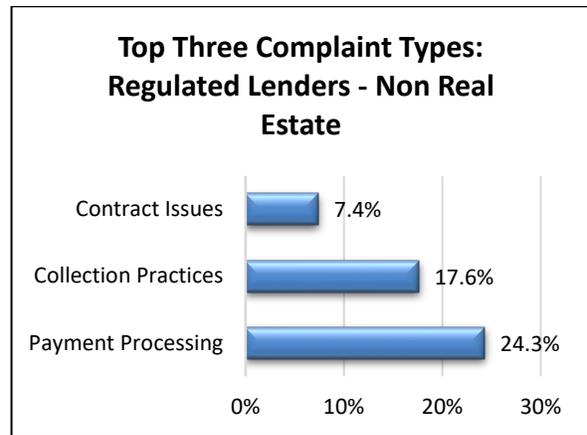
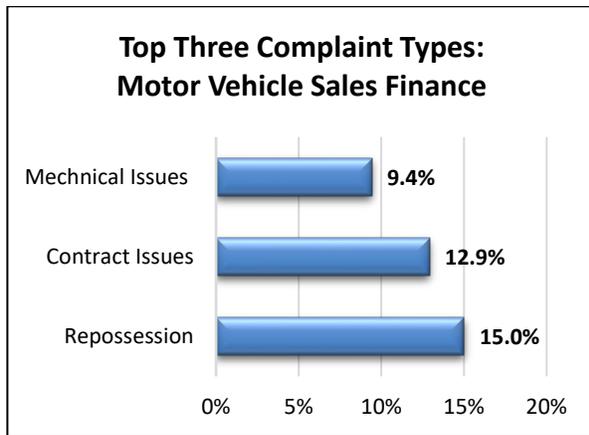
Fiscal Year 2024: Number of Complaints Closed by Source (Table 1), Subject (Table 2), and Disposition (Table 3)

Source of Complaint	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Consumer	421	374	404	NA
Business	3	2	6	NA
Law Enforcement	0	0	1	NA
State or Federal Agency	78	31	45	NA
OCCC	4	2	0	NA
Whistleblower	0	0	0	NA
Other	0	1	0	NA
<b>Total</b>	<b>506</b>	<b>410</b>	<b>456</b>	<b>NA</b>

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	284	203	241	NA
CAB Payday Loans	18	17	26	NA
CAB Auto Title Loans	25	23	17	NA
Reg. Lenders - Non-Real Estate	35	41	41	NA
Pawn	18	27	30	NA
Registered Creditors	22	14	21	NA
Crafted Precious Metal Dealers	0	0	0	NA
Regulated Lenders - Real Estate	0	1	0	NA
Manufactured Housing	1	2	0	NA
Property Tax Lenders	5	3	5	NA
Debt Management/Settlement	2	1	5	NA
Refund Anticipation Loan	0	0	0	NA
Non-Jurisdictional	96	78	69	NA
Commercial Motor Vehicle Sales Finance	0	0	1	NA
<b>Total</b>	<b>506</b>	<b>410</b>	<b>456</b>	<b>NA</b>

Disposition	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	8	3	8	NA
Closed to Legal	0	0	0	NA
Closed -Action Taken	60	57	58	NA
Closed -No Violation	208	154	173	NA
Closed - Administratively	134	118	146	NA
Close - Non-Jurisdictional	96	78	71	NA
<b>Total</b>	<b>506</b>	<b>410</b>	<b>456</b>	<b>NA</b>

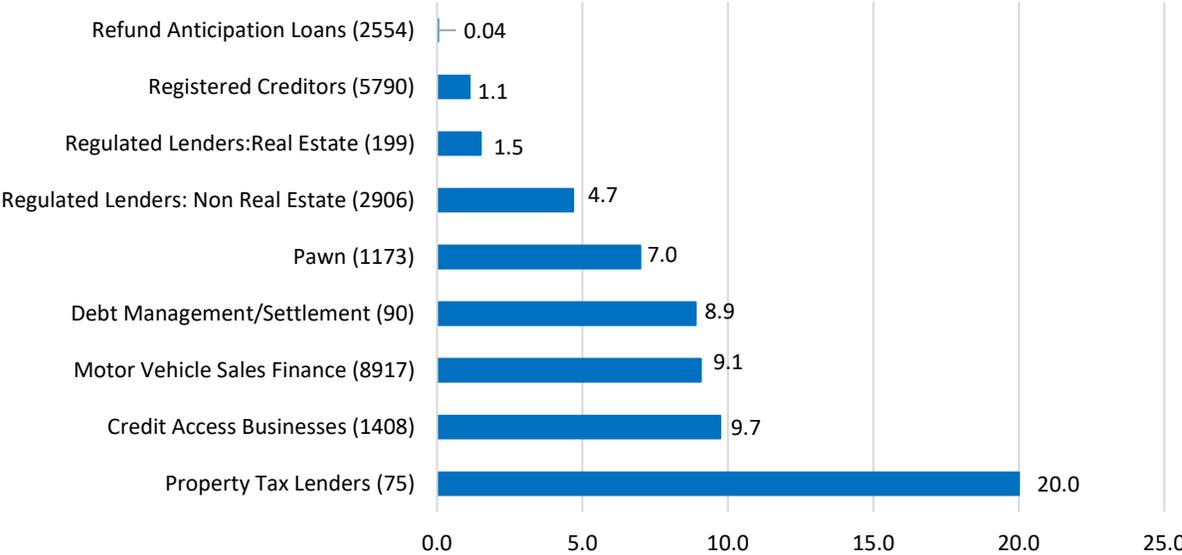
The following charts represent the top three complaint areas per license type. Allegations of violations related to payment processing remain in the top three complaints for all areas except motor vehicle sales finance.



Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Percentage of Written Complaints Closed within 90 days	96.1%	97.40%	96.50%	NA
Average Number of Days to Close a Complaint	39.2	35.4	36.8	NA
Number of Complaints Closed	506	410	456	NA

Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. For this reporting period, the highest ratio of complaints to active license/registrants is Property Tax Lenders, followed by Credit Access Businesses, Motor Vehicle Sales Finance, and Debt Management/Settlement providers.

**Ratio of Complaints Closed to Total Active License & Registrant Totals  
FY '24: Sept 2023 - Jun 2024**



License/Registrant Totals as of 6/30/2024  
Complaints Per Hundred License/Registrants

## Licensing Department Report

*Mirand Diamond, Director of Licensing, Finance & HR*

August 2024

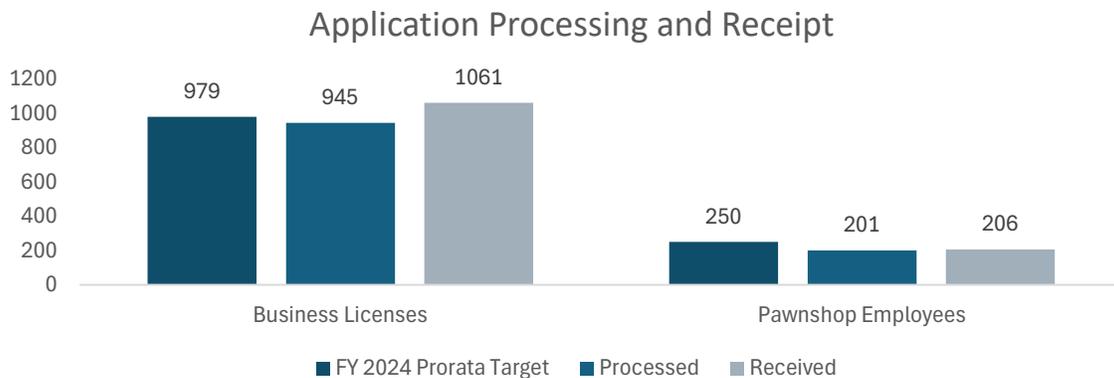
### Renewals Report

The department has concluded license renewal for both pawnshops and pawn employees. As of early August, 98% of pawnshops have successfully renewed, while 74% of pawn employees have also renewed—both figures closely align with the initial projections.

In August, the department will begin analysis on the discount rate for motor vehicle sales finance licensees in preparation for the upcoming renewal cycle in October. As in previous years, online renewal is scheduled to open in early September.

### Application Processing

The following chart includes application processing and receipt information for FY 2024 to date (September 1, 2023, through June 30, 2024).

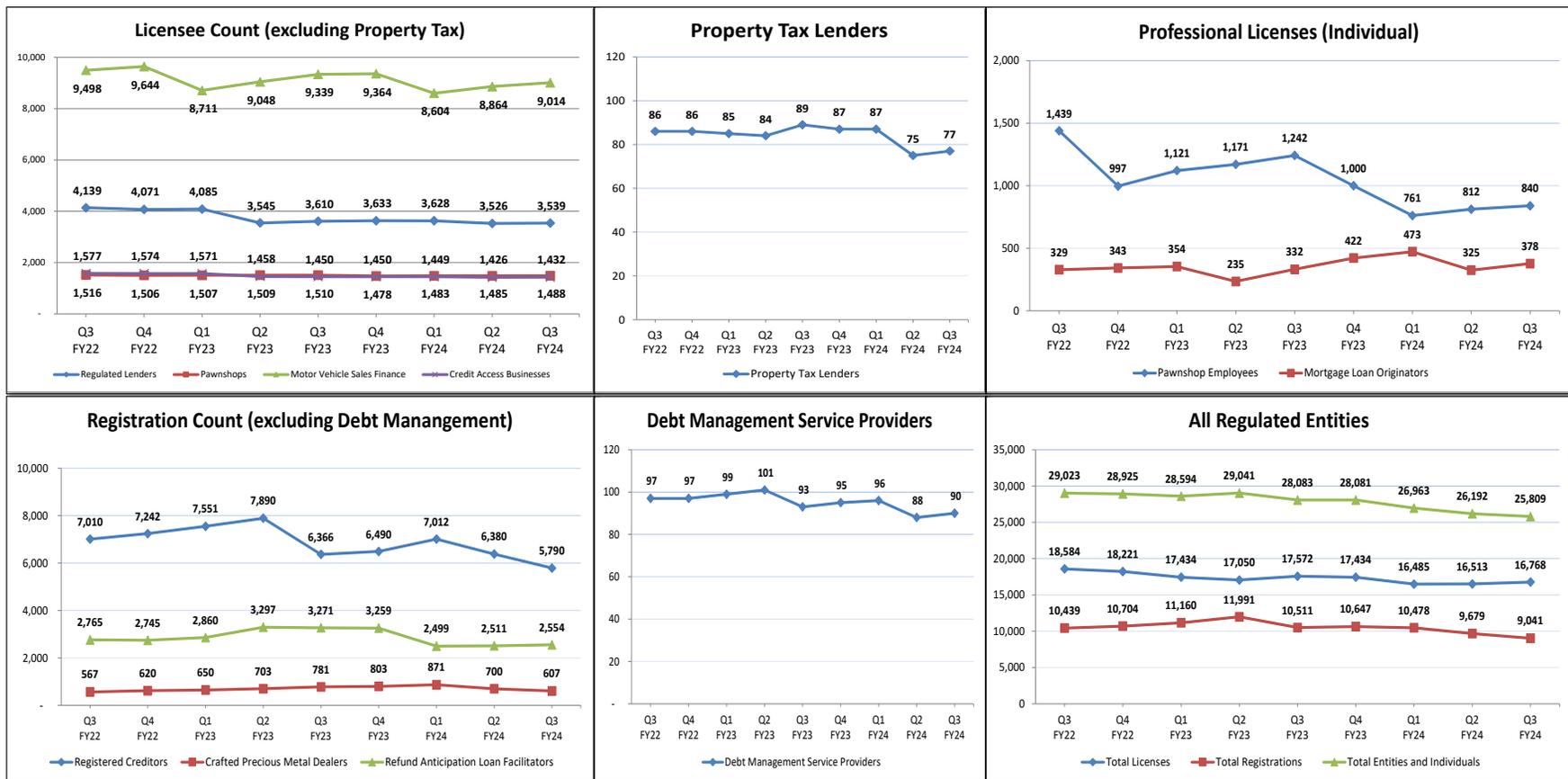


### Other Updates

#### **Digitization of Historical Paper Files**

The department is working to digitize historical paper files in collaboration with a third-party vendor. The first part of the project is nearing completion, with the department having successfully conducted quality assurance checks.

# Number of OCCC Regulated Entities Quarterly Comparison of FY 22-24





## **Administration**

### **Financial Education and TFEE**

Staff from the OCCC and DOB partnered together last month to make a presentation at the Federal Reserve Bank in Dallas for the 2024 Texas Bankers Association Financial Literacy Summit, discussing the importance of collaboration between leaders, teachers, and bankers in the financial education arena. The two agencies also partnered on a recent webinar about preparing financially for natural disasters.

The OCCC has provided direct educational services to 923 individuals this fiscal year, with one final webinar scheduled with Employee Retirement Systems of Texas (ERS) at the end of August. Several presentations are already on the calendar for FY '25, including two webinars with the Texas County & District Retirement System (TCDRS), as well as an in-person presentation for a Houston-area senior center.

The 2022-2023 TFEE grant cycle ended on December 31<sup>st</sup>, and the final impact report will be available for review at the October Finance Commission meeting. Semi-annual reports and reimbursement requests for the initial period of the 2024-2025 grant cycle are currently being reviewed and processed. The comprehensive report for the first semi-annual period will be published this fall.

### **Communication**

OCCC staff are currently planning the Annual Examiner Conference and Training School, which will be held in Fredericksburg during September. The agency launched a new communication initiative by publishing the first of a series of monthly management insight articles. These articles aim to provide valuable updates, reflections, and insights to employees from senior management on a regular basis. In July, Exam Review and Exam Scheduling procedures were updated.

The OCCC continues to communicate with stakeholders, and staff have provided presentations to regulated entities and other groups as follows:

- On June 5, 2024, Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On June 11-13, 2024, Commissioner Pettijohn, Director Diamond, General Counsel Nance, and Financial Examiner Fancher attended the annual meeting of the National Association of Consumer Credit Administrators (NACCA).
- On June 11, 2024, Director Lewis and Financial Examiner Traweek provided a presentation at the HIADA seminar.

- On July 11, 2024, Commissioner Pettijohn, General Counsel Nance, and Director Lewis presented at the Texas Consumer Finance Association Annual Convention in San Antonio.
- On July 12, 2024, Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On July 22, 2024, Commissioner Pettijohn provided remarks at the Texas Independent Dealer Association Conference.
- On July 23, 2024, Director Lewis, Financial Examiner Fancher, and Financial Examiner Traweek presented an educational session on Requirements and Responsibilities for Collateral Protection Insurance at the Texas Independent Dealer Association Conference.
- On July 29, 2024, Commissioner Pettijohn, General Counsel Nance, Director Lewis, Assistant Director Hubenthal, Assistant General Counsel Vedanarayanan, and Paralegal Fisher conducted a Motor Vehicle Rule Review Webinar.
- On July 30, 2024, Commissioner Pettijohn, General Counsel Nance, and Director Lewis presented at the Texas Consumer Credit Coalition Annual Meeting in San Antonio.
- On August 1, 2024, Assistant Director Graham conducted an interview with the Daily Texan related to college students and financial education.

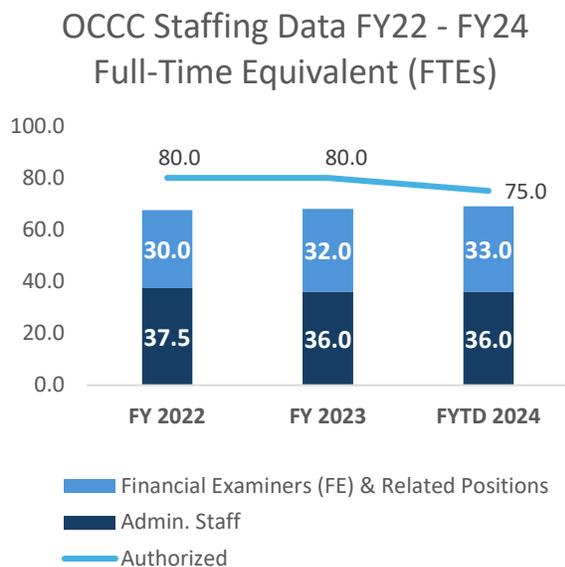
**Human Resources:**

As of July 31, 2024, the OCCC was staffed with a total of 69 FTEs. The agency has worked vigorously to fill multiple vacancies in FY 2024. With the execution of a wide array of strategies, the OCCC has been able to fill many vacancies, to include exam support staff, financial examiners, and other administrative positions.

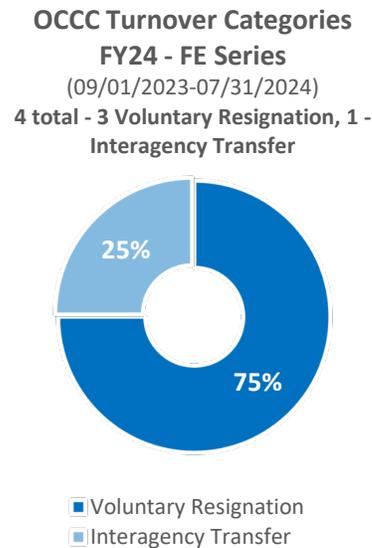
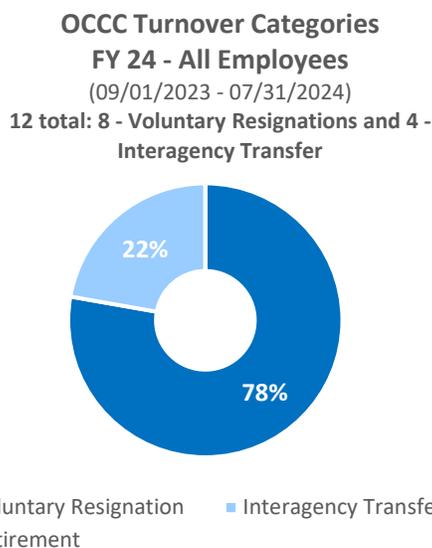
The OCCC has the following open positions:

Vacancy	Status
Financial Examiner I- Houston (1)	Open until filled
Customer Service Representative II-III	Open until filled
Program Specialist IV: Grant, Education, Communication Specialist	Open until filled
Complaints Specialist	Open until filled

The following charts represent staffing data for fiscal years 2022-2024 as of July 31, 2024.



The turnover ratio as of July 31, 2024, was 16%, and the charts below represent FY24 data.



## Information Technology (August 2024)

### **Cybersecurity and Privacy**

IT policies and procedures restructuring continues. Policies are 99% completed – families are complete, five additional, individual controls are in progress. Procedures are over 40%.

Annual cybersecurity training was completed for the agency population and the two external vendors with access to confidential or sensitive information. The attestation has been submitted to DIR.

The annual External Penetration Test initial scan was completed.



## **Accounting Report- August 2024**

*Mirand Diamond, Director of Licensing, Finance & HR*

### Financial Reporting

The third quarter of fiscal year 2024 ended on May 31, 2024. The third quarter financial statement is included in the Audit Committee meeting section of the meeting material. The team is beginning preparatory work for the FY 2024 annual fiscal year close which occurs at the end of August.

### Budget

Accounting staff, in collaboration with management, have completed the FY 25 proposed budget which is being presented for approval to the Finance Commission.

### Staffing

The accounting team has been working to fill a vacancy for one accountant who transferred to another state agency. A candidate is scheduled to start on August 12.

### Other Items

Quarterly reports due to other state and federal agencies were submitted in July.

**OFFICE OF CONSUMER CREDIT COMMISSIONER**  
**EXECUTIVE SUMMARY**

*As of May 31, 2024*

	FY 2022	FY 2023	FISCAL YEAR 2024				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
<b>CONSUMER PROTECTION</b>							
Monies Returned (000)	24,756	13,720	846	1,636	1,100		3,582
Regulated Lenders Examinations	818	830	148	261	214		623
Property Tax Lender Examinations	27	24	1	2	1		4
Pawnshop Examinations	638	398	128	117	116		361
Motor Vehicle Examinations	1,398	1,360	277	339	366		982
Credit Access Businesses Examinations	268	563	41	1	152		194
Crafted Precious Metal Dealers	10	10	0	6	4		10
<b>CONSUMER ASSISTANCE</b>							
Telephone Complaints Received	491	496	115	123	125		363
Written Complaints Received	1,252	1,310	325	196	422		943
Total Complaints Closed	1,751	1,797	506	410	456		1,372
% of Written Complaints Closed within 90 Calendar Days	92.3%	92.5%	96.1%	97.4%	96.0%		96.5%
<b>ADMINISTRATIVE ENFORCEMENT ACTIONS</b>							
Originated	114	124	4	35	21		60
Finalized	138	133	52	14	27		93
<b>LICENSING AND REGISTRATION</b>							
<b>Licenses</b>							
Regulated Lender Licenses	4,071	3,633	3,628	3,526	3,539		3,539
Pawnshop Licenses	1,506	1,478	1,483	1,485	1,488		1,488
Pawnshop Employee Licenses	997	1,000	761	812	840		840
Commercial MV Sales Fin. Licenses	59	65	63	66	70		70
Motor Vehicle Sales Finance Licenses	9,585	9,364	8,541	8,798	8,944		8,944
Property Tax Lender Licenses	86	87	87	75	77		77
Mortgage Loan Originators	343	422	473	325	378		378
Credit Access Business Licenses	1,574	1,450	1,449	1,426	1,432		1,432
<b>Registrations</b>							
Registered Creditors	7,242	6,490	7,012	6,380	5,790		5,790
Crafted Precious Metal Dealers	620	803	871	700	607		607
Debt Management Service Providers	97	95	96	88	90		90
Refund Anticipation Loan Facilitators	2,745	3,259	2,499	2,511	2,554		2,554
<b>Applications</b>							
Business -- New	1,434	1,118	314	253	263		830
Business -- Change of Ownership	58	85	10	22	14		46
Pawnshop Employees -- New	366	286	63	67	45		175
<b>HUMAN RESOURCES DATA</b>							
Field Examiners Staffing	30	32	31	30	33		33
Total Staffing	67.5	68	66	68	69		69

**Office of Consumer Credit Commissioner**  
**Actual Performance for Output Measures**  
**Fiscal Year 2024**

Type/Strategy/Measure	2024 Target	2024 Actual	2024 YTD	Percent of Annual Target	
<b>Output Measures-Key</b>					
<b>CONSUMER PROTECTION</b>					
<b>1-1-1</b>	<b>Complaint Resolution</b>				
	<b>1. # Complaints Closed</b>				
<b>Quarter 1</b>	1,750	506	506	28.9%	
<b>Quarter 2</b>	1,750	410	916	52.3%	
<b>Quarter 3</b>	1,750	456	1,372	78.4%	
<b>2-1-1</b>	<b>Examination and Enforcement</b>				
	<b>1. # Examinations Completed</b>				
<b>Quarter 1</b>	3,000	595	595	19.8%	*
	<i>Examination results are more than 5% under the quarterly target primarily due to resources associated with training instead of production. Examination production is anticipated to normalize at the end of the second quarter.</i>				
<b>Quarter 2</b>	3,000	720	1,315	43.8%	*
	<i>Examination results are under pro-rata targets because of delayed issuance of multi-state mortgage examination reports. Examination results are anticipated and will be on target at the end of 3rd quarter. Two large enterprise exams are underway encompassing over 200 licenses and these exams will be finalized by May 31, 2024.</i>				
<b>Quarter 3</b>	3,000	853	2,168	72.3%	
<b>EFFECTIVE LICENSING &amp; REGISTRATION</b>					
<b>2-2-1</b>	<b>Licensing and Registration</b>				
	<b>1. # Business License Applications Processed</b>				
<b>Quarter 1</b>	1,175	324	324	27.6%	
<b>Quarter 2</b>	1,175	275	599	51.0%	
<b>Quarter 3</b>	1,175	277	876	74.6%	
<b>FINANCIAL EDUCATION</b>					
<b>3-3-1</b>	<b>Financial Education</b>				
	<b>1. # People Receiving Direct Educational Services</b>				
<b>Quarter 1</b>	650	284	284	43.7%	*
	<i>During the first quarter, the OCCC received more requests for financial education classes than forecasted.</i>				
<b>Quarter 2</b>	650	88	372	57.2%	*
	<i>The agency is slightly ahead of financial education targets due to higher attendance than anticipated at events during the first quarter.</i>				
<b>Quarter 3</b>	650	551	923	142.0%	*
	<i>The agency is ahead of financial education targets due to higher attendance than anticipated at events throughout the year.</i>				

\*Varies by 5% or more from target.



## **Legal Department Report**

*Matthew Nance, General Counsel*

August 2024

### **Enforcement Report**

#### **Contested Cases**

As of July 31, 2024, the OCCC does not have any contested cases pending before the State Office of Administrative Hearings (SOAH).

#### **Enforcement Case Highlights**

##### ***Orders on reporting violations***

The Texas Finance Code and its implementing rules require regulated lenders and property tax lenders to file periodic reports with the OCCC describing transaction activity. If a licensee violates this requirement, the OCCC's typical practice is to send an injunction for the first violation, followed by administrative penalties for subsequent violations. In July 2024, the OCCC issued 9 orders against property tax lenders for failing to file 2023 annual reports by the deadline of March 31, 2024. Also in July, the OCCC issued 37 orders against regulated lenders for failing to file 2023 annual reports by the deadline of May 1, 2024.

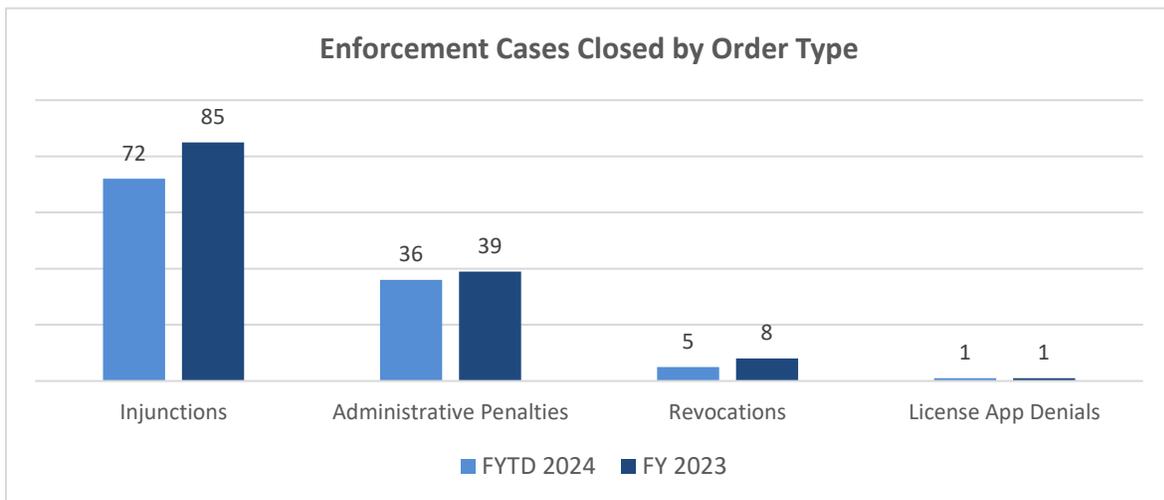
##### ***Unlicensed credit access business activity***

Under Chapter 393 of the Texas Finance Code, a person must hold a credit access business license in order to assist consumers in obtaining payday or title loans. In certain cases where a license applicant has engaged in previous unlicensed activity, the OCCC will enter an agreed order with the applicant before approving the application and granting the license. In May 2024, the OCCC entered an agreed order with a credit access business that entered transactions at a location without a license. The business agreed to refund credit access business fees to affected consumers.

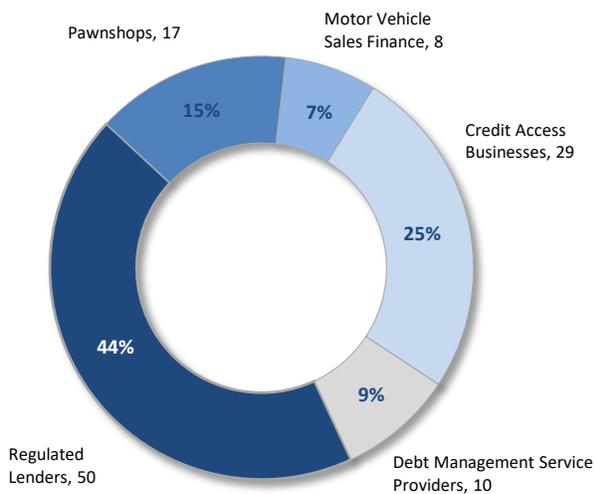
## Enforcement Case Tracking

The following table includes enforcement case tracking information for FY 2024 to date (September 1, 2023, through July 31, 2024) and FY 2023.

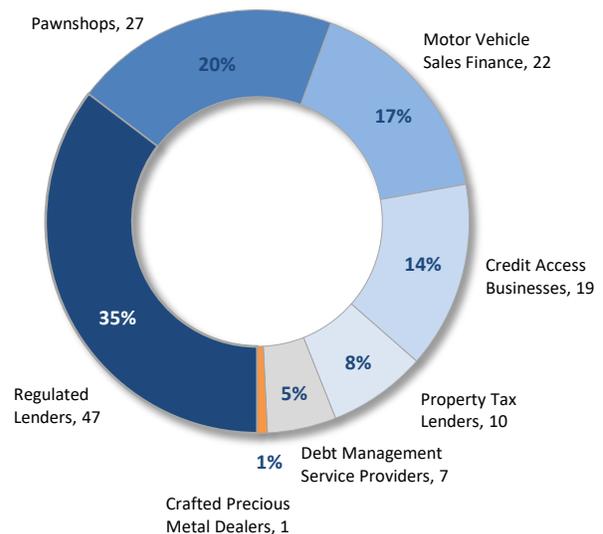
Enforcement Case Tracking Information	FYTD 2024	FY 2023
Enforcement Cases Opened	110	124
Enforcement Cases Closed	114	133
Enforcement Cases Closed by Final Order	109	126
Average Number of Days to Close an Enforcement Action	81	142
Contested Cases Docketed at SOAH	1	2



### Cases Closed by Industry FYTD 2024



### Cases Closed by Industry FY 2023



## **Litigation**

### ***Ernest Polk v. Texas Office of Consumer Credit Commissioner***

This is an employment discrimination lawsuit pending before the First Court of Appeals in Houston (case no. 01-22-00712-CV). The district court dismissed the plaintiff's case, and the plaintiff appealed the case. The parties have filed their briefs in the court of appeals. On October 4, 2023, the court of appeals issued a letter that identified the three justices who will decide the case, stated that the court will not hear oral argument, and set a case submission date of November 28, 2023. As of July 31, 2024, the appeal is still pending.

## **Rulemaking**

At the August meeting, the OCCC is presenting the following rule actions:

- Adoption of amendments to 7 TAC Chapter 86 (relating to registered creditors) to adjust the maximum documentary fee for motorcycles, boats, and certain other vehicles.
- Readoption of 7 TAC Chapter 84 (relating to motor vehicle sales finance), as well as proposed amendments to the chapter, resulting from rule review.

At the October meeting, the OCCC intends to present the following rule actions:

- Adoption of amendments to 7 TAC Chapter 84 (relating to motor vehicle sales finance), resulting from rule review.
- Adoption of amendments to 7 TAC Chapter 151 (relating to home equity lending procedures), resulting from rule review.
- Readoption of 7 TAC Chapter 7 (relating to the Texas Financial Education Endowment Fund), as well as any proposed amendments to the chapter, resulting from rule review.

## **Federal Rulemaking and Litigation**

### ***CFPB Payday Lending Rule Litigation***

The Consumer Financial Protection Bureau's Payday Lending Rule contains payment-withdrawal requirements for certain short-term and long-term consumer loans. A lawsuit challenging the Payday Lending Rule's constitutionality, *Community Financial Services Association v. Consumer Financial Protection Bureau*, is currently pending in the federal Fifth Circuit Court of Appeals (case no. 21-50826). In May 2024, the U.S. Supreme Court issued a decision finding that the CFPB's funding structure is constitutional and remanded the case to the Fifth Circuit. On June 14, the CFPB issued a statement that it expects the Payday Lending Rule to go into effect on March 30, 2025. On June 19, the Fifth Circuit issued a decision rendering judgment in the CFPB's favor and declared that the Payday Lending Rule is constitutional. On July 3, the plaintiffs filed a petition for the Fifth Circuit to rehear the case *en banc*. The CFPB's deadline to file a response to the petition is August 5.

### ***CFPB Paycheck Advance Interpretive Rule***

On July 18, 2024, the CFPB issued a proposed interpretive rule on paycheck advance products, also known as “earned wage access” products. The proposed rule would generally require earned wage lenders to provide Truth in Lending Act disclosures to consumers. The proposed rule would also provide that certain tips and expedited payment fees are considered finance charges under the Truth in Lending Act. The CFPB is accepting public comments on the proposal until August 30, 2024.

### **Advisory Guidance**

From June 1, 2024, to July 31, 2024, the OCCC issued one new advisory bulletin. The bulletin summarizes recent rule amendments regarding the administrative fee and acquisition charge for regulated loans.

During this period, the OCCC also revised one previously issued advisory bulletin with instructions for motor vehicle documentary fee filings. The revised bulletin includes an updated documentary fee amount considered reasonable based on recent rule amendments.

From June 1, 2024, to July 31, 2024, the OCCC did not receive any requests for official interpretations of the Texas Finance Code. As of July 31, 2024, there were no pending requests for official interpretations of the Texas Finance Code.

### **Public Information Requests**

<b>Public Information Tracking Information</b>	<b>FYTD 2024</b>	<b>FY 2023</b>
Public Information Requests Received	130	162
Public Information Requests Closed	118	155
Public Information Requests Withdrawn	8	7
Public Information Requests Referred to Office of Attorney General	0	0
Average Number of Days to Address a Public Information Request	2.6	2.3

### **Gifts Received by the OCCC**

From June 1, 2024, to July 31, 2024, the OCCC received no gifts.

**B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors

**PURPOSE:** The purpose of the rule changes to 7 TAC Chapter 86 is to adjust the maximum documentary fee amount for motorcycles, boats, and certain other vehicles.

**RECOMMENDED ACTION:** The OCCC requests that the Finance Commission approve the adoption of amendments to 7 TAC Chapter 86.

**RECOMMENDED MOTION:** I move that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 86.

*Title 7, Texas Administrative Code*  
*Part 5. Office of Consumer Credit Commissioner*  
*Chapter 86. Retail Creditors*  
*Subchapter B. Retail Installment Contract*

The Finance Commission of Texas (commission) adopts amendments to §86.201 (relating to Documentary Fee) in 7 TAC Chapter 86, concerning Retail Creditors.

The commission adopts the amendments to §86.201 without changes to the proposed text as published in the May 3, 2024, issue of the Texas Register (49 TexReg 2871).

The commission received no official comments on the proposed amendments.

The rule at §86.201 relates to documentary fees for retail installment transactions under Texas Finance Code, Chapter 345. In general, the purpose of the rule changes to 7 TAC §86.201 is to adjust the maximum documentary fee amount under the rule.

The Office of Consumer Credit Commissioner (OCCC) distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received three written precomments on the rule text draft. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Texas Finance Code, Chapter 345 governs retail installment transactions to purchase goods other than motor vehicles. Under Texas Finance Code, §345.251(a), a retail seller may charge a documentary fee in a retail installment transaction to purchase a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle. Under Texas Finance

Code, §345.251(b)(2), the documentary fee "may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services, subject to a reasonable maximum amount set by rule by the finance commission."

Currently, §86.201 describes the maximum documentary fee in a Chapter 345 retail installment transaction. The rule distinguishes between retail installment transactions for covered land vehicles (i.e., motorcycles, mopeds, all-terrain vehicles, boat trailers, and towable recreational vehicles) and covered watercraft (i.e., boats and boat motors). Current §86.201(c) contains a \$125 maximum documentary fee for the purchase of one or more covered land vehicles. Current §86.201(d) contains a \$125 maximum documentary fee for the purchase of one or more covered watercraft. Current §86.201(e) contains a \$175 maximum documentary fee for the purchase of one or more covered land vehicles and one or more covered watercraft.

In 2013, the commission adopted the \$125 and \$175 amounts in §86.201. The amounts have not been adjusted since then. As the commission explained in its preamble to the 2013 adoption, the rule's fee amounts and terminology are intended to correspond to different sets of titling and registration requirements. Land vehicles are subject to titling and registration requirements administered by the Texas Department of Motor Vehicles (TxDMV) under Texas Transportation Code, Chapters 501 and 502. Watercraft are subject to titling and registration requirements administered by the

Texas Parks and Wildlife Department (TPWD) under Texas Parks and Wildlife Code, Chapter 31. As the commission explained, the higher \$175 amount for the purchase of both types of vehicles "is intended to compensate the retail creditor for the documents and procedures that are necessary to title items with both TxDMV and TPWD." 38 TexReg 5707 (Aug. 30, 2013).

Adopted amendments throughout §86.201 adjust the maximum documentary fee for a Chapter 345 retail installment transaction. An amendment to §86.201(c) adjusts the documentary fee for a covered land vehicle from \$125 to \$200. An amendment to §86.201(d) adjusts the documentary fee for covered watercraft from \$125 to \$200. An amendment to §86.201(e) adjusts the documentary fee for both a covered land vehicle and covered watercraft from \$175 to \$250.

The commission and the OCCC believe that now is an appropriate time to revisit the maximum documentary fee amounts in §86.201 and to adjust them. The \$75 adjustment corresponds to a similar adjustment recently adopted by the commission in amendments to 7 TAC §84.205 (relating to Documentary Fee), concerning documentary fees for motor vehicles. See 49 TexReg 4903 (July 5, 2024). The amendments to §84.205 adjusted the motor vehicle documentary fee amount considered reasonable from \$150 to \$225. That adoption was based on the OCCC's ongoing review of documentary fee cost analyses, as well as documentary fee amounts found to be reasonable in a recent contested case.

The commission and the OCCC believe that a corresponding \$75 adjustment is

appropriate for covered land vehicles and watercraft under §86.201. The \$200 amount is appropriate because these vehicles are subject to similar document-related requirements that apply to motor vehicles; many, but not all, of the motor vehicle document requirements apply to vehicles under §86.201. For example, vehicles under §86.201 are subject to titling and registration requirements (as described earlier in this preamble) but generally are not subject to the requirements to provide a new car window sticker or a used car buyers guide. See 15 U.S.C. §1232 (requirement to provide new car window sticker applies to automobiles), Federal Trade Commission Used Car Rule, 16 C.F.R. §455.1(d)(2) (requirement to provide used car buyers guide applies to certain motorized vehicles other than motorcycles).

In informal precomments, stakeholders expressed general support for the proposed amendments. Two boating trade associations filed precomments supporting the proposed amendments. A third informal precomment was filed on behalf of a motorcycle trade association, a recreational vehicle association, and two boating trade associations. This precomment stated that the associations support the proposed amendments and stated: "We can confirm that our dealers conduct the same required administrative work to complete transactions as do automobile dealers: vehicle titling (which sometimes requires in-person visits to county offices), vehicle registration, submitting taxes, obtaining and mailing license plates, ensuring liens are correctly recorded and released, verifying a trade-in's value and whether it has open recalls, etc." The precomment also stated: "Costs have increased since 2013 due to general inflation, specific cost increases and heightened state and federal regulatory requirements. We

have seen increased costs across multiple categories, including wages (up over 50% in some labor markets), real property leasing rates, technology (with specific new hardware, software and printers now mandated) and postage."

The rule amendments are adopted under Texas Finance Code, §345.251(b)(2), which authorizes the Finance Commission to adopt a rule establishing a reasonable maximum documentary fee amount, and Texas Finance Code, §345.251(e), which authorizes the commission to adopt rules to enforce Texas Finance Code, §345.251. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 345.

*§86.201. Documentary Fee*

(a) Purpose. The purpose of this section is to specify the maximum documentary fee in a retail installment transaction for the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle, as provided by Texas Finance Code, §345.251.

(b) Definitions.

(1) All-terrain vehicle--Has the meaning provided by Texas Transportation Code, §551A.001(1).

(2) Boat--A vessel, as described by Texas Parks and Wildlife Code, §31.003(2).

(3) Boat motor--An outboard motor, as described by Texas Parks and Wildlife Code, §31.003(13).

(4) Covered land vehicle--A motorcycle, moped, all-terrain vehicle, boat trailer, or towable recreational vehicle.

(5) Covered watercraft--A boat or boat motor.

(6) Moped--Has the meaning provided by Texas Transportation Code, §541.201(8).

(7) Motorcycle--Has the meaning provided by Texas Transportation Code, §541.201(9).

(8) Retail installment contract--Has the meaning provided by Texas Finance Code, §345.001(6) and refers to one or more instruments entered into that evidence a secured or unsecured retail installment transaction for the sale of goods under Texas Finance Code, Chapter 345.

(9) Towable recreational vehicle--Has the meaning provided by Texas Finance Code, §348.001(10-a).

(c) Contract for covered land vehicles only. For a retail installment contract for the purchase of one or more covered land vehicles, the reasonable maximum amount of the documentary fee is \$200 [~~\$125~~].

(d) Contract for covered watercraft only. For a retail installment contract for the purchase of one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$200 [~~\$125~~].

(e) Contract for both covered land vehicles and covered watercraft. For a retail

installment contract for the purchase of one or more covered land vehicles and one or more covered watercraft, the reasonable maximum amount of the documentary fee is \$250 [~~\$175~~].

**Certification**

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on August 16, 2024.

Matthew J. Nance  
General Counsel  
Office of Consumer Credit Commissioner

**B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review

**PURPOSE:** Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 84 and believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

**RECOMMENDED ACTION:** The OCCC requests that the Finance Commission readopt 7 TAC Chapter 84 following rule review, because the reasons for the rules continue to exist.

**RECOMMENDED MOTION:** I move that the Finance Commission readopt 7 TAC Chapter 84 following rule review, because the reasons for the rules continue to exist.

*Title 7. Banking and Securities*  
*Part 5. Office of Consumer Credit Commissioner*  
*Chapter 84. Motor Vehicle Installment Sales*

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 84, concerning Motor Vehicle Installment Sales, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 84 was published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3937). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 84 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

**B. OFFICE OF CONSUMER CREDIT COMMISSIONER**

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review

**PURPOSE:** The purpose of the proposed rule changes to 7 TAC Chapter 84 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

**RECOMMENDED ACTION:** The OCCC requests that the Finance Commission approve the amendments to 7 TAC Chapter 84 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve for publication and comment the amendments to 7 TAC Chapter 84.

*Title 7, Texas Administrative Code*  
*Part 5. Office of Consumer Credit Commissioner*  
*Chapter 84. Motor Vehicle Installment Sales*

The Finance Commission of Texas (commission) proposes amendments to §84.602 (relating to Filing of New Application), §84.608 (relating to Processing of Application), §84.611 (relating to Fees), §84.613 (relating to Denial, Suspension, or Revocation Based on Criminal History), §84.616 (relating to License Display), §84.617 (relating to License Term, Renewal, and Expiration), §84.705 (relating to Unclaimed Funds), §84.707 (relating to Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)), §84.708 (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)), §84.709 (relating to Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)), §84.802 (relating to Non-Standard Contract Filing Procedures), §84.806 (relating to Format), §84.808 (relating to Model Clauses), and §84.809 (relating to Model Contract); and proposes new §84.710 (relating to Annual Report) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The rules in 7 TAC Chapter 84 govern motor vehicle retail installment transactions. In general, the purpose of the proposed rule changes to 7 TAC Chapter 84 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 84 was published in the *Texas Register* on May 31, 2024 (49 TexReg 3937). The commission received no official comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft.

Proposed amendments to §84.602 would update requirements for filing a new motor vehicle sales finance license application. Currently, §84.602(1)(A)(ii) requires a license application to identify a "responsible person" with substantial management responsibility for each proposed office. The proposal would replace the "responsible person" requirement in §84.602(1)(A)(ii) with a requirement to list a "compliance officer," who must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. The amendment would enable businesses to identify an individual who can be contacted on a company-wide basis. The amendment is intended to ensure that each business lists an individual who can be contacted about compliance issues. In addition, a proposed amendment to §84.602(2)(A)(v) would remove language suggesting that license applicants send fingerprints directly to the OCCC. Currently, license applicants submit fingerprints through a party approved by the Texas Department of Public Safety.

Proposed amendments to §84.608 would revise provisions governing the OCCC's denial of a motor vehicle sales finance license application. Under Texas Finance Code, §348.504(b), if the OCCC finds that a license applicant has not met the eligibility

requirements for a license, then the OCCC will notify the applicant. Under Texas Finance Code, §348.504(c), an applicant has 30 days after the date of the notification to request a hearing on the denial. Proposed amendments at §84.608(d) would specify that if the eligibility requirements for a license have not been met, the OCCC will send a notice of intent to deny the license application, as described by Texas Finance Code, §348.504(b). Proposed amendments at §84.608(e) would revise current language to specify that an affected applicant has 30 days from the date of the notice of intent to deny to request a hearing, as provided by Texas Finance Code, §348.504(c). These amendments would ensure consistency with the license application denial process in Texas Finance Code, §348.504. The amendments are consistent with the OCCC's current practice for notifying an applicant of the intent to deny a license application.

Proposed amendments to §84.611 and proposed new §84.710 relate to annual reports filed by licensees. Under Texas Finance Code, §14.107, §16.003, and §348.506, the commission and the OCCC are authorized to set fees for the OCCC to carry out its statutory functions. Current §84.611(e)(1)(C) authorizes the OCCC to collect a variable annual assessment based on the dollar volume of transactions reported by a licensee in an annual renewal statement. Current §84.611(e)(3) describes the content and filing of the annual renewal statement. Proposed amendments would move this requirement to new §84.710, would redesignate the annual renewal statement as an "annual report," and would specify a June 30 deadline for filing the report. The new section is similar to rules for other OCCC licensees filing annual reports, such as the current rule for pawnshops at §85.502 (relating to Annual Report). The OCCC

anticipates that it will begin requiring annual reports under new §84.710 beginning in 2026.

Proposed amendments to §84.613 relate to the OCCC's review of the criminal history of a motor vehicle applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.151; and Texas Government Code, §411.095. The proposed amendments to §84.613 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included a change to Texas Occupations Code, §53.022 relating to factors considered in determining whether an offense relates to the duties and responsibilities of the licensed occupation. Proposed amendments to §84.613(c)(2) would implement this statutory change from HB 1342.

Proposed amendments to §84.616 would make clarifying changes relating to license display. Currently, §84.616 requires a licensee to display its license prominently in a conspicuous location visible to the general public. The proposed amendments clarify that this requirement applies if a licensed location or registered office is open to the general public, and does not apply to a location or office that is not open to the general public (e.g., a servicing or collection office that operates exclusively online or by phone).

A proposed amendment to §84.617(e) would specify that the late filing fee for a registered office is \$250, as provided by Texas Finance Code, §349.302. Another proposed amendment would remove current §84.617(f), which was a temporary provision that governed licenses obtained or renewed in 2019 or 2020.

Proposed amendments to §84.705 would make technical changes relating to the escheat of unclaimed funds. Amended text in §84.705(d) would reflect that unclaimed funds are submitted to the Unclaimed Property Division of the Texas Comptroller of Public Accounts. Another proposed amendment would add a reference to Texas Property Code, §74.301, in order to provide a more complete statutory reference for the requirement to pay unclaimed funds to the state after three years.

Proposed amendments to §84.707 would update recordkeeping requirements for retail sellers that assign motor vehicle retail installment contracts to another holder. Under Texas Finance Code, §348.514 and §348.517, licensees must maintain records of each motor vehicle retail installment transaction, and licensees must allow the OCCC to access records pertaining to retail installment transactions. Currently, provisions throughout §84.707 refer to both paper and electronic recordkeeping systems. Proposed amendments throughout §84.707 would simplify and rearrange this language to refer to electronic recordkeeping systems before referring to paper systems, based on licensees' increasing use of electronic systems rather than paper systems. Currently, §84.707(d)(1) requires licensees to be able to provide a retail installment sales transaction report containing the date of the contract, the retail buyer's name, the account number, and other information, and §84.707(d)(3) requires licensees to be able to provide an assignment report. Proposed amendments at §84.707(d)(1) would specify that licensees must be able to sort or filter the retail installment transaction report by date of the contract or sale, the retail buyer's name, the status of the transaction (open or closed), whether the transaction has been assigned to

another person, and the name of any assignee. The OCCC understands that licensees generally have this information available in existing systems, and this information will help ensure that the OCCC can effectively examine licensees under Texas Finance Code, Chapter 348.

In an informal precomment, an association of Texas motor vehicle dealers addressed the proposed amendments in §84.707(d)(1)(E) regarding sorting or filtering the transaction report. The precomment indicates that sorting or filtering by date, buyer's name, and transaction status "are possible," but sorting or filtering by assignment status and name of assignee "may be more problematic." The precomment did not explain how or why this requirement would be problematic. Under current §84.707(d)(3), §84.708(e)(4), and §84.709(e)(4), licensees are already required to be able to produce an assignment report showing assigned contracts with the name and address of each assignee. The commission maintains this portion of the sorting and filtering provisions in the proposed amendments to §84.707(d)(1)(E), because the commission and the OCCC believe that this information is important for ensuring that the OCCC can effectively conduct examinations and scope risks. However, the OCCC and the commission invite additional comments from stakeholders explaining how or why it would be problematic to sort or filter a transaction report by assignment information.

Additional proposed amendments to §84.707 relate to data security recordkeeping. A proposed amendment at §84.707(d)(8) specifies that licensees must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the

Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. Another proposed amendment at §84.707(d)(8) specifies that if a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4. A proposed amendment at §84.707(d)(9) specifies that licensees must maintain data breach notifications to consumers and to the Office of the Attorney General under Texas Business & Commerce Code, §521.053. Data security is a crucial issue. The OCCC's 2025-2029 strategic plan includes action items to "[p]romote cybersecurity awareness and best practices among regulated entities" and "[m]onitor cybersecurity incidents and remediation efforts reported by regulated entities." A recent data breach affecting dealer management systems highlights the urgent need for vigilance in the motor vehicle sales finance industry. *See* "Car Dealerships in North America Revert to Pens and Paper After Cyberattacks on Software Provider" AP News (June 24, 2024). The proposed data security recordkeeping amendments will help ensure that the OCCC can monitor this crucial issue.

Proposed amendments to §84.708 would update recordkeeping requirements for retail sellers that collect payments on motor vehicle retail installment contracts. The proposed amendments to §84.708 are similar to the proposed amendments to §84.707 described in the previous three paragraphs. In particular, the proposed amendments would simplify and rearrange language referring to electronic and paper recordkeeping systems, would specify requirements for sorting or filtering the retail installment sales transaction report, would specify requirements to maintain policies and procedures for an information security

program, and would specify requirements to maintain data breach notifications. In addition, a proposed amendment at §84.708(d)(3) would specify requirements for sorting or filtering the currently required alphabetical records search, similar to the proposed requirements for the retail installment sales transaction report. Also, a proposed amendment at §84.708(e)(2)(L)(ii)(V) would remove a reference to the Texas Department of Public Safety's CR-2 crash report form and replace this with a more general reference to "any law enforcement crash report form." The OCCC understands that the CR-2 form is no longer used for crash reports in Texas.

Proposed amendments to §84.709 would update recordkeeping requirements for holders that take assignment of motor vehicle retail installment contracts. The proposed amendments to §84.709 are similar to the proposed amendments to §84.707 and §84.708 described in the previous four paragraphs. In particular, the proposed amendments would simplify and rearrange language referring to electronic and paper recordkeeping systems, would specify requirements for sorting or filtering the alphabetical records search and retail installment sales transaction report, would replace a reference to the CR-2 crash report form with a more general reference, would specify requirements to maintain policies and procedures for an information security program, and would specify requirements to maintain data breach notifications.

Proposed amendments to §84.802 would reorganize and clarify the requirements for submitting non-standard plain language contracts. Under Texas Finance Code, §341.502(b), if a motor vehicle sales finance licensee uses a retail installment sales contract other than a model contract adopted

by the commission, then the licensee must submit the contract to the OCCC for review. Currently, §84.802 describes the requirements for submitting these non-standard contracts to the OCCC. Under the proposal, subsection (a) would be amended to provide an up-front summary of the submission requirements, including the requirements under Texas Finance Code, §341.502. In particular, new paragraph (a)(3) would specify that non-standard loan contracts "must be consistent with Texas law and federal law." Currently, licensees are required to ensure that contracts comply with applicable law, and the OCCC's prescribed certification requires a person submitting a non-standard contract to certify compliance with state and federal law. If a contract contains illegal provisions, then the contract is misleading, and is not "easily understood by the average consumer" as required by Texas Finance Code, §341.502(a)(1). Before submitting a contract for review, licensees and form providers should work with their legal counsel and compliance staff to ensure that contracts comply with applicable law. Proposed amendments to subsection (b) would specify the grounds for disapproving a non-standard contract under Texas Finance Code, §341.502(c). These amendments replace language on the certification of readability, which would be moved into subsection (d). Proposed amendments to subsection (c) would specify that the subsection refers to the requirements for filing copies of the retail installment sales contract. Proposed amendments to subsection (d) would consolidate the rule's requirements for the submission form that must be submitted with the copies of the contract. The commission believes that it is helpful to reorganize these related requirements into a single subsection. The proposed amendments to §84.802 are consistent with the commission's 2022 amendments to the rule

for submitting non-standard regulated loan contracts at §90.104 (relating to Non-Standard Contract Filing Procedures).

Proposed amendments to §84.806 would update the list of typefaces that are considered easily readable for plain language contracts. Under Texas Finance Code, §341.502(a)(2), retail installment sales contracts must be "printed in an easily readable font and type size." Currently, §84.806(b) lists the following typefaces considered to be readable: Arial, Calibri, Caslon, Century Schoolbook, Garamond, Helvetica, Scala, and Times New Roman. The proposal would revise this list to add Georgia and Verdana, and to remove Caslon, Century Schoolbook, Garamond, and Scala. Since the commission originally adopted §84.806 in 2008, electronic contracts and screen reading have changed how consumers view contracts. The amendments to §84.806 are based on updated guidance for accessibility and screen reading, including guidance from federal agencies on typefaces that are considered accessible. *See, e.g.*, U.S. Department of Health and Human Services, Research-Based Web Design and Usability Guidelines, p. 106; Centers for Medicare & Medicaid Services, Section 508 Guide for Microsoft Word 2013, p. 5 (rev. 2018). Other amendments throughout §84.806 add a descriptive title to each subsection. The proposed amendments to §84.806 are consistent with the commission's 2022 amendments to the rule for formatting regulated loan contracts at §90.103 (relating to Format).

Proposed amendments to §84.808 would revise the model itemization of amount financed to refer to inspection program replacement fees and emissions inspection fees, following recent legislative changes. In 2023, the Texas Legislature passed HB 3297.

HB 3297 repealed statutory provisions in Texas Transportation Code, Chapter 548 that generally required inspections for noncommercial vehicles. HB 3297 amended Texas Transportation Code, §548.509 and §548.510 to provide that an inspection program replacement fee will be remitted to the state. HB 3297 maintained existing provisions in Texas Health and Safety Code, Chapter 382 authorizing counties to require emissions inspections. HB 3297 will take effect on January 1, 2025. Proposed amendments to the figures accompanying §84.808(8)(A) and (B) would replace current references to the government inspection fee with lines for the inspection program replacement fee and the emissions inspection fee. Proposed amendments to §84.808(8)(E) and (F) would make conforming changes to the model clauses for inspection fees in the text of the rule. These changes will help ensure consistency with the amendments in HB 3297. The commission anticipates that the amendments to §84.808 will have a delayed effective date of January 1, 2025, to conform to the effective date of HB 3297. The OCCC does not intend to require licensees to resubmit non-standard plain language retail installment contracts that the OCCC has accepted since May 5, 2016. The clauses contained in §84.808 are model clauses, and licensees maintain some flexibility to disclose charges in a manner that is accurate and not misleading (e.g., disclosing the inspection program replacement fee on one of the extra lines in the "Other charges" section of the itemization of amount financed).

In an informal precomment, an association of Texas motor vehicle dealers stated: "As to 7 TAC §84.808. Model Clauses, a request is that the disclosure 'Government vehicle inspection program replacement fee' be shortened, such as 'Gov't

inspection replacement fee' or some similar disclosure that does not take so much real estate on the forms as the buyer's order/purchase order is more limited in space than a retail installment contract." The commission declines to include this suggestion in the proposal. As discussed in the previous paragraph, use of the model clauses is optional. The model clauses do not restrict a licensee to using the exact same language in a buyer's order or in a submitted non-standard retail installment contract. A shorter label such as "Gov't inspection replacement fee" could be sufficient if it is disclosed in an accurate manner. However, for purposes of creating a model clause for a retail installment contract, the commission and the OCCC believe that the full label "Government vehicle inspection program replacement fee" is appropriate and provides clear information to the retail buyer. Therefore, the commission has maintained the text for this proposal.

Proposed amendments to §84.809 would revise the model motor vehicle retail installment contract. The proposed amendments to the figure accompanying §84.809(b) would replace current references to the government inspection fee with lines for the inspection program replacement fee and the emissions inspection fee. These changes would ensure consistency with HB 3297 and conform to the proposed amendments to §84.808, as discussed in the previous two paragraphs.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will better enable licensees to comply with Chapter 348 of the Texas Finance Code and related legal requirements, will ensure that motor vehicle retail installment contracts are easily understood by consumers, and will ensure that the OCCC can efficiently process license applications and plain language contract filings.

In general, the OCCC does not anticipate economic costs to persons who are required to comply with the proposed rule changes. If there are economic costs, then the OCCC anticipates that these will be minimal. Regarding the proposed amendments related to producing transaction reports and search results in §§84.707, 84.708, and 84.709, the OCCC understands that licensees' existing systems generally have the capabilities described in the proposed amendments. Regarding the proposed amendments related to information security programs and data breach notifications in §§84.707, 84.708, and 84.709, licensees are required to develop this information by existing statutes and regulations outside of the proposed amendments, so any costs do not result from the proposed amendments. Regarding the annual report described in proposed new §84.710, the proposal moves the current requirement to file an annual renewal statement in §84.611 to a new section with substantially similar requirements.

Regarding the proposed amendments related to plain language contracts in §§84.802, 84.806, 84.808, and 84.809, the

OCCC does not intend to require licensees to resubmit non-standard plain language retail installment contracts that the OCCC has accepted since May 5, 2016. Costs of drafting revised contracts may result from recent legislation regarding inspections and the inspection replacement fee, but these costs do not result from the proposed amendments. The OCCC has attempted to lessen potential costs of developing revised contracts by providing updated model clauses that are consistent with recent statutory changes related to itemized charges. Use of the updated model clauses is optional, and licensees maintain some flexibility to disclose charges in a manner that is accurate and not misleading (e.g., disclosing the inspection program replacement fee on one of the extra lines in the "Other charges" section of the itemization of amount financed).

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations

to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would create a new regulation at §84.710 containing annual report requirements that are substantially the same as the existing requirements for annual renewal statements in current §84.611(e)(3). The proposal would expand current §84.602 by specifying a requirement to identify a compliance officer, would expand current §84.608 to specify the process to deny a license application, would expand current §84.613 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history, would expand current §84.617 to specify the late filing fee for a registered office, would expand current §84.707, §84.708, and §84.709 to specify records that licensees must maintain, would expand current §84.802 by specifying requirements for submitting non-standard contracts, would expand current §84.806 by adjusting the list of readable typefaces, and would expand current §84.808 and §84.809 to add model language regarding inspection program replacement fees and emissions inspection fees. The proposal would limit current §84.602 by removing a requirement for a license applicant to identify a responsible person for each office, would limit §84.616 to specify circumstances when a license must be displayed, would limit §84.806 by adjusting the list of readable typefaces, and would limit current §84.808 and §84.809 to remove outdated language regarding inspection fees. The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate

that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov). To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. The rule changes to §84.802, §84.806, §84.808, and §84.809 are also proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 348.

#### *Subchapter F. Licensing*

##### *§84.602. Filing of New Application*

An application for issuance of a new motor vehicle sales finance license issued under Texas Finance Code, Chapter 348 or 353 must be submitted in a format prescribed by the commissioner at the date of filing and

in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) (No change.)

(ii) Compliance officer. The application must list a compliance officer. The compliance officer must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. [~~Responsible person. The person responsible for the day-to-day operations of the applicant's proposed offices must be named.~~]

(iii) - (v) (No change.)

(B) - (F) (No change.)

(2) Other required filings.

(A) Fingerprints.

(i) - (iv) (No change.)

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Motor Vehicles), fingerprints are still required to be submitted under [~~to the OCCC, as per~~] Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

(B) - (D) (No change.)

(3) (No change.)

*§84.608. Processing of Application*

(a) - (c) (No change.)

(d) Notice of intent to deny application. If the OCCC does not find that the eligibility requirements for a license have been met, then the OCCC will send a notice of intent to deny the license application to the applicant.

(e) [(d)] Hearing. An [Whenever an application is denied, the] affected applicant has 30 calendar days from the date of the notice of intent to deny the license application [the application was denied] to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(f) [(e)] Denial. If an application has been denied, the assessment fee will be refunded to the applicant. The investigation fee and the fingerprint processing fee in §84.611 of this title (relating to Fees) will be forfeited.

(g) [(f)] Processing time.

(1) - (3) (No change.)

*§84.611. Fees*

(a) - (d) (No change.)

*§84.613. Denial, Suspension, or Revocation  
Based on Criminal History*

(e) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each licensee consisting of:

(A) - (B) (No change.)

(C) if necessary, a variable fee based upon the annual dollar volume of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, as stated in the annual report under §84.710 of this title (relating to Annual Report) [~~renewal statement described by paragraph (3) of this subsection~~].

(2) (No change.)

~~[(3) A licensee must file an annual renewal statement in connection with the license renewal. The licensee must provide the statement in a format prescribed by the OCCC and in accordance with the OCCC's instructions. The statement must include the annual dollar volume and number of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, calculated in accordance with the OCCC's instructions, and any other information required under the OCCC's instructions. The annual renewal statement is collected under the OCCC's examination authority, as provided by Texas Finance Code, §348.514. A licensee's annual renewal statement relates to the examination process and is confidential under Texas Finance Code, §14.2015(a) and §348.514(d). However, the OCCC may publish aggregated reports based on the annual renewal statements that it collects.]~~

(f) - (g) (No change.)

(a) - (b) (No change.)

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 348 or 353, as provided by Texas Occupations Code, §53.021(a)(1).

(1) (No change.)

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) - (B) (No change.)

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; ~~[and]~~

(D) the relationship of the crime to the ability or [~~;~~] capacity [~~;~~ ~~or~~ fitness] required to perform the duties and discharge the responsibilities of a licensee; and [~~;~~]

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) (No change.)

(d) - (f) (No change.)

*§84.616. License Display*

If a licensed location or registered office is open to the general public, then the licensee must prominently display the license in the location or office, [Licenses must be prominently displayed in a licensee's office] in a conspicuous location visible to the general public. This requirement does not apply to a location or office that is not open to the general public (e.g., a servicing or collection office that operates exclusively online or by phone).

*§84.617. License Term, Renewal, and Expiration*

(a) - (d) (No change.)

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a \$1,000 late filing fee. The late filing fee for a registered office is \$250 under Texas Finance Code, §349.302.

~~[(f) ——— Temporary ——— provision. Notwithstanding subsections (a) and (d) of this section, if a licensee renews a license during 2019, or obtains a new license on or after August 1, 2019, then the license will be effective until October 31, 2020. The license must be renewed in order to remain in effect after October 31, 2020. This subsection expires on January 1, 2021.]~~

*Subchapter G. Examinations*

*§84.705. Unclaimed Funds*

(a) - (c) (No change.)

(d) Escheat to state. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts, Unclaimed Property [Treasury] Division, as required by Texas Property Code, §72.101 and §74.301, or must be paid to the appropriate state or other governmental entity under the time period provided by the other state's or entity's applicable law.

(e) (No change.)

*§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)*

(a) - (b) (No change.)

(c) Recordkeeping systems. The records required by this section may be maintained by using either an electronic recordkeeping system, a legible paper or manual recordkeeping system, ~~[electronic recordkeeping system, optically imaged recordkeeping system,]~~ or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Records required.

(1) Retail installment sales transaction report.

(A) (No change.)

(B) Recordkeeping systems. The retail installment sales transaction report can be maintained either as an electronic system or as a paper record, [~~or may be generated from an electronic system or systems~~] so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is entered into by the licensee.

(C) - (D) (No change.)

(E) Sorting or filtering. Upon request, a licensee must be able to sort or filter the retail installment transaction report by each of the following:

- (i) the date of contract or date of sale;
- (ii) the retail buyer's name(s);
- (iii) the status of the transaction (open or closed); and
- (iv) whether the transaction has been assigned to another person and the name of any assignee.

(2) Retail installment sales transaction file. A licensee must maintain an electronic or [a] paper [~~or imaged~~] copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance

Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (P) (No change.)

(3) - (7) (No change.)

(8) Information security program. A licensee must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. If a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4.

(9) Data breach notifications. A licensee must maintain the text of any data breach notification provided to retail buyers, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification. A licensee must maintain any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

*§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)*

(a) - (b) (No change.)

(c) Recordkeeping systems. The records required by this section may be maintained by using either an electronic recordkeeping system, a legible paper or manual recordkeeping system, [~~electronic recordkeeping system, optically imaged recordkeeping system,~~] or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements.

(1) Open retail installment sales transactions. A licensee must be able to access or produce a list of all open retail installment sales transactions. If the list of open transactions is accessed through an electronic system, the licensee must be able to generate a separate report of open transactions. Alternatively, a licensee may provide a list containing open and closed retail installment sales transactions as long as the open transactions are designated as "open."

(2) Alphabetical search. A licensee must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record

retention period required by subsection (e)(10) [~~(e)(9)~~] of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(3) Sorting or filtering. Upon request, a licensee must be able to sort or filter a records search by each of the following:

(A) the date of contract or date of sale;

(B) the retail buyer's name(s);

(C) the status of the transaction (open or closed); and

(D) whether the transaction has been assigned to another person and the name of any assignee.

(e) Records required.

(1) Retail installment sales transaction report.

(A) (No change.)

(B) Recordkeeping systems. The retail installment sales transaction report can be maintained either an electronic system or as a paper record, [~~or may be generated from an electronic system or systems~~] so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is made or acquired.

(C) - (D) (No change.)

(E) Sorting or filtering. Upon request, a licensee must be able to sort or filter the retail installment transaction report by each of the following:

(i) the date of contract or date of sale;

(ii) the retail buyer's name(s);

(iii) the status of the transaction (open or closed); and

(iv) whether the transaction has been assigned to another person and the name of any assignee.

(2) Retail installment sales transaction file. A licensee must maintain an electronic or [a] paper [or imaged] copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (K) (No change.)

(L) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) (No change.)

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) - (IV) (No change.)

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of any law enforcement crash report form [the Texas Department of Public Safety's "Crash Report" (Form CR-2)] filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(M) - (U) (No change.)

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate electronic or paper [~~or an electronic~~] record [~~;~~] must be maintained covering each retail installment sales contract. The electronic or paper [~~or electronic~~] account record must be readily available by reference to either a retail buyer's name or account number.

(A) - (C) (No change.)

(4) - (5) (No change.)

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or be able to generate a report, electronic or paper [~~or electronic~~], reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(7) - (10) (No change.)

(f) (No change.)

(g) Information security program. A licensee must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. If a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a

written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4.

(h) Data breach notifications. A licensee must maintain the text of any data breach notification provided to retail buyers, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification. A licensee must maintain any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

*§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)*

(a) - (b) (No change.)

(c) Recordkeeping systems. The records required by this section may be maintained by using either an electronic recordkeeping system, a legible paper or manual recordkeeping system, [~~electronic recordkeeping system, optically imaged recordkeeping system,~~] or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements.

(1) - (2) (No change.)

(3) Sorting or filtering. Upon request, a licensee must be able to sort or filter a records search by each of the following:

(A) the date of contract or date of sale;

(B) the retail buyer's name(s);

(C) the status of the transaction (open or closed); and

(D) whether the transaction has been assigned to another person and the name of any assignee.

(e) Records required.

(1) Retail installment sales transaction report. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (9) of this subsection. The retail installment sales transaction report can be maintained either as a paper record or may be generated from an electronic system or systems so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is acquired. ~~[A retail installment sales transaction report must contain the following information:]~~

(A) A retail installment sales transaction report must contain the following information: [the date of contract (day, month, and year);]

(i) the date of contract (day, month, and year);

(ii) the retail buyer's name(s);

(iii) a method of identifying the vehicle, such as the last six digits of the vehicle identification number or the stock number; and

(iv) the account number.

(B) Sorting or filtering. Upon request, a licensee must be able to sort or filter the retail installment transaction report by each of the following: [the retail buyer's name(s);]

(i) the date of contract or date of sale;

(ii) the retail buyer's name(s);

(iii) the status of the transaction (open or closed); and

(iv) whether the transaction has been assigned to another person and the name of any assignee.

~~[(C) a method of identifying the vehicle, such as the last six digits of the vehicle identification number or the stock number; and]~~

~~[(D) the account number.]~~

(2) Retail installment sales transaction file. A licensee must maintain an

electronic or [a] paper [or imaged] copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (D) (No change.)

(E) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) (No change.)

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) - (IV) (No change.)

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of any law enforcement crash report form [~~the Texas Department of Public Safety's "Crash Report" (Form CR-2)~~] filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(F) - (J) (No change.)

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate electronic or paper [~~or an electronic~~] record [~~;~~] must be maintained covering each retail installment sales contract. The electronic or paper [~~or electronic~~] account record must be readily available by reference to either a retail buyer's name or account number.

(A) - (C) (No change.)

(4) - (5) (No change.)

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or be able to generate a report, electronic or

paper [~~or electronic~~], reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(7) - (9) (No change.)

(f) (No change.)

(g) Information security program. A licensee must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. If a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4.

(h) Data breach notifications. A licensee must maintain the text of any data breach notification provided to retail buyers, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification. A licensee must maintain any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

*§84.710. Annual Report*

(a) Generally. Each licensee must file an annual report with the OCCC. The annual report is due June 30 of each year for the prior calendar year's transaction activity. The licensee must provide the annual report in a format prescribed by the OCCC and in accordance with the OCCC's instructions.

(b) Required information. The statement must include the annual dollar volume and number of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, calculated in accordance with the OCCC's instructions, and any other information required under the OCCC's instructions.

(c) Confidentiality. The annual report is collected under the OCCC's examination authority, as provided by Texas Finance Code, §348.514. A licensee's annual report relates to the examination process and is confidential under Texas Finance Code, §14.2015(a) and §348.514(d). However, the OCCC may publish aggregated reports based on the annual reports that it collects.

*Subchapter H. Retail Installment Sales Contract Provisions*

*§84.802. Non-Standard Contract Filing Procedures*

(a) Non-standard contracts. A non-standard contract is a contract that uses clauses other than [~~does not use~~] the model contract provisions. Before a licensee uses a non-standard contract, the contract must be submitted to the OCCC for review under Texas Finance Code, §341.502(c). A non-standard contract: [Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be

~~reviewed to determine that the contract is written in plain language.]~~

(1) must be written in plain language designed to be easily understood by the average consumer, as required by Texas Finance Code, §341.502(a);

(2) must be printed in an easily readable font and type size, as required by Texas Finance Code, §341.502(a) and §84.806 of this title (relating to Format);

(3) must be consistent with Texas law and federal law;

(4) must include a notice with the OCCC's contact information, as required by Texas Finance Code, §14.104 and §86.101 of this title (relating to Consumer Notifications);

(5) must comply with the requirements described in subsection (c) of this section, including the maximum Flesch-Kincaid Grade Level score; and

(6) must be accompanied by a complete submission form containing the information required by subsection (d) of this section.

(b) Disapproval. If a non-standard contract filing fails to comply with one or more of the requirements listed in subsection (a) of this section, then the OCCC may disapprove the filing under Texas Finance Code, §341.502(c). A licensee must cease using a disapproved contract immediately after an order of disapproval takes effect, as provided by Texas Finance Code, §341.502(d). [Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the creditor or the entity

~~submitting the form on behalf of the creditor. The certification must state that the contract is written in plain language and that the contract can be easily understood by the average consumer. The certification must state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.]~~

(c) Contract filing [Filing] requirements. Copies of the retail installment sales contract [Contract filings must be identified as to the transaction type. Contract filings] must be submitted in accordance with the OCCC's instructions and the following requirements:

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid Grade Level score of the contract must be based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

(2) PDF format. One copy must be submitted in a text-searchable PDF format so that the contract may be visually reviewed in its entirety. The page size must be 8.5 inches by 11 inches or 8.5 inches by 14 inches. The PDF may not be locked or restricted in a way that prohibits comparison of different versions of the contract.

(3) No other formats permitted. The OCCC will not accept paper filings or any other unlisted formats for non-standard contract filings.

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level

score for a Chapter 348 contact filing is grade 11.

~~(d) Submission form. A non-standard contract must be accompanied by a written submission form prescribed by the OCCC. The submission form must be completed in accordance with the OCCC's instructions and the following requirements: [Contact person. One person must be designated as the contact person for each filing submitted. Each submission must provide the name, address, phone number, and if available, the email address and fax number of the contact person for that filing. If the contracts are submitted by anyone other than the company itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.]~~

~~(1) Transaction chapter. The submission form must specify that the contract will be used under Texas Finance Code, Chapter 348.~~

~~(2) Contact person. The submission form must identify an individual as the contact person for the contract filing, and must include the individual's name, address, phone number, and email address. If a contract is submitted by a person other than a licensee, then the contract must be accompanied by a dated letter that contains a description of the anticipated users of the contract, and designates the legal counsel or other designated contact person for that filing.~~

~~(3) Certification of readability. The submission form must include a certification signed by an officer of the licensee or the entity submitting the form on behalf of the licensee. The certification must state that the~~

contract is written in plain language and that the contract can be easily understood by the average consumer. The certification must also state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.

(e) (No change.)

*§84.806. Format*

(a) Generally. Plain language contracts must be printed in an easily readable font and type size pursuant to Texas Finance Code, §341.502(a). If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) Typeface readability. The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include [∓] Arial, Calibri, Georgia, [~~Caslon, Century Schoolbook, Garamond,~~] Helvetica, [~~Scala, and~~] Times New Roman, and Verdana.

(c) Titles and headings. Titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or to provide emphasis.

(d) Typeface size. Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times New Roman typeface for visual comparative purposes. Use of a larger typeface is

encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8 point in the Times New Roman typeface. A point is generally viewed as 1/72nd of an inch.

(e) Arrangement of model clauses. The model clauses may be arranged in any order. Additionally, the seller has considerable flexibility in the formatting and arrangement of the information contained in the model clauses.

*§84.808. Model Clauses*

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

(1) - (7) (No change.)

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the

manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization of amount financed-sales tax advance reads:

*Figure: 7 TAC §84.808(8)(A) {See attached amendments.}*

(B) The model clause regarding itemization of amount financed-sales tax deferred reads:

*Figure: 7 TAC §84.808(8)(B) {See attached amendments.}*

(C) - (D) (No change.)

(E) Inspection program replacement fee. Under Texas Transportation Code, §548.509 and §548.510, at the time of registration, the Texas Department of Motor Vehicles or a county assessor-collector will collect an inspection program replacement [a ~~portion of the inspection~~] fee to be remitted to the state. The creditor may disclose the inspection program replacement fee on a line labeled "Government vehicle inspection program replacement fee." [by either of the following methods:]

~~[(i) including the entire inspection fee in the "Government vehicle inspection fees" section, with the amounts paid to the state and the inspector documented immediately below this section with the following language: "to state \$ \_\_\_\_\_" and "to inspection station \$ \_\_\_\_\_"; or]~~

~~[(ii) including the portion remitted to the state in the "Government license and registration fees" section, and the portion remitted to the inspection station in~~

the "Government vehicle inspection fees" section.]

(F) Emissions inspection fee. A creditor may disclose a vehicle emissions inspection fee prescribed by law under Texas Health and Safety Code, Chapter 382, on a line labeled "Vehicle emissions inspection fee."

(G) [(F)] Benefit under trade-in credit agreement. A benefit provided under a trade-in credit agreement must be included in the downpayment, and must be listed in the line labeled "other (describe)," with a description such as "trade-in credit agreement benefit."

(H) [(G)] Benefit under depreciation benefit optional member program. A benefit provided under a depreciation benefit optional member program must be included in the downpayment, and must be listed in the line labeled "other (describe)," with a description such as "depreciation benefit."

(10) - (32) (No change.)

*§84.809. Model Contract; Permissible Changes*

(a) (No change.)

(b) A sample model motor vehicle retail installment sales contract is presented in the following example.

*Figure: 7 TAC §84.809(b) {See attached amendments.}*

(c) - (d) (No change.)

**Certification**

The agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 16, 2024.

Matthew J. Nance  
General Counsel  
Office of Consumer Credit Commissioner

**Figure: 7 TAC §84.808(8)(A)**

<b>ITEMIZATION OF AMOUNT FINANCED</b>		
1.	Cash price [Optional additional description: "(including any accessories, services, and taxes)"]	\$ _____ (1)
2.	Downpayment = [If netting add: (if negative, enter "0" and see Line 4.A. below)]	
	Gross trade-in	\$ _____
	- payoff by Seller	\$ _____
	= net trade-in	\$ _____
	[If not netting add: (if negative enter "0" and see Line 4.A. below)]	
	+ cash	\$ _____
	+ Mfrs. Rebate	\$ _____
	+ other (describe) _____	\$ _____
	Total downpayment	\$ _____ (2)
3.	Unpaid balance of cash price (1 minus 2)	\$ _____ (3)
4.	Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):	
A.	Net trade-in payoff [Alternative caption: "prior credit or lease balance"] to _____	\$ _____
B.	Cost of physical damage insurance paid to insurance company	\$ _____
C.	Cost of optional coverages with physical damage insurance paid to insurance company	\$ _____
D.	Cost of optional credit insurance paid to insurance company or companies Life _____ Disability _____	\$ _____
E.	Debt cancellation agreement fee paid to the Seller	\$ _____
F.	Official fees paid to government agencies	\$ _____
G.	Dealer's inventory tax [Optional addition: (if not included in cash price)]	\$ _____
H.	Sales tax [Optional addition: (if not included in cash price)]	\$ _____
I.	Other taxes [Optional addition: (if not included in cash price)]	\$ _____
J.	Government license and registration fees	\$ _____
K.	Government certificate of title fee	\$ _____
L.	Government vehicle inspection program replacement fee	\$ _____
M.	Vehicle emissions inspection fee	\$ _____
N.	Deputy service fee paid to dealer	\$ _____
O.	<b>Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [Option to insert Spanish translation of disclosure here.]</b>	\$ _____
P.	Other charges (Seller must identify who is paid and describe purpose) to _____ for _____	\$ _____
	to _____ for _____	\$ _____
	to _____ for _____	\$ _____
	Total other charges and amounts paid to others on my behalf	\$ _____ (4)
5.	<b>Amount Financed</b> (3 + 4)	\$ _____ (5)

[Optional caption: Seller will pay taxes, title fee, license and registration fees, and the inspection program replacement fee to government agencies. Seller will retain the documentary fee and the deputy service fee. Seller may also retain part or all of the emissions inspection fee, insurance, service contracts, and other charges.]

[Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company."]

**Figure: 7 TAC §84.808(8)(B)**

<b>ITEMIZATION OF AMOUNT FINANCED</b>		
1.	Cash price [Optional additional description: "(including any accessories, services, and taxes)"]	\$ _____ (1)
2.	Downpayment (A + B) =	
	A. [If netting add: (if negative, enter "0" and see Line 4.A. below)]	
	Gross trade-in	\$ _____
	- payoff by Seller	\$ _____
	= net trade-in	\$ _____
	B. [If not netting add: (if negative enter "0" and see Line 4.A. below)]	
	+ cash	\$ _____
	+ Mfrs. Rebate	\$ _____
	+ other (describe) _____	\$ _____
	Total downpayment	\$ _____ (2)
3.	Unpaid balance of cash price (1 minus 2)	\$ _____ (3)
4.	Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):	
	A. Net trade-in payoff [Alternative caption: "prior credit or lease balance"] to _____	\$ _____
	B. Cost of physical damage insurance paid to insurance company	\$ _____
	C. Cost of optional coverages with physical damage insurance paid to insurance company	\$ _____
	D. Cost of optional credit insurance paid to insurance company or companies	\$ _____
	Life	
	Disability	
	E. Debt cancellation agreement fee paid to the Seller	\$ _____
	F. Official fees paid to government agencies	\$ _____
	G. Dealer's inventory tax [Optional addition: (if not included in cash price)]	\$ _____
	H. Other taxes [Optional addition: (if not included in cash price)]	\$ _____
	I. Government license and registration fees	\$ _____
	J. Government certificate of title fee	\$ _____
	K. Government vehicle inspection program replacement fee	\$ _____
	L. Vehicle emissions inspection fee	\$ _____
	M. Deputy service fee paid to dealer	\$ _____
	N. <b>Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [Option to insert Spanish translation of disclosure here.]</b>	\$ _____
	O. Other charges (Seller must identify who is paid and describe purpose)	
	to _____ for _____	\$ _____
	to _____ for _____	\$ _____
	to _____ for _____	\$ _____
	Total Itemized Charges upon which the Finance Charge is assessed	\$ _____ (4)
5.	Total Unpaid Balance Plus Itemized Charges Upon which the Finance Charge is assessed. (3+4)	\$ _____ (5)
6.	Total Sales Tax (Upon Which No Finance Charge is Assessed)	\$ _____ (6)
7.	<b>Amount Financed</b> (5+6)	\$ _____ (7)
	<b>Finance Charge</b> (Not Assessed Upon Sales Tax)	\$ _____

[Optional caption: Seller will pay taxes, title fee, license and registration fees, and part of the inspection program replacement fee to government agencies. Seller will retain the documentary fee and the deputy service fee. Seller may also retain part or all of the emissions inspection fee, insurance, service contracts, and other charges.]

[Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company."]

Figure: 7 TAC §84.809(b)

**MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT**

(Optional: DATE \_\_\_\_\_)  
 BUYER \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 PHONE \_\_\_\_\_

SELLER/CREDITOR \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 PHONE \_\_\_\_\_

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

**PROMISE TO PAY**

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

**MOTOR VEHICLE IDENTIFICATION**

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	<input type="checkbox"/> New <input type="checkbox"/> Demonstrator <input type="checkbox"/> Factory Official/Executive <input type="checkbox"/> Used	USE FOR WHICH PURCHASED
							<input type="checkbox"/> PERSONAL, FAMILY OR HOUSEHOLD <input type="checkbox"/> BUSINESS OR COMMERCIAL <input type="checkbox"/> AGRICULTURAL

Trade-in: Year \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_ VIN \_\_\_\_\_ License No. \_\_\_\_\_

<p><b>ANNUAL PERCENTAGE RATE</b> The cost of my credit as a yearly rate.</p> <p style="text-align: right;">%</p>	<p><b>FINANCE CHARGE</b> The dollar amount the credit will cost me.</p> <p style="text-align: right;">\$</p>	<p><b>Amount Financed</b> The amount of credit provided to me or on my behalf.</p> <p style="text-align: right;">\$</p>	<p><b>Total of Payments</b> The amount I will have paid after I have made all payments as scheduled.</p> <p style="text-align: right;">\$</p>	<p><b>Total Sale Price</b> The total cost of my purchase on credit, including down payment of</p> <p style="text-align: right;">\$ _____</p>
<b>My Payment Schedule will be:</b>				
<u>Number of Payments</u>	<u>Amount of Payments</u>	<u>When Payments Are Due</u>		

**Security:** You will have a security interest in the motor vehicle being purchased.

**Late Charge:** [Sum of the periodic balances method:] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of \_\_\_\_% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of \_\_\_\_% of the scheduled payment. [Scheduled installment earnings or true daily earnings method:] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of \_\_\_\_% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of \_\_\_\_% of the scheduled payment.

**Prepayment:** [True daily earnings method:] If I pay all that I owe early, I will not have to pay a penalty. [Sum of the periodic balances or scheduled installment earnings method:] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

**Additional information:** I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

## ITEMIZATION OF AMOUNT FINANCED

1.	Cash price [Optional additional description: "(including any accessories, services, and taxes)"]	\$ _____ (1)
2.	Downpayment = [If netting add: (if negative, enter "0" and see Line 4.A. below)] Gross trade-in <span style="float: right;">\$ _____</span> - payoff by Seller <span style="float: right;">\$ _____</span> = net trade-in <span style="float: right;">\$ _____</span> [If not netting add: (if negative enter "0" and see Line 4.A. below)] + cash <span style="float: right;">\$ _____</span> + Mfrs. Rebate <span style="float: right;">\$ _____</span> + other (describe) _____ <span style="float: right;">\$ _____</span> Total downpayment <span style="float: right;">\$ _____ (2)</span>	
3.	Unpaid balance of cash price (1 minus 2)	\$ _____ (3)
4.	Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):	
A.	Net trade-in payoff [Alternative caption: "prior credit or lease balance"] to _____ <span style="float: right;">\$ _____</span>	
B.	Cost of physical damage insurance paid to insurance company <span style="float: right;">\$ _____</span>	
C.	Cost of optional coverages with physical damage insurance paid to insurance company <span style="float: right;">\$ _____</span>	
D.	Cost of optional credit insurance paid to insurance company or companies Life <span style="float: right;">\$ _____</span> Disability <span style="float: right;">\$ _____</span>	
E.	Debt cancellation agreement fee paid to the Seller <span style="float: right;">\$ _____</span>	
F.	Official fees paid to government agencies <span style="float: right;">\$ _____</span>	
G.	Dealer's inventory tax [Optional addition: (if not included in cash price)] <span style="float: right;">\$ _____</span>	
H.	Sales tax [Optional addition: (if not included in cash price)] <span style="float: right;">\$ _____</span>	
I.	Other taxes [Optional addition: (if not included in cash price)] <span style="float: right;">\$ _____</span>	
J.	Government license and registration fees <span style="float: right;">\$ _____</span>	
K.	Government certificate of title fee <span style="float: right;">\$ _____</span>	
L.	Government vehicle inspection program replacement fee <span style="float: right;">\$ _____</span>	
M.	Vehicle emissions inspection fee <span style="float: right;">\$ _____</span>	
N.	Deputy service fee paid to dealer <span style="float: right;">\$ _____</span>	
O.	<b>Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [Option to insert Spanish translation of disclosure here.]</b> <span style="float: right;">\$ _____</span>	
P.	Other charges (Seller must identify who is paid and describe purpose) to _____ for _____ <span style="float: right;">\$ _____</span> to _____ for _____ <span style="float: right;">\$ _____</span> to _____ for _____ <span style="float: right;">\$ _____</span>	
	Total other charges and amounts paid to others on my behalf	\$ _____ (4)
5.	<b>Amount Financed</b> (3 + 4)	\$ _____ (5)

[Optional caption: Seller will pay taxes, title fee, license and registration fees, and the inspection program replacement fee to government agencies. Seller will retain the documentary fee and the deputy service fee. Seller may also retain part or all of the emissions inspection fee, insurance, service contracts, and other charges.]

[Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company."]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	DATE DUE

**MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE**

**PROPERTY INSURANCE:** I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. The maximum deductible is \$ \_\_\_\_\_. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for creditors who finance physical damage insurance. Creditors who do not routinely finance physical damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	_____	<input type="checkbox"/> \$ _____
Comprehensive	_____	<input type="checkbox"/> \$ _____
Fire, Theft, and Combined Additional Coverage	_____	<input type="checkbox"/> \$ _____
Other	_____	<input type="checkbox"/> \$ _____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial \_\_\_\_\_ month term are itemized below. [Note: Alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.808(12).]

\$ \_\_\_\_\_ Towing and Labor Costs Reimbursement       \$ \_\_\_\_\_ Rental Reimbursement  
 \$ \_\_\_\_\_ Other: \_\_\_\_\_

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES AND DEBT CANCELLATION AGREEMENT**

Optional insurance coverages and debt cancellation agreement. The granting of credit will not be dependent on the purchase of either the insurance coverages or the debt cancellation agreement described below. It will not be provided unless I sign and agree to pay the extra cost. [At creditor's option, the following may be added:] The credit approval process will not be affected by whether or not I buy these insurance coverages or the debt cancellation agreement. [Note: If this form is used for commercial transactions, a creditor has the option to bold the language in the preceding paragraph.]

Coverage	Term in Months	Premium or Fee
GAP*	_____	<input type="checkbox"/> \$ _____
Invol. Unemployment	_____	<input type="checkbox"/> \$ _____
Debt cancellation agreement**	_____	\$ _____
Liability Insurance	_____	<input type="checkbox"/> \$ _____
	\$ _____ per person	\$ _____ property damage
	\$ _____ per accident	

\*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

\*\*YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT. I can cancel the debt cancellation agreement without charge for a period of 30 days from the date of this contract, or for the period stated in the debt cancellation agreement, whichever period ends later.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. A debt cancellation agreement is not insurance and is regulated by the Office of Consumer Credit Commissioner.

For the premiums or fees included above, I want the related optional coverages and debt cancellation agreement.

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

**MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE**

*Optional credit life and credit disability insurance.* Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. **[At creditor's option, the following may be added:]** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Credit Life, one buyer \$ \_\_\_\_\_  Credit Life, both buyers \$ \_\_\_\_\_ Term \_\_\_\_\_  
 Credit Disability, one buyer \$ \_\_\_\_\_  Credit Disability, both buyers \$ \_\_\_\_\_ Term \_\_\_\_\_

**[Optional additional sentence for balloon payment contracts:]** Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first \_\_\_\_ payments and does not cover the last scheduled payment. **[Optional additional language for true daily earnings method contracts:]** Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Co-Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]**

**LIABILITY INSURANCE**

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

\_\_\_\_\_ Buyer \_\_\_\_\_ Co-Buyer

**HOW YOU FIGURE THE FINANCE CHARGE**

**[Regular transaction using sum of the periodic balances method:]** (Option A<sub>1</sub>: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A<sub>2</sub>: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$ \_\_\_\_\_ per \$100.00 per year. This rate is not the same as the Annual Percentage Rate. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of \$ \_\_\_\_\_ per \$100.00 per year. This rate is not the same as the Annual Percentage Rate.

**[True daily earnings method:]** (Option A<sub>1</sub>: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A<sub>2</sub>: Sales Tax Advance) The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

**[Scheduled installment earnings method:]** (Option A<sub>1</sub>: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A<sub>2</sub>: Sales Tax Advance) The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is \_\_\_\_%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

**CONSUMER WARNING**

**[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.**

**[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.**

**BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT**

**(OPTION A: If the buyer's signature is dated) I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.**

**(OPTION B: If the buyer's signature is not dated) I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON \_\_\_\_\_ (MO.) (DAY) (YR.)**

**(OPTION C: If the buyer's signature is not dated) I SIGNED THIS CONTRACT ON \_\_\_\_\_ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.**

**(OPTION D: If the buyer's signature is dated or not dated) I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.**

_____	_____	_____	_____
Buyer	Date	Seller	Date
_____	_____		
Co-Buyer	Date		

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

**OCCC NOTICE. For questions or complaints about this contract, contact (insert name of creditor) at (insert creditor's phone number and, at creditor's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to this contract. If a complaint or question cannot be resolved by contacting the creditor, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: [occc.texas.gov](http://occc.texas.gov). E-mail: [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov).**

**OTHER TERMS AND CONDITIONS**

**[Sum of the periodic balances method and scheduled installment earnings method:] HOW YOU CALCULATE MY FINANCE CHARGE REFUND IF I PREPAY** If I prepay in full, I may be entitled to a refund of part of the Finance Charge. **[Sum of the periodic balances method:]** You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than \$1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than \$1.00.) **[Scheduled installment earnings method:]** You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional clause for sales tax advance: You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than \$1.00.) (Optional clause for deferred sales tax: You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance subject to a finance charge as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the contract rate shown on the contract. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than \$1.00.) **[Flexible contract forms designed to accommodate alternative methods:]** You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than \$1.00.

**HOW YOU WILL APPLY MY PAYMENTS [True daily earnings method:]** You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. anything else I owe under this agreement.

**HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY** [**True daily earnings method:**] You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

**INTEREST AFTER MATURITY** [**Scheduled installment earnings or sum of the periodic balances method:**] If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

**SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS** A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

**(Paying the balloon payment under Texas Finance Code §348.123(a))** I can pay all I owe when the balloon payment is due and keep my motor vehicle.

**(Option A: Refinancing the balloon payment)** If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

**(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii))** I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

**AGREEMENT TO KEEP MOTOR VEHICLE INSURED** I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. The insurer must be authorized to do business in Texas. (Optional Provisions: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage. The maximum deductible is \$\_\_\_\_\_.)

**YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED** If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

**PHYSICAL DAMAGE INSURANCE PROCEEDS** I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

**RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES** [**True daily earnings method:**] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. [**Scheduled installment earnings method or sum of the periodic balances:**] If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

**APPLICATION OF CREDITS** Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

**TRANSFER OF RIGHTS** You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

**SECURITY INTEREST** To secure all I owe on this contract and all my promises in it, I give you a security interest in:

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

**USE AND TRANSFER OF THE MOTOR VEHICLE** I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of \$25 (\$50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

**CARE OF THE MOTOR VEHICLE** I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or

possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

**DEFAULT** I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

**LATE CHARGE** I will pay you a late charge as agreed to in this contract when it accrues.

**REPOSSESSION** If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

**MY RIGHT TO REDEEM** If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

**DISPOSITION OF THE MOTOR VEHICLE** If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. If you sell the motor vehicle in a public or private sale, you will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

**COLLECTION COSTS** If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

**CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS** This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

**YOUR RIGHT TO DEMAND PAYMENT IN FULL** If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

**IF YOU DEMAND I PAY ALL I OWE** [Sum of the periodic balances method or scheduled installment earnings method:] If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

**SERVICING AND COLLECTION CONTACT** You may try to contact me at any mailing address, e-mail address, or phone number I give you, as the law allows. You may try to contact me in writing (including mail, e-mail, and text messages) and by phone (including prerecorded or artificial voice messages and automatic telephone dialing systems).

**RETURNED CHECK FEE** I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

**INTEGRATION AND SEVERABILITY CLAUSE** This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

**LEGAL LIMITATIONS ON YOUR RIGHTS** If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

**APPLICABLE LAW** Federal law and Texas law apply to this contract.

**SELLER'S DISCLAIMER OF WARRANTIES** Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

**NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)**

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.

In this box only, the word "you" refers to the Buyer.

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation:

Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

**C.**

**Department of Savings and  
Mortgage Lending**

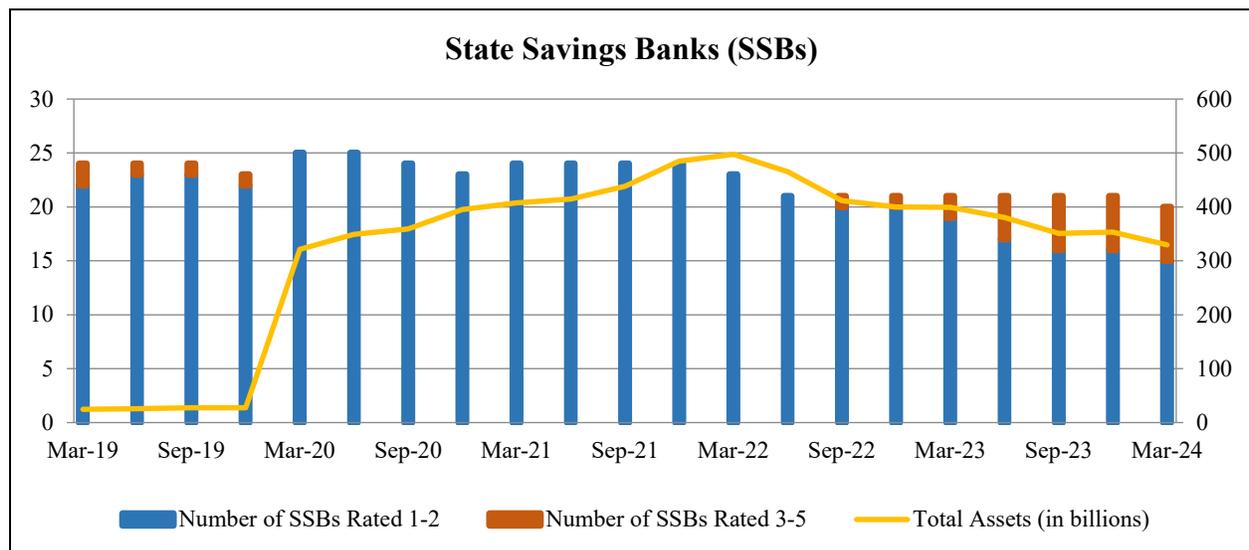
## C. Department of Savings and Mortgage Lending

### a) Thrift Regulation Division Activities

#### Industry Status

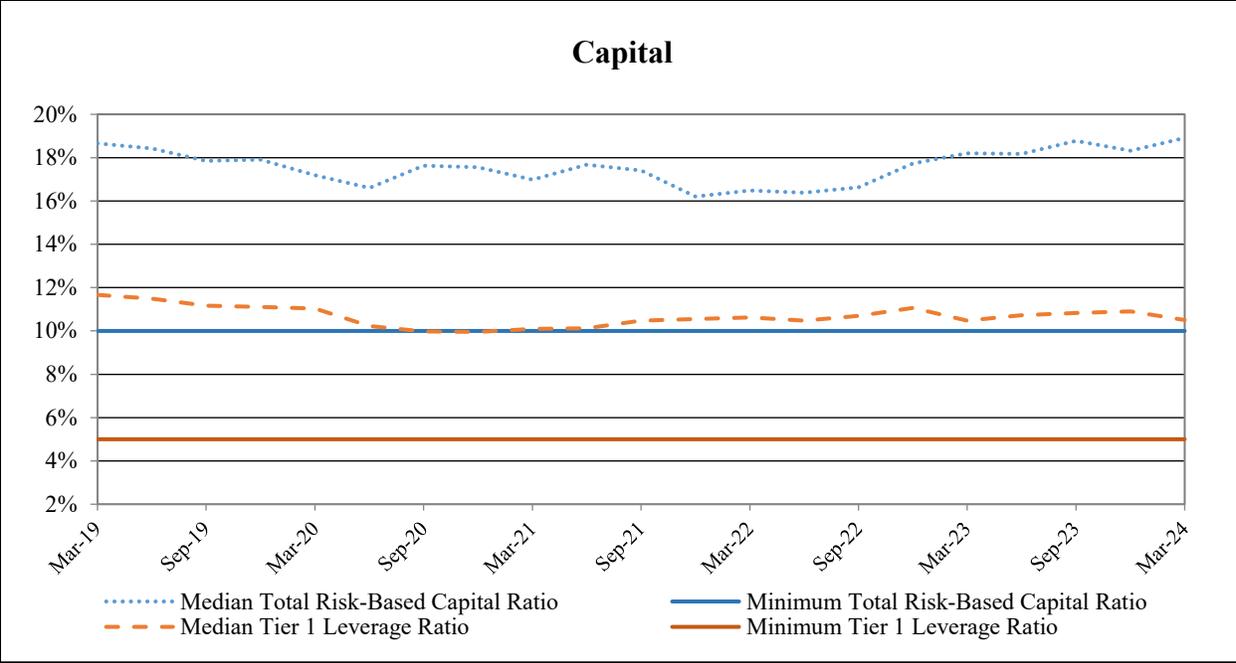
The Department continues to monitor various local, state, and national data sources to understand the risks facing the industry and individual savings banks.

The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well-rated. The industry is comprised of 20 state savings banks with assets totaling \$329.4 billion as of March 31, 2024. The industry consists of 75% of banks being well rated as of March 31, 2024 and with four informal and one formal supervisory actions are in place.

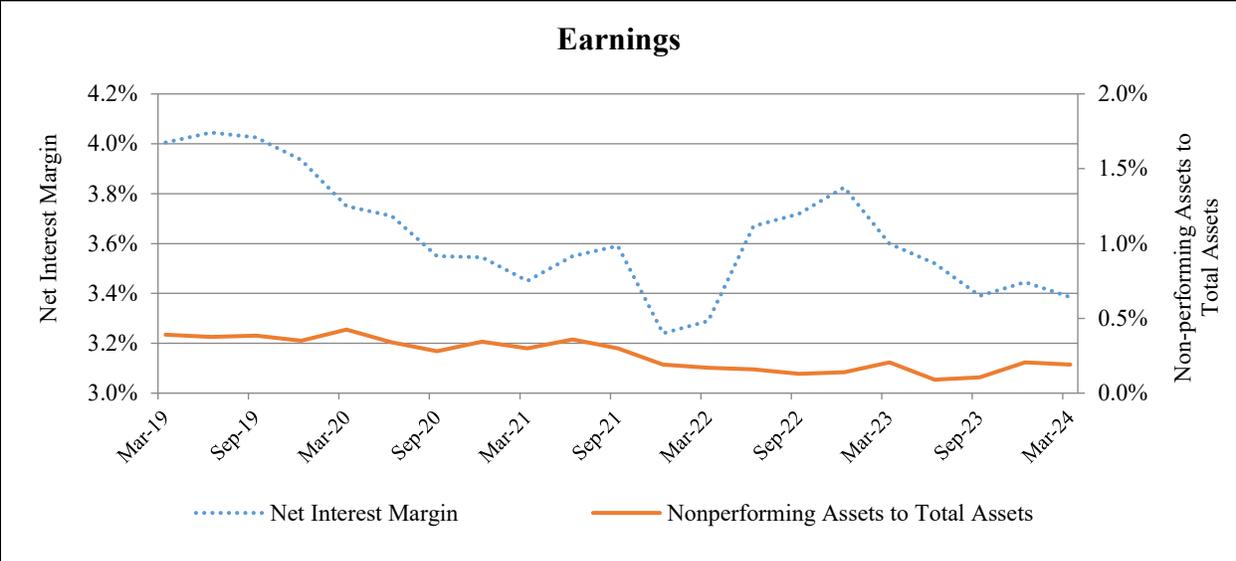


All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and national economic environment.

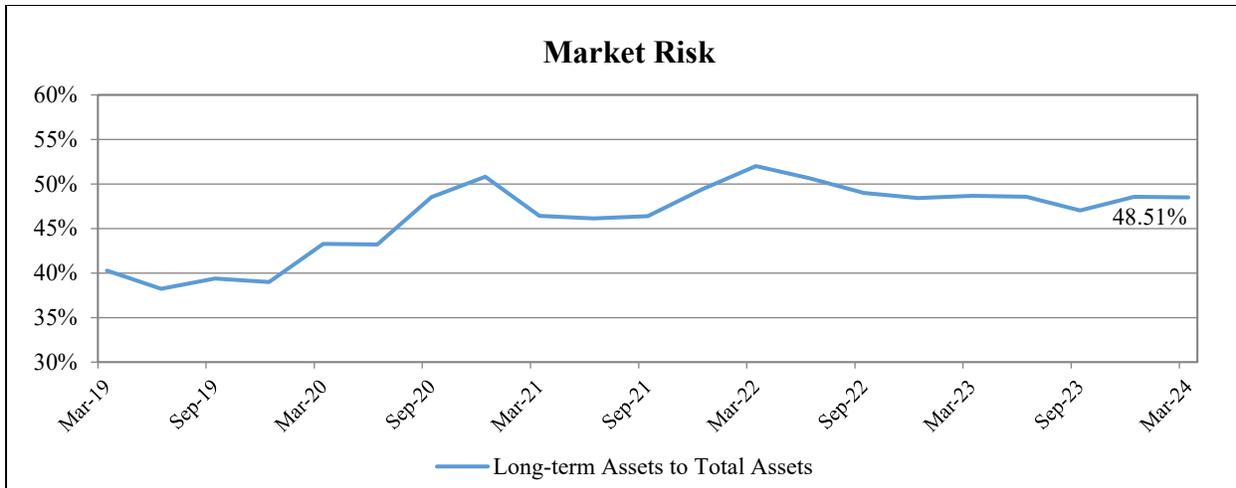
Bank capital performs several very important functions, including absorbs losses, promotes public confidence helps restrict excessive asset growth and provides protection to the depositors. Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of March 31, 2024, all SSBs remain well above regulatory capital minimums. The portfolio median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 18.91% and 10.51%, respectively.



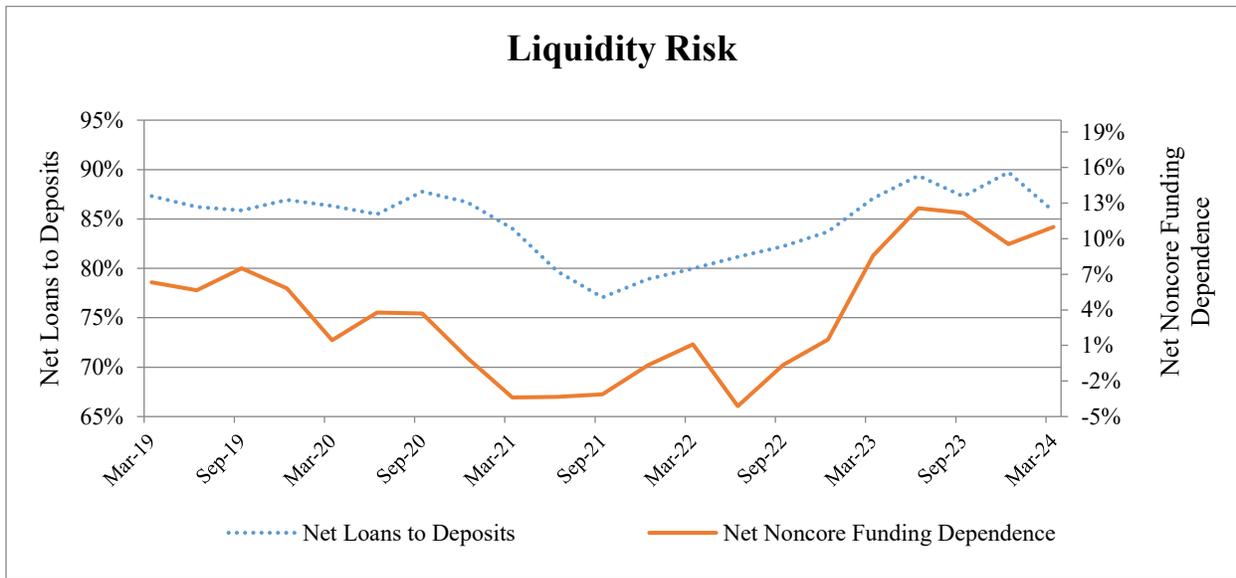
Earnings is the initial safeguard against the risk of engaging in the banking business, and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management’s strategic initiatives. The net interest or profit margin is 3.39%. Non-performing asset levels remain low at 0.19% of total assets.



Market risk primarily reflects exposures to changing interest rates over time. Long-term asset exposure can be an indicator of the degree of market risk taken by a state savings bank. As of March 31, 2024, long-term assets to total assets ratio increased to 48.51%.



Liquidity risk reflects the bank’s ability to fund assets and meet financial obligations under various scenarios, including adverse conditions. Liquidity risk is increasing. The Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies, is 10.98%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 85.76%.



**Thrift Examination Activity Report**

On-site examinations are being conducted based on a risk priority schedule.

**Thrift Supervision Activity Report**

The Thrift Supervision section continues to receive and process various requests for approval, including branch, subsidiary, and holding company applications.

**Outreach and Training**

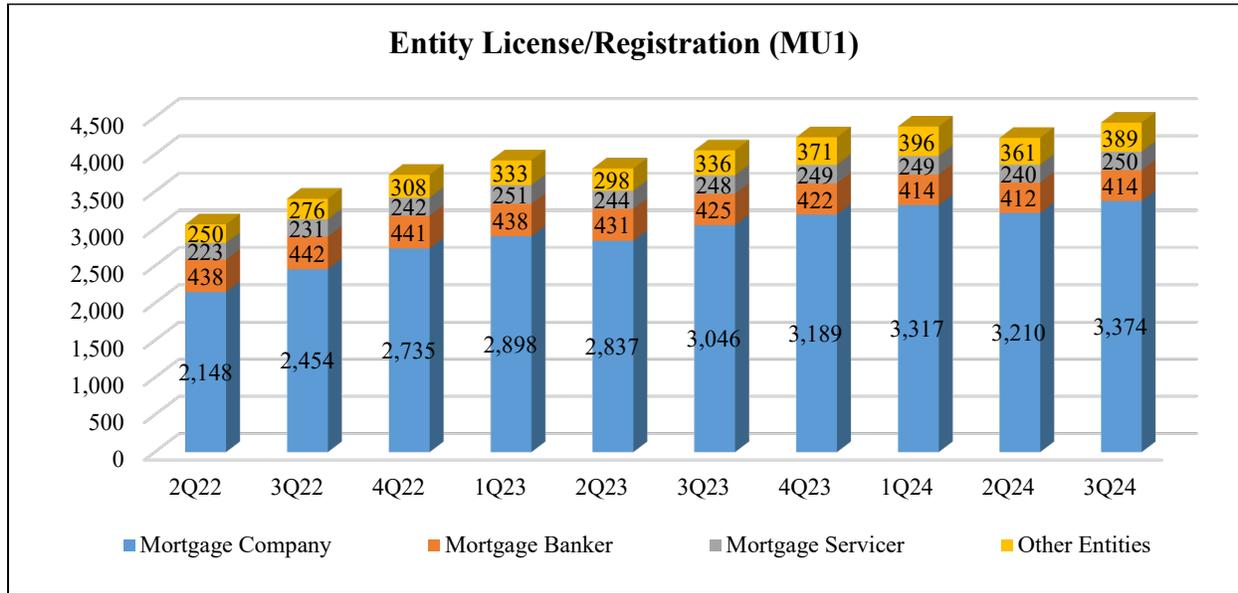
Texas Bankers Association 139<sup>th</sup> Annual Convention - Retta/Trotti

**b) Mortgage Regulation Division Activities**

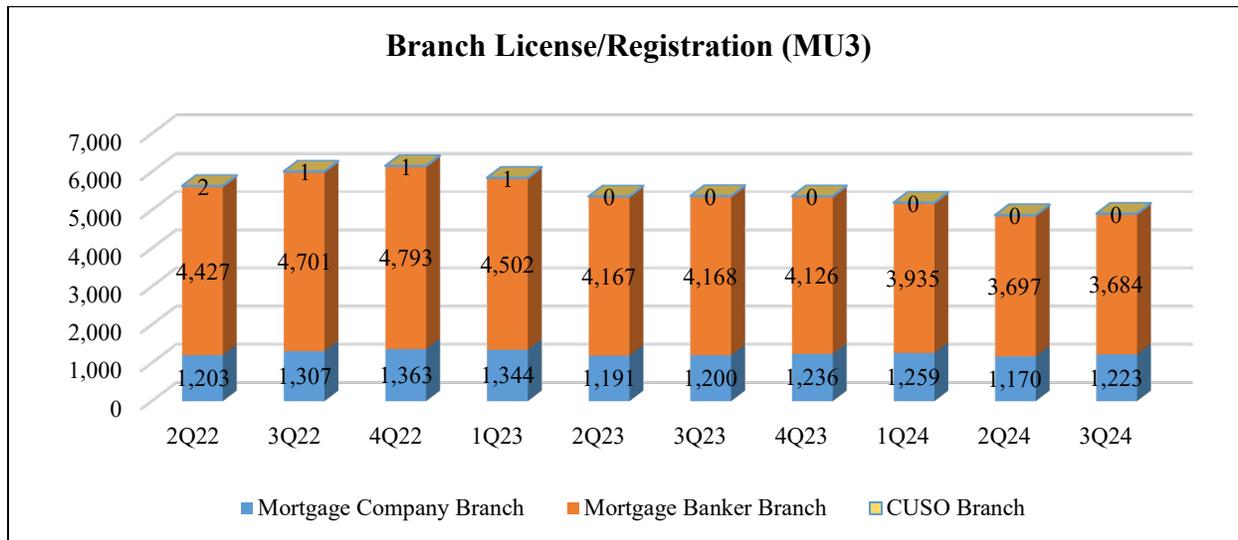
**Industry Status**

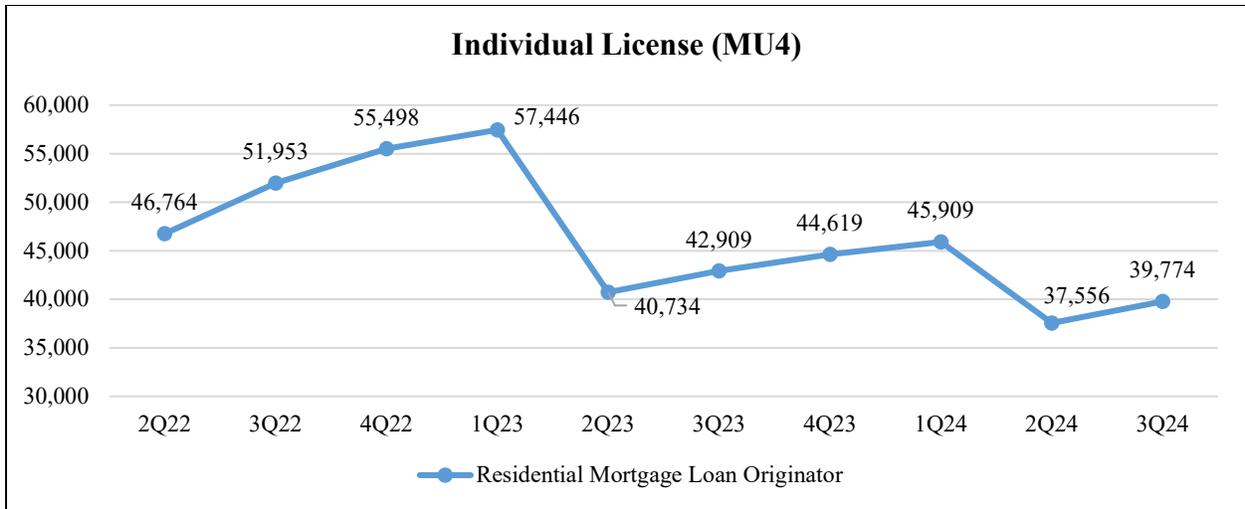
The Department continues to monitor various local, state, and national sources to identify issues impacting the mortgage industry, including interest rate changes, housing supply and demand, availability and affordability of homeowner’s and flood insurance, mortgage-backed securities (MBSs) market, and trends in homeownership.

The charts below reflect historical information regarding the number of licenses and registrations in an approved status.



Other entities include an Auxiliary Mortgage Loan Activity Company, a Credit Union Subsidiary Organization (CUSO), a Financial Services Company, and an Independent Contractor Processor/Underwriter Company.



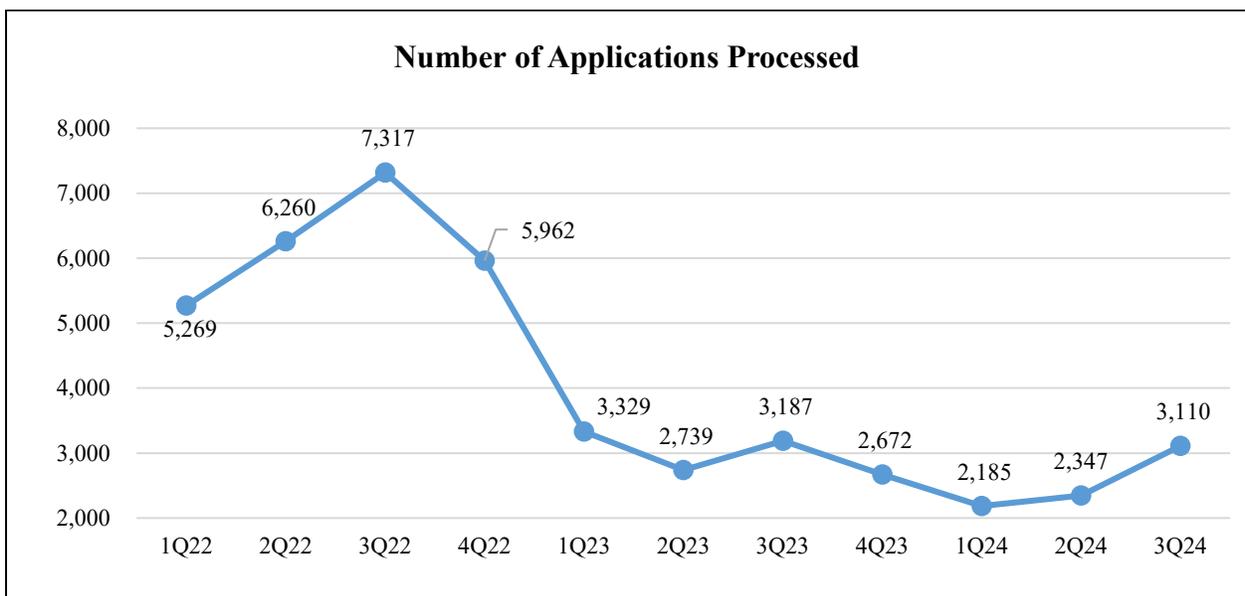


The most notable elements from the three graphs shown above are the growth in licensed mortgage companies and the decline in the number of licensed residential mortgage loan originators over the past few years. Over the past ten quarters, licensed mortgage companies have increased 57.07% (2,148 to 3,374). Although the number of licensed residential mortgage loan originators has declined over the past ten fiscal quarters, the current number still exceeds the department's historical average.

### **Licensing Activity Report**

For the third quarter of FY2024, the Mortgage Licensing section processed 3,110 applications and approved 2,761 applications, including 241 mortgage entities, 453 branch offices, and 2,067 residential mortgage loan originators. The remaining 349 applications were either withdrawn by the applicant or denied by the Department.

The chart below shows the historical information on the total number of applications processed by the Department.



According to NMLS Data Analytics, for the third quarter of FY2024, the Mortgage Licensing section processed 26,545 license amendments, 1,585 credit report reviews, 5,854 sponsorship removals, and 4,382 sponsorship requests from March 1, 2024, to May 31, 2024.

### **Mortgage Examination Activity Report**

For the third quarter of FY2024, the Mortgage Examination section issued 105 examinations covering 2,338 individual licensees. Compared to the same reporting period in FY2023, the overall number of examinations issued (105 versus 127) decreased by 20.95%; however, the number of individual licensees examined increased by 20.27% (2,338 versus 1,944).

The number of examinations issued was impacted by numerous factors, including:

- the training for, implementation and adoption of the State Examination System (a secure online nationwide examination platform or system developed by CSBS and state regulators that connects agencies and companies in the examination process);
- the departure of two trained Financial Examiners (turnover);
- the attendance of the majority of the examination staff for training at the American Association of Residential Mortgage Regulators (AARMR) Spring 2024 Examiner Training School on topics related to loan originator compensation, advertising, and marketing service agreements;
- the training and development of newly hired examiners (7 new examiners were employed in the past two years, which comprises 43.75% of the current mortgage examination staff);
- the inability of the recently licensed mortgage companies to provide adequate records, including policies and procedures for the examination; and
- the inclusion of additional compliance elements to the examination process for information security plans, home equity lines of credit, wrap mortgage loans, and other items.

The ever-increasing number of licensed mortgage companies is also impacting the timeliness of the examinations as more newly licensed mortgage companies have reached sufficient production. To address the timeliness of the examinations, two changes were implemented – (1) the timing of the initial examination was increased from 12 to 18 months, and (2) a new Initial Compliance Review process was implemented for the first initial examination.

The examinations revealed violations related to unlicensed independent loan processors, unlicensed residential mortgage loan originators, inadequate recordkeeping, failure to maintain adequate policies and procedures (e.g., Anti-Money Laundering Programs, Identity Theft Prevention Programs, Information Security Program, and Remote Work Policies), non-compliant social media advertisements, and non-compliant Conditional Pre-Qualification and Conditional Approval Letters.

The Department is participating in several multi-state examinations, including a joint origination and servicing examination with the Office of Consumer Credit Commissioner.

### **Outreach and Training**

On July 10, 2024, Commissioner Retta and Director of Mortgage Regulation Purce provided an in-person presentation to the North Texas Association of Mortgage Professionals (NTXAMP). The presentation discussed: (1) the agency priorities for FY2025, (2) the mortgage grant fund, (3) the current and historical licensing trends, (4) the current and historical examination trends, (5) common examination findings, (6) loan originator compensation restrictions and limitations, (7) the recent pre-comment draft version of the rules, and (8) cybersecurity issues.

### **c) Operations Division Activities**

#### **Accounting, Budget, and Financial Reporting**

Staff has developed the budget for fiscal year 2025 and closed out the third quarter of fiscal year 2024. The related documents are located elsewhere in the packet.

The FY24 year-end and FY25 preparatory CAPPs and financial reporting activities are in progress.

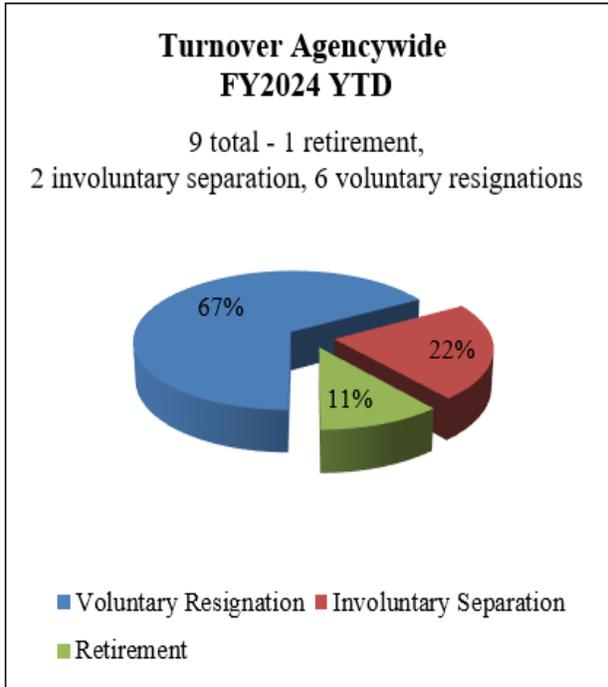
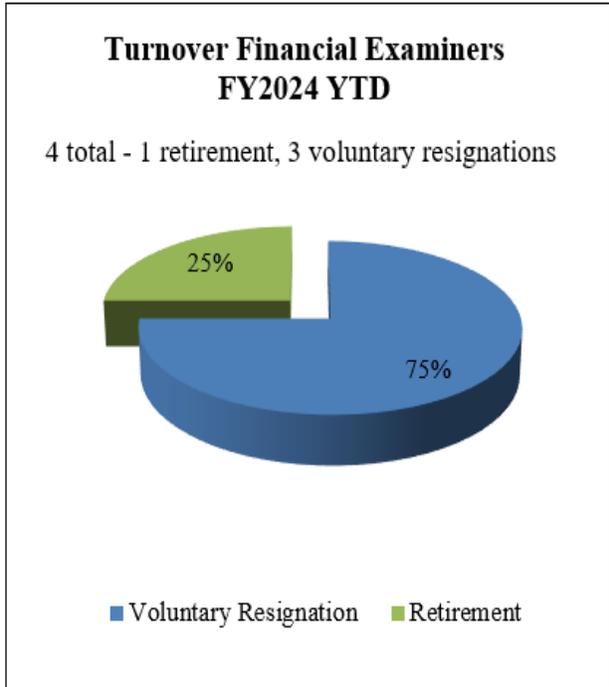
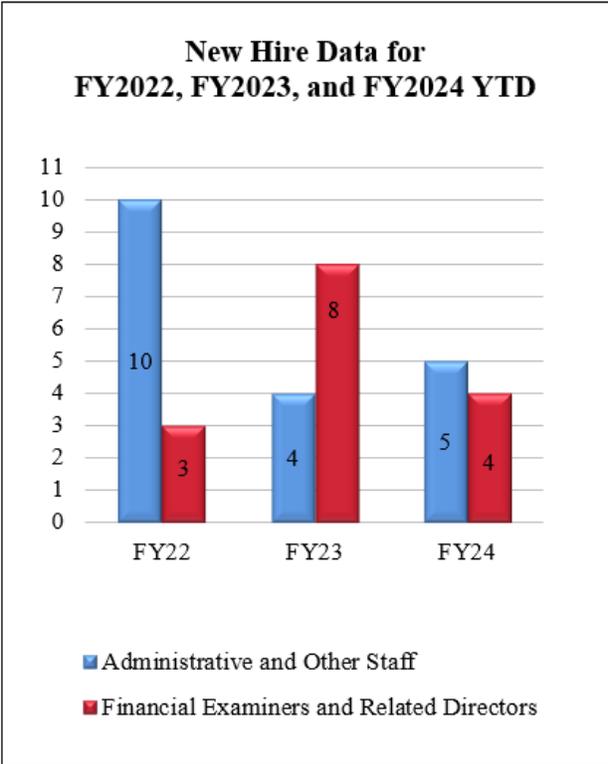
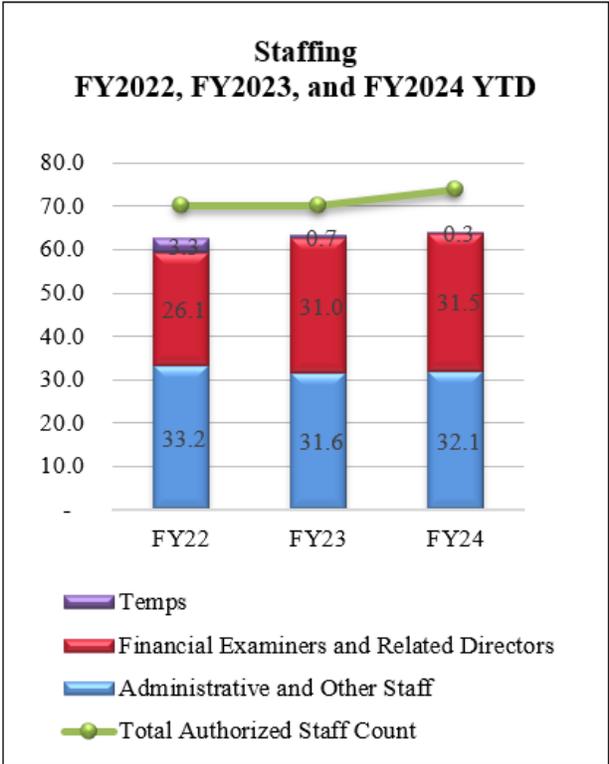
#### **Audit**

The Department underwent a Post-Payment and Procurement Audit conducted by the Comptroller of Public Accounts. The final report is pending. The Mortgage Grant Fund audit conducted by Garza/Gonzales and Associates has been completed and the report is located elsewhere in the packet.

#### **Human Resources**

As of July 31, 2024, the Department was staffed at 62 regular full-time employees and one temporary worker. During July, four employees separated from the Department – an Investigator, a Technical Writer, an Administrative Assistant and a Mortgage Examiner.

**Staffing Charts as of July 31, 2024**



Below is the status of the Department’s vacancies:

Vacancy Status	
Financial Examiner I-II – Mortgage Examinations - 2	Position Filled
Financial Examiner I – Thrift Examinations - 2	Collecting and reviewing applications Interviewing applicants
Financial Examiner I-II -Thrift Examinations (Information Technology)	
Financial Examiner VI/VII– Thrift Examinations - 3	
Financial Examiner V – Thrift Examinations (Loan Review) - 2	
Program Specialist II – Executive	
Investigator II-IV – Mortgage Licensing	
Financial Examiner I-II – Mortgage Examinations - 2	

**Outreach and Training**

The next agencywide meeting and training is scheduled for August 29, 2024.

**Department of Savings and Mortgage Lending  
Actual Performance for Output Measures**

Type/Strategy/Measure	2024 Target	2024 Actual	2024 YTD	Percent of Annual Target
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**Output Measures-Key**

**1-1-1 Thrift Safety and Soundness**

**1. Number of State Chartered Savings Institution Examinations Performed**

Quarter 1	19	6	6	31.58%	*
Quarter 2	19	2	8	42.11%	*
Quarter 3	19	4	12	63.16%	*

\* The Department examines state chartered savings banks jointly with the FDIC and FRB, based on a priority schedule. The results for this measure may fluctuate between quarters due to the timing of individual examinations.

**2-1-1 Mortgage Regulation**

**1. Number of Applications Processed**

Quarter 1	9,350	2,185	2,185	23.37%	
Quarter 2	9,350	2,347	4,532	48.47%	
Quarter 3	9,350	3,110	7,642	81.73%	*

\* The number of applications received was higher than anticipated; therefore, the number of applications processed was affected in the same manner.

**2. Number of Examination Reports Issued**

Quarter 1	575	88	88	15.30%	
Quarter 2	575	93	181	31.48%	*
Quarter 3	575	105	286	49.74%	

{explanation - if needed}

\* The transition of the examination process to the State Examination System (SES) platform and examiner turnover has impacted production.

**3-1-1 Consumer Responsiveness**

**1. Number of Complaints Closed**

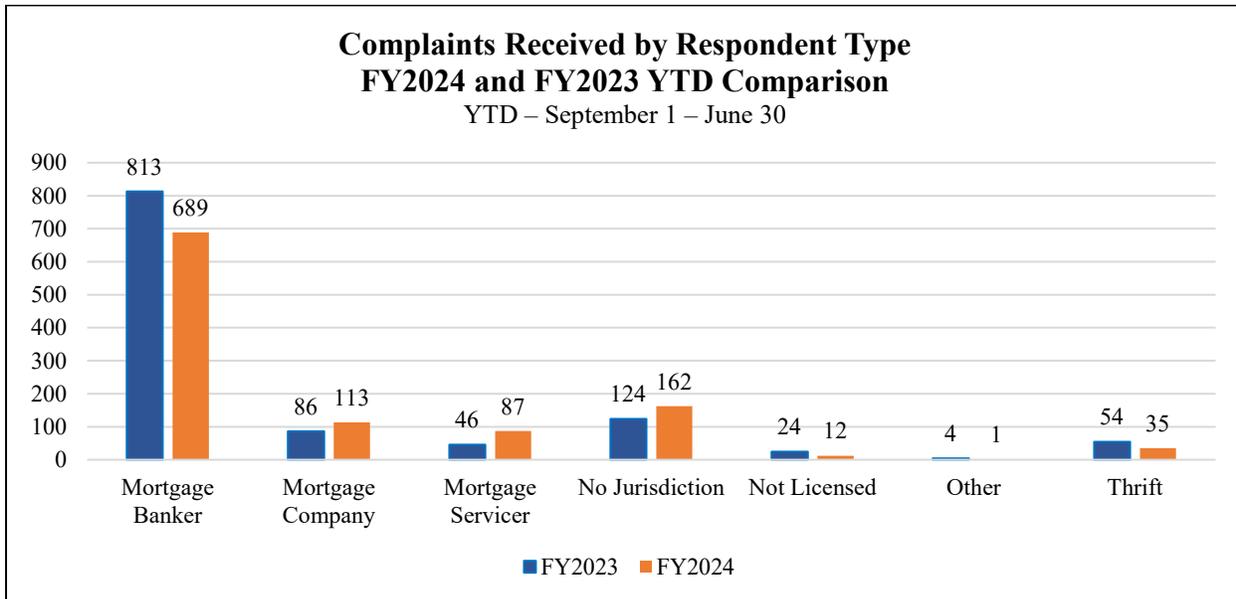
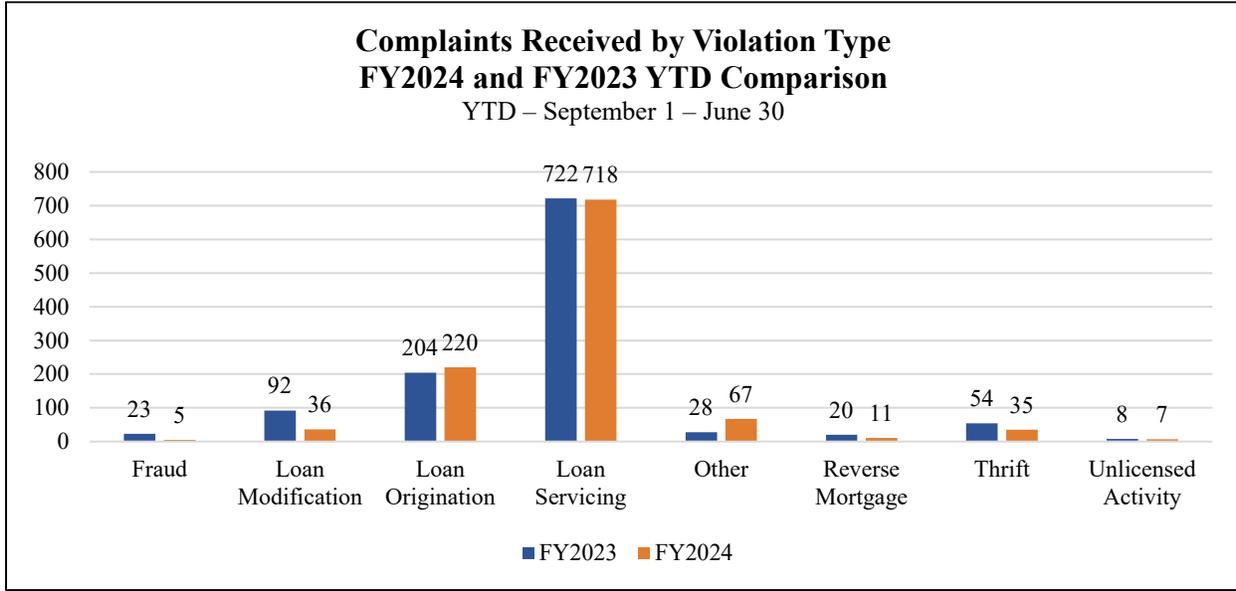
Quarter 1	1,350	329	329	24.37%	
Quarter 2	1,350	321	650	48.15%	
Quarter 3	1,350	358	1,008	74.67%	

\* Varies by 5% or more from the target

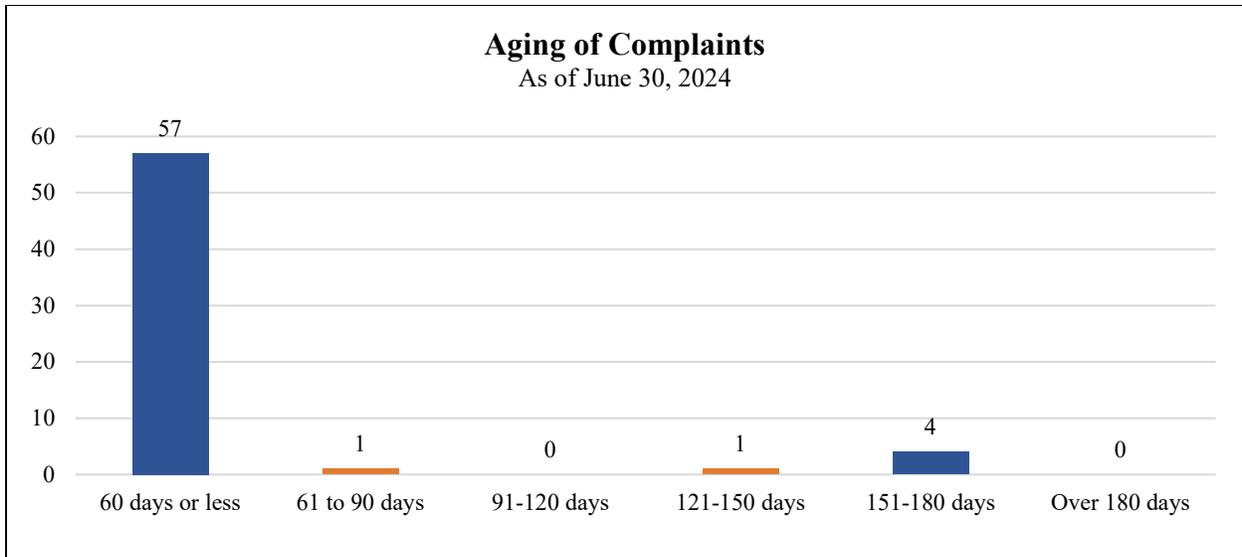
**d) Legal Division Activities, including Consumer Complaints and Gift Reporting**

**Consumer Complaints Activity Report**

**Complaints Received** – For the fiscal year to date (September 1, 2023 – June 30, 2024), SML received 1,099 complaints, compared to 1,151 received during the same period in FY2023 - a 4.5% decrease.



**Aging of Open Complaints** – As of June 30, 2024, there were 63 open complaint files. Complaint aging is acceptable with 92% of complaints aged 120 days or less.



Closed Complaints	FY2024			
	1 <sup>st</sup> Qtr	2 <sup>nd</sup> Qtr	3 <sup>rd</sup> Qtr	4 <sup>th</sup> Qtr
<b>Servicing Complaints</b>				
Number of Servicing Complaints Closed	211	208	245	
Average Number of Days to Close a Complaint	27	22	16	
Percentage of Complaints Closed Within 90 Days	90%	94%	99.5%	
<b>Non-Servicing Complaints</b>				
Number of Non-Servicing Complaints Closed	118	113	113	
Average Number of Days to Close a Complaint	24	23	19	
Percentage of Complaints Closed Within 90 Days	92%	94%	96%	
<b>Total</b>	<b>329</b>	<b>321</b>	<b>358</b>	

#### **Legal and Enforcement Activity Report**

Mortgage Enforcement Actions	FY2024			
	1 <sup>st</sup> Qtr	2 <sup>nd</sup> Qtr	3 <sup>rd</sup> Qtr	4 <sup>th</sup> Qtr
Advisory Letter	10	4	0	
Agreed Order to Take Affirmative Action	0	1	0	
Final Order for Violation of Cease and Desist	0	0	1	
Notice of Suspension/Revocation	1	0	4	
Order to Cease and Desist	3	7	1	
Order to Take Affirmative Action	2	0	0	
<b>Total</b>	<b>16</b>	<b>12</b>	<b>6</b>	

Recovery Claim Applications Received	FY2024			
	1 <sup>st</sup> Qtr	2 <sup>nd</sup> Qtr	3 <sup>rd</sup> Qtr	4 <sup>th</sup> Qtr
	1	0	5	

<b>Status of Pending Recovery Claim Applications as of June 30, 2024</b>	
Pending Investigation	0
Pending Preliminary Determination Letter	10
Preliminary Determination Letter Issued, Pending Opportunity to Appeal	0
On Appeal	0
Open to Facilitate Resolution by the Parties	0
<b>Total</b>	<b>10</b>

<b>Closed Recovery Claim Files</b>	<b>FY2024</b>			
	<b>1<sup>st</sup> Qtr</b>	<b>2<sup>nd</sup> Qtr</b>	<b>3<sup>rd</sup> Qtr</b>	<b>4<sup>th</sup> Qtr</b>
Granted	0	1	2	
Denied	0	0	0	
Resolved by the Parties	0	0	0	
Claim Withdrawn	0	1	0	
<b>Total</b>	<b>0</b>	<b>2</b>	<b>2</b>	

**Contested Cases at the State Office of Administrative Hearings (SOAH)**

SML does not have any cases pending at SOAH.

**Litigation**

*Tim Schoenbauer v. Texas Department of Savings and Mortgage Lending (Cause No. JPC-23-02334-32; in the Justice Court, Precinct 3, Place 2, Dallas, County, Texas)* In this lawsuit, Mr. Schoenbauer seeks to compel SML to take action that would, in turn, cause the insurer on a lender-placed homeowner’s insurance policy (a policy that insures Mr. Schoenbauer’s home and protects the mortgagee against loss) to add Mr. Schoenbauer as an insured. On May 5, 2023, Mr. Schoenbauer filed his original petition. On June 16, 2023, SML, represented by the Office of the Attorney General, filed its original answer. On June 29, 2023, Mr. Schoenbauer filed his response to SML’s original answer. On May 17, 2024, SML filed its plea to the jurisdiction seeking to dismiss the case for lack of jurisdiction. A hearing on the plea to the jurisdiction is set for August 9, 2024.

<b>Public Information Requests</b>	<b>FY2024</b>			
	<b>1<sup>st</sup> Qtr</b>	<b>2<sup>nd</sup> Qtr</b>	<b>3<sup>rd</sup> Qtr</b>	<b>4<sup>th</sup> Qtr</b>
Requests Received	39	44	46	

<b>SML Future Rule Activity</b>		
<b>Rule</b>	<b>Rulemaking Action</b>	<b>Projected Date for Presentation</b>
Chapter 55, Residential Mortgage Loan Originators	Adoption of New rules Resulting from Rule Review	October 2024
Chapter 56, Residential Mortgage Loan Companies	Adoption of New rules Resulting from Rule Review	October 2024
Chapter 57, Mortgage Bankers	Adoption of New rules Resulting from Rule Review	October 2024
Chapter 58, Residential Mortgage Loan Servicers	Adoption of New rules Resulting from Rule Review	October 2024
Chapter 59, Wrap Mortgage Loans	Adoption of New rules Resulting from Rule Review	October 2024
Chapter 78, Wrap Mortgage Loans	Adoption of Repeals Resulting from Rule Review	October 2024
Chapter 79, Residential Mortgage Loan Servicers	Adoption of Repeals Resulting from Rule Review	October 2024
Chapter 80, Residential Mortgage Loan Companies	Adoption of Repeals Resulting from Rule Review	October 2024
Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators	Adoption of Repeals Resulting from Rule Review	October 2024
Chapter 51, Department Administration	Rule Review	FY2025

### **Gift Reporting**

During May 19-21, 2024, Senior Review Examiner Justin Accola and Manager of Licensing Chris Osuna attended the Texas Mortgage Bankers Association Annual Conference. Registration fees totaling \$1,790 were waived.

On May 21, 2024, Commissioner Retta and Director of Mortgage Regulation William Purce attended the Greater Houston Association of Mortgage Professionals Luncheon. Registration fees totaling \$90 were waived.

**e) Legislative Activities**

The Legislature is holding committee hearings concerning the 88<sup>th</sup> Legislature's interim charges. The 89<sup>th</sup> Legislature convenes January 14, 2025. The prefiling of bills starts November 11, 2024.

**2. Discussion of and Possible Action Regarding Anticipated and Pending Litigation**

**Anticipated Litigation**

None

**Pending Litigation**

*Tim Schoenbauer v. Texas Department of Savings and Mortgage Lending (Cause No. JPC-23-02334-32; in the Justice Court, Precinct 3, Place 2, Dallas, County, Texas)*

**2. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans, Resulting from Rule Review**

**PURPOSE:** Pursuant to Texas Government Code §2001.039, SML has completed its review of 7 TAC Chapter 78 and believes that the reasons for initially adopting the rules in that chapter continue to exist.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission readopt 7 TAC Chapter 78 following rule review, because the reasons for the rules continue to exist.

**RECOMMENDED MOTION:** I move that the Finance Commission readopt 7 TAC Chapter 78 following rule review.

Department of Savings and Mortgage Lending

**Title 7, Part 4**

The Department of Savings and Mortgage Lending (SML) has completed its review of 7 TAC, Part 4, Chapter 78, Wrap Mortgage Loans (§§78.1 - 78.3, 78.100 - 78.102, 78.200, 78.201, 78.300 - 78.303, and 78.400 - 78.403).

The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1517). No comments were received in response to the notice.

The rules in 7 TAC Chapter 78 were adopted by the Finance Commission of Texas (commission) on behalf of SML.

As a result of the rule review conducted by SML, the commission has determined that certain changes to the rules are appropriate. Those proposed rule changes are published in the Proposed Rules section in this issue of the *Texas Register*.

The commission, after considering the results of the rule review conducted by SML, finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 7 TAC Chapter 78.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 79, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review**

**PURPOSE:** Pursuant to Texas Government Code §2001.039, SML has completed its review of 7 TAC Chapter 79 and believes that the reasons for initially adopting the rules in that chapter continue to exist.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission readopt 7 TAC Chapter 79 following rule review, because the reasons for the rules continue to exist.

**RECOMMENDED MOTION:** I move that the Finance Commission readopt 7 TAC Chapter 79 following rule review.

Department of Savings and Mortgage Lending

**Title 7, Part 4**

The Department of Savings and Mortgage Lending (SML) has completed its review of 7 TAC, Part 4, Chapter 79, Residential Mortgage Loan Servicers (§§79.1 - 79.20, 79.30, 79.40, and 79.50).

The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1517). No comments were received in response to the notice.

The rules in 7 TAC Chapter 79 were adopted by the Finance Commission of Texas (commission) on behalf of SML.

As a result of the rule review conducted by SML, the commission has determined that certain changes to the rules are appropriate. Those proposed rule changes are published in the Proposed Rules section in this issue of the *Texas Register*.

The commission, after considering the results of the rule review conducted by SML, finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 7 TAC Chapter 79.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**4. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 80, Residential Mortgage Loan Companies, Resulting from Rule Review**

**PURPOSE:** Pursuant to Texas Government Code §2001.039, SML has completed its review of 7 TAC Chapter 80 and believes that the reasons for initially adopting the rules in that chapter continue to exist.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission readopt 7 TAC Chapter 80 following rule review, because the reasons for the rules continue to exist.

**RECOMMENDED MOTION:** I move that the Finance Commission readopt 7 TAC Chapter 80 following rule review.

Department of Savings and Mortgage Lending

**Title 7, Part 4**

The Department of Savings and Mortgage Lending (SML) has completed its review of 7 TAC, Part 4, Chapter 80, Residential Mortgage Loan Companies (§§80.1 - 80.5, 81.100 - 80.102, 80.105 - 80.107, 80.200 - 80.206, and 80.300 - 80.302).

The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1517). No comments were received in response to the notice.

The rules in 7 TAC Chapter 80 were adopted by the Finance Commission of Texas (commission) on behalf of SML.

As a result of the rule review conducted by SML, the commission has determined that certain changes to the rules are appropriate. Those proposed rule changes are published in the Proposed Rules section in this issue of the *Texas Register*.

The commission, after considering the results of the rule review conducted by SML, finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 7 TAC Chapter 80.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

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**5. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators, Resulting from Rule Review**

**PURPOSE:** Pursuant to Texas Government Code §2001.039, SML has completed its review of 7 TAC Chapter 81 and believes that the reasons for initially adopting the rules in such chapter continue to exist.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission readopt 7 TAC Chapter 81 following rule review, because the reasons for the rules continue to exist.

**RECOMMENDED MOTION:** I move that the Finance Commission readopt 7 TAC Chapter 81 following rule review.

Department of Savings and Mortgage Lending

**Title 7, Part 4**

The Department of Savings and Mortgage Lending (SML) has completed its review of 7 TAC, Part 4, Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators (§§81.1 - 81.5, 81.100 - 81.111, 81.200 - 81.206, and 81.300 - 81.302).

The review was conducted in accordance with Government Code §2001.039. Notice of the review was published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1517). No comments were received in response to the notice.

The rules in 7 TAC Chapter 81 were adopted by the Finance Commission of Texas (commission) on behalf of SML.

As a result of the rule review conducted by SML, the commission has determined that certain changes to the rules are appropriate. Those proposed rule changes are published in the Proposed Rules section in this issue of the *Texas Register*.

The commission, after considering the results of the rule review conducted by SML, finds that the reasons for initially adopting the rules reviewed continue to exist and readopts 7 TAC Chapter 81.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

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**6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 55, Residential Mortgage Loan Originators, Resulting from Rule Review**

**PURPOSE:** The purpose of the new rules in 7 TAC Chapter 55 is to implement changes resulting from SML's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the preamble for the rule proposal.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission approve publication of the new rules in 7 TAC Chapter 55 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve publication of the new rules in 7 TAC Chapter 55 for comment in the *Texas Register*.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 55. RESIDENTIAL MORTGAGE LOAN ORIGINATORS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes new rules in 7 TAC Chapter 55: §§55.1 - 55.6, 55.100 - 55.114, 55.200 - 55.205, 55.300 - 55.303, 55.310, and 55.311 (proposed rules).

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, affect mortgage bankers registered with SML and individual residential mortgage loan originators (originators) licensed by SML under Finance Code Chapter 157.

*Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Originator Rules from Chapter 81 to Chapter 55*

SML has determined it should reorganize its rules concerning originators by relocating the rules to Chapter 55, a vacant chapter, and devoting such chapter exclusively to rules affecting originators. The proposed rules, if adopted, would effectuate these changes.

*Changes Concerning General Provisions (Subchapter A)*

The proposed rules: in §55.2, Definitions, adopt new definitions for "E-Sign Act," "making a residential mortgage loan," "person," "SML," "State Examination System," and "trigger lead," while eliminating definitions for "Commissioner's designee," and "Department"; in §55.3, Formatting Requirements for Notices,

adopt formatting requirements for the various disclosures an originator is required to make; in §55.4, Electronic Delivery and Signature of Notices, clarify that any notice or disclosure made by an originator may be delivered and signed electronically; and, in §55.5, Computation of Time, clarify how time periods measured in calendar days are computed.

*Changes Concerning Licensing (Subchapter B)*

The proposed rules: in §55.100, Licensing Requirements, clarify when an originator license is required (including as it relates to a loan processor or underwriter who is an independent contractor); in §55.102, Fees, clarify that the license fee charged by SML is exclusive of fees charged by the Nationwide Multistate Licensing System (NMLS), and clarify that an insufficient funds fee under Finance Code §157.013(d) may be charged if the originator makes a payment to SML by automated clearing house and that payment fails; in §55.103, Renewal of the License, clarify that a license approved with a pending deficiency is a conditional license and requires the originator to resolve the deficiency within 30 days after the date the license is approved, and clarify that, if a license is not renewed within the reinstatement period provided by Finance Code §157.016, the individual must apply for a new license; in §55.105, Conditional License, clarify the terms and conditions under which a conditional license may be granted; in §55.106, Surrender of the License, clarify circumstances under which SML may not grant a request made by the originator to surrender his or her license; in §55.107, Sponsorship of the Originator, clarify that an originator may be sponsored by more than one mortgage company or mortgage banker, and establish requirements for an originator sponsored by more than one mortgage company or mortgage banker; in §55.108, Required Education, clarify that the pre-licensing examination required by Finance Code §180.057

means the uniform national examination approved by NMLS on or after April 1, 2013; and, in §55.109, Temporary Authority, clarify that the maximum duration for temporary authority under Finance Code §180.0511 is 120 days.

*Changes Concerning Duties and Responsibilities (Subchapter C)*

The proposed rules: in §55.200, Required Disclosures, remove the requirement that the disclosure to consumers required by Finance Code §156.004(a) or §157.0021(a) be signed by the originator and the mortgage applicant; in §55.202, Fraudulent, Misleading, or Deceptive Practices and Improper Dealings, clarify that an originator commits a violation if the originator knowingly misrepresents the lien position of a residential mortgage loan, create requirements concerning the use of trigger leads, clarify that an originator commits a violation if the originator solicits a consumer on the federal do-not-call registry, clarify that an originator commits a violation if the originator issues a conditional pre-qualification letter or conditional approval letter that is inaccurate, erroneous, or negligently-issued, and clarify that an originator commits a violation if the originator acts as an originator when his or her license is inactive; in §55.204, clarify that the books and records of an originator must be maintained by the mortgage company or mortgage banker sponsoring his or her license, and require that the originator work diligently and cooperatively with the mortgage company or mortgage banker to fulfill such requirements; and, in §55.205, Mortgage Call Reports, clarify that mortgage call reports are filed by the mortgage company or mortgage banker sponsoring the originator's license, and remove that seeming requirement.

*Changes Concerning Supervision and Enforcement (Subchapter D)*

The proposed rules: in §55.300, Examinations, provide that examinations are conducted using the State Examination System, and that SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority; in §55.302, Confidentiality of Examination, Investigation, and Inspection Information, clarify the confidentiality of information arising from an examination, investigation, or inspection by SML; in §55.303, Corrective Action, clarify when SML may direct an originator to voluntarily take corrective action, and creating requirements for refunds made to consumers; in §55.310, Appeals, establish various deadlines by which an originator or other individual subject to an enforcement action must appeal; and, in §55.311, Hearings, clarify how hearing costs assessed against an individual under Finance Code §157.017(f) are calculated.

*Other Modernization and Update Changes*

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

*Fiscal Impact on State and Local Government*

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are

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no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

#### Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing originators to be easier to find by members of the public; and, to better protect members of the public who are consumers seeking a residential mortgage loan from the wrongful conduct of an originator licensed by SML.

#### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent

agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency. The proposed rules related to Changes Concerning Licensing (Subchapter B) may result in additional fees paid to SML in connection with the insufficient funds fee for failed automated clearing house payments sent to SML, as discussed in such section; however, those fees may be avoided entirely and therefore an increase in fees is not required; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning General provisions (Subchapter A), Changes Concerning Licensing (Subchapter B), Changes Concerning Duties and Responsibilities (Subchapter C), and Changes Concerning Supervision and Enforcement (Subchapter D) establish various rule requirements, as discussed in such sections; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Duties and Responsibilities (Subchapter C) have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 7 TAC §§55.1 - 55.6

##### Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to

implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

##### §55.1 Purpose and Applicability.

This chapter governs SML's administration and enforcement of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act (other than Subchapter C), and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Texas SAFE Act), concerning the licensing and conduct of residential mortgage loan originators. This chapter applies to individuals licensed by SML as a residential mortgage loan originator or those required to be licensed, except for individuals engaged in authorized activity subject to the authority of the regulatory official under Finance Code §180.251(c).

##### §55.2 Definitions.

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapters 157 (other than Subchapter C) and 180, the following definitions apply, unless the context clearly indicates otherwise:

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(1) "Application," as used in Finance Code §157.002(6) and §180.002(19), and paragraphs (7) and (18) of this section means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, or the mortgage loan amount.

(2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

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

(4) "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.

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

(6) "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.

(7) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator in response

to a solicitation) to obtain a residential mortgage loan and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., the Fannie Mae Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

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

(9) "Mortgage company" means, for purposes of this chapter, a "residential mortgage loan company," as defined by Finance Code §157.002.

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

(11) "Offers or negotiates the terms of a residential mortgage loan," as used in Finance 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.

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(12) "Originator" has the meaning assigned by Finance Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (11) and (18) 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 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 Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Finance Code §180.051.

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

(14) "Residential mortgage loan" has the meaning assigned by Finance 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 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.

(15) "Residential real estate" has the meaning assigned by Finance 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.

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

(17) "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.

(18) "Takes a residential mortgage loan application," as used in Finance 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.

(19) "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, is 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.

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

*§55.3 Formatting Requirements for Notices.*

Any notice or disclosure (notice) required by Finance Code Chapters 157 or 180, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. A font point generally equates to 1/72 of

an inch. If Finance Code Chapters 157 or 180, 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):

- (1) Arial;
- (2) Aptos;
- (3) Calibri;
- (4) Century Schoolbook;
- (5) Garamond;
- (6) Georgia;
- (7) Lucinda Sans;
- (8) Times New Roman;
- (9) Trebuchet; and
- (10) Verdana.

§55.4 Electronic Delivery and Signature of Notices.

Any notice or disclosure required by Finance Code Chapters 157 or 180, 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.

§55.5 Computation of Time.

The calculation of any time period measured in

days by Finance Code Chapters 157 or 180, 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.

§55.6 Enforceability of Liens.

A violation of Finance Code Chapters 157 or 180, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

The agency certifies that counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER B. LICENSING

**7 TAC §§55.100 - 55.114**

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter

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180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§55.100. Licensing Requirements.

(a) License Required. An individual, unless exempt as provided by Finance Code §157.0121 or §180.003, or acting under temporary authority as provided by Finance Code §180.0511 and §55.109 of this title (relating to Temporary Authority), is required to be licensed as an originator under Finance Code Chapter 157 if the individual acts or attempts to act in the capacity of an originator concerning a loan or prospective loan secured or designed to be secured by residential real estate located in Texas, including, but not limited to:

(1) representing or holding that individual out to the public through advertising or other means of communication as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise representing that the individual can or will perform residential mortgage loan origination services as an originator;

(2) signing a residential mortgage loan application as the originator (e.g., signing the "Loan Originator Information" section of the Fannie Mae Form 1003 Uniform Residential Loan Application; which is deemed to be a certification by the originator that he or she took the residential mortgage loan application);

(3) providing disclosures to a mortgage

applicant or prospective mortgage applicant or discussing or explaining such disclosures (an individual who prepares a disclosure at the direction and under the supervision of a licensed originator who does not send the disclosure to or discuss the disclosure with the mortgage applicant or prospective mortgage applicant and does not sign the disclosure is deemed not to have provided a disclosure for purposes of this paragraph), including:

(A) the disclosures required by Finance Code §156.004 or §157.0021, and §55.200(a) of this title (relating to Required Disclosures);

(B) the 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; and

(C) the disclosure for acting in the dual capacity of an originator and real estate broker, sales agent, or attorney, as described by Finance Code §157.024(a)(10);

(4) determining the lender or investor to which the prospective residential mortgage loan will be submitted;

(5) issuing or signing a conditional pre-qualification letter or conditional approval letter, or similar, as specified by Finance Code §156.105 and §157.02012, and §55.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters); and

(6) being a loan processor or underwriter who is an independent contractor, as provided by Finance Code §180.051(b). An individual working for a mortgage company licensed by SML or a mortgage banker registered with SML, whose compensation for federal income tax purposes is not reported on a W-2 form (e.g., a self-employed worker who is issued an IRS Form

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1099-NEC), that acts as a loan processor or underwriter, is deemed to be an independent contractor loan processor or underwriter for purposes of Finance Code §180.051(b) and must be licensed as an originator. All individuals working for a mortgage company that is an independent loan processor underwriter company, regardless of how their income is documented (including W-2 employees), who act as a loan processor or underwriter or otherwise perform work in connection with the provision of loan processing or underwriting services by the company, are deemed to be independent contractors for purposes of Finance Code §180.051(b) and must be licensed as an originator.

§55.101. Applications for Licensure.

(a) NMLS. Applications for licensure 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.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation deemed necessary or appropriate to determine that the licensing requirements of Finance Code Chapters 157 and 180 are met.

(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.

§55.102. Fees.

(a) License Fees. The license fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §157.013(b)(1), exclusive of fees charged by NMLS, as described in subsection (b) of this section, and exclusive of the recovery fund fee required by Finance Code §157.013(b)(2). The Commissioner may establish different fee amounts for a new license versus renewal of the license. 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 license fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges various fees to process the application. Such fees are determined by NMLS and must be paid by the applicant at the time he or she files the application. The current fees are set in NMLS and posted on the NMLS Resource Center website (nationwidelicensingsystem.org). Specifically, NMLS charges the following types of fees:

- (1) application processing fee;
- (2) credit report fee; and
- (3) criminal background check fee.

(c) All fees are nonrefundable and nontransferable.

(d) Insufficient Funds Fee. The Commissioner may collect a fee in an amount determined by the Commissioner not to exceed \$50 for any returned check, credit card chargeback, or failed automated clearing house (ACH) payment. A fee assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

§55.103. Renewal of the License.

(a) A license may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees;

(2) a determination by SML that the originator continues to meet the minimum requirements for licensure, including the requirements of Finance Code §§157.012(c), 157.015(g), and 180.055; and

(3) completion of the continuing education required by Finance Code §180.060 and §55.108 of this title (relating to Required Education) as reflected in NMLS.

(b) Application of §55.101. A renewal request is a license application subject to the requirements of §55.101 of this title (relating to Applications for Licensure). A renewal request withdrawn under §55.101(c) of this title will be rejected in NMLS.

(c) Commissioner's Discretion to Approve with a Deficiency; Conditional License. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the originator to continue conducting regulated activities while the originator works diligently to resolve the deficiency. 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 originator of the obligation to resolve the deficiencies. A license approved under this subsection is deemed to be a conditional license for which the originator, in order to maintain the license, 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 license.

(d) Reinstatement. This section applies to an individual seeking reinstatement of an expired license (assigned the license status "Terminated - Failed to Renew") during the reinstatement period described by Finance Code §157.016 and must be construed accordingly. An originator license cannot be renewed beyond the reinstatement period; instead, the individual must apply for a new license and comply with all current requirements and procedures governing issuance of a new license.

§55.104. NMLS Records; Notices Sent to the Originator.

(a) NMLS License Status. SML is required to assign a status to the license in NMLS. The license status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the license status options available in NMLS. The NMLS Resource Center website (nationwidelicensingsystem.org) describes the available license status options and their meaning.

(b) Amendments to License Records Required. Unless Finance Code §157.019 applies and requires additional notice, an originator must amend his or her NMLS license records (MU4

filing) within 10 days after the date of any material change affecting any aspect of the MU4 filing, including, but not limited to:

(1) name (which must be accompanied by supporting documentation submitted to SML establishing the name change);

(2) phone number;

(3) email address (including his or her NMLS account email address, as described by subsection (d)(1) of this section);

(4) mailing address;

(5) residential history;

(6) employment history; and

(7) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(b) Amendments Requiring New Credit History Check. An originator amending his or her MU4 filing to make a financial disclosure is deemed to have authorized SML to retrieve a current copy of his or her credit report, as provided by Finance Code §157.0132 and §55.111 of this title (relating to Background Checks), and the originator must further amend his or her MU4 filing to formally consent to and request such credit report in NMLS, if requested by SML.

(c) Amendments Requiring New Criminal Background Check. An originator amending his or her MU4 filing to make a criminal disclosure is deemed to have authorized SML to perform an additional criminal background check in accordance with Finance Code §157.0132 and §55.111 of this title, and the originator must further amend his or her MU4 filing to formally

consent to and request such criminal background check in NMLS, if requested by SML.

(d) Notices Sent to the Originator. Any correspondence, notification, alert, message, official notice, or other written communication from SML will be sent to the originator in accordance with this subsection using the originator's current contact information of record in NMLS unless another method is required by other applicable law.

(1) Service by Email. Service by email is made using the email address the originator has designated for use with his or her NMLS account (a/k/a the "NMLS account email address" or "individual account email address"). The NMLS account email address is the same email address to which NMLS-generated notifications are sent. Service by email is complete on transmission of the email to the license holder'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. An originator must monitor the email account designated as his or her NMLS account email address and ensure that emails from SML or system notifications from NMLS are not lost in a "spam folder" or similar, or undelivered due to intervention by a "spam filter" or similar. An originator is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. An originator is further deemed to have constructive notice of any NMLS system notifications sent to him or her by email.

(2) Service by Mail. 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 originator by mail and the document communicates a deadline by or a time during which the originator 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.

§55.105. Conditional License.

(a) Conditional License; Terms and Conditions. The Commissioner may, in his or her sole discretion, issue a license on a conditional basis. A conditional license will be assigned the license status "Approved - Conditional" in NMLS. Reasonable terms and conditions for a conditional license include:

(1) requiring the originator to undergo additional credit checks or provide evidence of satisfaction concerning a debt, judgment, lien, child support obligation, or other financial delinquency affecting his or her financial condition;

(2) requiring the originator to undergo additional criminal background checks or provide information on a periodic basis or upon request concerning the status of a pending criminal proceeding that might affect his or her eligibility for the license;

(3) requiring the originator to take other specific action or provide other specified information to address a known deficiency; and

(4) requiring the originator to surrender the license upon the occurrence of an event that would render the originator ineligible for the license.

(b) Probated Suspensions and Revocations. A license subject to a probated suspension or revocation is deemed to be a conditional license.

(c) Conditional License in Lieu of Denial. The

Commissioner may issue a license on a conditional basis in lieu of seeking denial of the license where the Commissioner determines the individual applying for the license has the capacity to resolve the deficiency serving as grounds for the denial in a reasonable period of time. The granting of a license under this subsection is a voluntarily forbearance from seeking denial of the license and does not operate as a waiver by the Commissioner of any grounds he or she has to seek denial of the license. The Commissioner is under no obligation to continue the license on a conditional basis and may seek denial in the future based on the same or similar circumstances that existed at the time the conditional license was granted.

§55.106. Surrender of the License.

(a) Surrender Request. An originator may seek surrender of the license by filing a license 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:

(1) the originator is the subject of a pending or contemplated examination, inspection, investigation, or disciplinary action;

(2) the originator is in violation of an order of the Commissioner; or

(3) the originator has failed to pay any administrative penalty, fee, charge, or other indebtedness owed to SML

(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 originator's license will be assigned the license status "Approved - Inactive" in NMLS.

§55.107. Sponsorship of Originator.

(a) Sponsorship Required. In order to act in the capacity of an originator, an originator's license must be sponsored in NMLS by a mortgage company licensed by SML or a mortgage banker registered with SML. To establish sponsorship by a mortgage company or mortgage banker, the originator must amend his or her NMLS license records (MU4 filing) to reflect employment by such mortgage company or mortgage banker and grant such mortgage company or mortgage banker access to his or her license records to allow the mortgage company or mortgage banker to register a relationship with the originator in NMLS. The mortgage company or mortgage banker must make corresponding filings in NMLS to establish such sponsorship. Sponsorship is not effective until the mortgage company's or mortgage banker's sponsorship request has been reviewed and approved by SML. An originator must not act or attempt to act in the capacity of an originator on behalf of a mortgage company or mortgage banker until sponsorship with such mortgage company or mortgage banker has been established and is effective. Information about how to file for sponsorship is available on the NMLS Resource Center website (nationwidelicensingsystem.org).

(b) Number of Sponsorships. An originator may be sponsored by more than one mortgage company or mortgage banker if:

(1) the originator clearly identifies to the mortgage applicant the sponsoring entity or entities on whose behalf the originator is acting prior to taking an application;

(2) the application clearly states the

sponsoring entity on whose behalf the originator is acting (e.g., in the "Loan Originator Information" section of the Fannie Mae 1003 Uniform Residential Loan Application). The mortgage applicant may apply with more than one sponsoring entity, provided, there are separate applications for each such entity that clearly identifies the sponsoring entity to which the application was submitted;

(3) the authorization forms, disclosures, loan estimates, pre-qualification letters, conditional approval letters, closing disclosures, and other materials provided to the mortgage applicant clearly identify the mortgage company or mortgage banker providing residential mortgage loan origination services in the transaction;

(4) the originator does not misrepresent or misconstrue to the mortgage applicant the mortgage company or mortgage banker providing residential mortgage loan origination services in the transaction;

(5) the originator discloses to his or her sponsoring entities the existence the originator's multiple sponsorships;

(6) the originator does not steer the mortgage applicant to a sponsoring entity offering terms less favorable to the mortgage applicant and that might have the effect of increasing the originator's compensation; and

(7) the originator is only compensated for services actually performed and does not share or split any fee.

(c) Inactive License Status Pending Sponsorship. An applicant may be issued a license in an inactive status if the applicant has met all requirements for licensure except the requirement that the originator be sponsored by an appropriate entity, as provided by Finance

Code §157.012(a)(1). While in an inactive status, an originator must not act in the capacity of an originator and must continue to meet the minimum requirements for licensure. A license in an inactive status is assigned the license status "Approved - Inactive" in NMLS.

(d) Termination of Sponsorship. Sponsorship may be terminated by the mortgage company or mortgage banker, or the originator. If sponsorship is terminated, the party terminating the sponsorship must immediately notify SML of the termination by making a filing in NMLS to show the sponsorship as terminated in the system, as provided by Finance Code §156.211 and §157.019.

(e) Failure to Maintain Sponsorship; Inactive Status. If an originator's license does not maintain sponsorship by a mortgage company or mortgage banker, the license will revert to an inactive status ("Approved - Inactive") until a new sponsorship becomes effective, during which time the originator must not act or attempt to act in the capacity of an originator. An originator may voluntarily place his or her license in an inactive status by terminating all sponsorships as described by subsection (d) of this section.

§55.108. Required Education.

(a) Pre-Licensing Education and Examination. As provided by Finance Code §180.056, an individual applying for an originator's license (applicant) must complete the pre-licensing education and coursework prescribed by the federal S.A.F.E. Mortgage Licensing Act (federal SAFE Act) and approved by NMLS. Such education and coursework must include 3 hours of instruction relating to the applicable laws, rules, and practice considerations governing residential mortgage loan origination in Texas. As provided by Finance Code

§180.057, an applicant must pass a written test prescribed by the federal SAFE Act and approved by NMLS.

(b) Lapsing of Pre-Licensing Education and Examination. An applicant other than a current license holder seeking renewal under §55.103 of this title (relating to Renewal of the License; i.e., an individual seeking a new license) must have completed the required pre-licensing education and coursework described by subsection (a) within the 3 years preceding the date of application; otherwise, the applicant must take the pre-licensing education and coursework approved and offered at the time of the application. Additionally, if an applicant for a new license did not pass the National Component with Uniform State Content examination approved by NMLS on or after April 1, 2013, the applicant must pass the current pre-licensing examination approved by NMLS in order to satisfy the requirements of Finance Code §180.057 (examinations taken prior to April 1, 2013, will not satisfy such requirements).

(c) Recognition of Pre-Licensing Education Taken in Another Jurisdiction. As provided by Finance Code §180.056, SML will recognize pre-licensing education and coursework taken in another jurisdiction subject to the requirements of the federal SAFE Act; provided, it is approved by NMLS for that purpose and otherwise meets the requirements of the federal SAFE Act, and Finance Code Chapter 180. However, SML will not recognize those hours of pre-licensing education and coursework taken in another jurisdiction the content of which was specific to that jurisdiction and that comprised the 12-hour undefined electives portion of such pre-licensing education and coursework. An applicant may take coursework that is of limited duration and limited in scope to the applicable laws, rules, and practice considerations governing residential mortgage loan origination in Texas in order to supplement and remedy a shortfall in hours

derived from non-recognition of pre-licensing education taken in another jurisdiction, as provided by this subsection.

(d) Continuing Education. As provided by Finance Code §180.060 and §55.103 of this title, an originator must complete, on an annual basis, continuing education and coursework approved by NMLS in order to renew the licensed.

§55.109. Temporary Authority.

(a) Purpose. The purpose of this section is to specify how an originator licensed in another jurisdiction or by a different licensing authority, or who is a "registered mortgage loan originator" (as defined by Finance Code §180.002), may avail himself or herself of the ability to act in the capacity of an originator in Texas temporarily while he or she seeks licensure by SML, as provided by Finance Code §180.0511.

(b) Application Required. An individual seeking to act under temporary authority must comply with the requirements of Finance Code §180.0511. Among other requirements, Finance Code §180.0511 requires that the individual file an application with SML seeking licensure to be recognized as having temporary authority. An individual must not act or attempt to act in the capacity of an originator until the application has been filed and the individual has been assigned an NMLS license status by SML recognizing such temporary authority (see §55.104 of this title (relating to NMLS License Records; Notices Sent to the Originator)). An individual may confirm his or her temporary authority status by reviewing his or her license status in NMLS or on the NMLS Consumer Access website (nmlsconsumeraccess.org).

(c) Incomplete Applications. The requirements of §55.101(c) of this title (relating to Applications for Licensure), providing for the

deemed withdrawal of an application that is not complete, do not apply to an application for which temporary authority status is conferred.

(d) Maximum Duration. Pursuant to Finance Code §180.0511, the maximum duration for temporary authority is 120 days. When an originator has received the cumulative benefit of 120 days of temporary authority, no further temporary authority is allowed. An originator acting under temporary authority who has exceeded the 120-day maximum duration will have his or license status conferring temporary authority removed. An individual making an application for licensure who previously received the benefit of 120 days of temporary authority will not be conferred temporary authority status.

§55.110. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) Purpose. This section specifies licensing requirements for military service members, military veterans, and military spouses, in accordance with Occupations Code Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings assigned by Occupations Code §55.001.

(c) Late Renewal (Reinstatement). As provided by Occupations Code §55.002, an individual is exempt from any increased fee or other penalty for failing to renew his or her originator license in a timely manner if the individual establishes to the satisfaction of the Commissioner that he or she failed to timely renew the license because the individual was serving as a military service member. A military service member who fails to timely renew his or her originator license must seek reinstatement of the license within the time period specified by Finance Code §157.016; otherwise, the individual must obtain a new

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license, including complying with the requirements and procedures then in existence for obtaining an original license (see §55.103 of this title (relating to Renewal of the License).

(d) Expedited Review and Processing. Occupations Code §55.005 provides that a military service member, military veteran, or military spouse is entitled to expedited review and processing of his or her application for an originator license. A military service member, military veteran, or military spouse seeking expedited review of his or her application must, after applying for the license in NMLS, make a written request for expedited review using the current form prescribed by SML and posted on its website (sml.texas.gov), including providing the supporting documentation specified in the form, to enable SML to verify the individual's status as a military service member, military veteran, or military spouse. SML, within 30 days after the date it receives a complete application and request for expedited review from a qualifying applicant who is a military service member, military veteran, or military spouse, will process the application, and, provided the applicant is otherwise eligible to receive the license, issue a license to the applicant, if the applicant:

(1) is licensed as an originator in another jurisdiction with substantially equivalent licensing requirements; or

(2) was licensed as an originator in Texas within the 5 years preceding the date of the application.

(e) Temporary Authority for Military Service Member or Military Spouse. Occupations Code §55.0041 provides that a military service member or military spouse may engage in a business or occupation for which a license is required without obtaining the license if the

military service member or military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual licensed to act as an originator in another jurisdiction may act under temporary authority in this state (the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act), 12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)). Occupations Code §55.0041(c) further requires that a military service member or military spouse "comply with all other laws and regulations applicable to the business or occupation." As a result, a military service member or military spouse seeking to avail himself or herself of the temporary authority conferred by Occupations Code §55.0041 must apply for and seek temporary authority in accordance with Finance Code §180.0511 and §55.109 of this title (relating to Temporary Authority).

(f) Substantial Equivalency. For purposes of this section and Occupations Code §55.004, an originator license issued in another jurisdiction is substantially equivalent to a Texas originator license if it is issued in accordance with the requirements of the federal SAFE Act (12 U.S.C. §§5501-5117). SML will verify a license issued in another jurisdiction in NMLS.

(g) Credit for Military Experience. As provided by Occupations Code §55.007, with respect to an applicant who is a military service member or military veteran, SML will credit verified military service, training, or education toward the requirements for an originator license by considering the service, training, or education as part of the applicant's employment history. The following items cannot be substituted for military service, training, or education:

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(1) the pre-licensing education and coursework specified by Finance Code §180.056 and §55.108(a) of this title (relating to Required Education);

(2) the pre-licensing examination specified by Finance Code §180.057 and §55.108(a) of this title; and

(3) continuing education and coursework specified by Finance Code §180.060 and §55.108(d) of this title.

*§55.111. Background Checks.*

(a) NMLS Background Check; Fingerprints Required. An individual applying for an originator license (applicant) must provide fingerprints as prescribed by NMLS in order to facilitate a criminal background check through the Federal Bureau of Investigation. Additionally, an applicant must amend his or her license records (MU4 filing) to provide authorization for SML to obtain the criminal background check in NMLS.

(b) Background Checks by SML. Pursuant to Finance Code §157.0132 and Government Code §411.1385, SML is authorized to conduct a criminal background check through the Texas Department of Public Safety (DPS). If requested by SML, applicant must submit to the DPS criminal background check process, including providing fingerprints and paying any applicable fees to DPS or its designated third-party fingerprint processor to complete the criminal background check process.

(c) NMLS Credit Check. An applicant must amend his or her license records (MU4 filing) to provide authorization for SML to obtain a copy of the applicant's credit report concerning the applicant's credit history from a credit reporting agency (credit bureau) in NMLS.

(d) Supplemental Information. An applicant must provide information related to any administrative, civil, or criminal findings or proceedings by a governmental jurisdiction, including any information required by §55.112 of this title (relating to Procedures for Review of Background Checks) to SML. The information must be uploaded to NMLS.

*§55.112. Procedures for Review of Background Checks.*

(a) Purpose. This section establishes procedures used by SML to perform background checks and review an individual's criminal background and credit history to determine his or her fitness and eligibility for licensure in accordance with Finance Code §157.0132.

(b) Supporting Information/Documentation for Criminal Background Check. An individual applying for an originator license (applicant) with a criminal history, when requested by SML, must provide the following information concerning each conviction or other criminal proceeding identified by SML:

(1) a detailed explanation, in writing, of the events and circumstances for each conviction or other criminal proceeding required to be self-disclosed in his or her application, signed and dated by the individual seeking licensure; and

(2) copies of court records or other documentation reflecting:

(A) the nature of the criminal offense (including the statutory provisions violated, and the severity or classification of the offense);

(B) the individual's plea (including any terms or other arrangements for the plea);

(C) the conviction (judgment or court

order);

(D) the sentence imposed;

(E) any probation or community supervision imposed (including evidence of compliance); and

(F) any other action in the proceeding causing final disposition of the case to be deferred.

(c) Supporting Information/Documentation for Credit History Check. An applicant, when requested by SML, must provide the following information concerning each financial disclosure made in his or her application and each credit account on his or her credit report identified by SML:

(1) a detailed explanation, in writing, of the background and circumstances surrounding each financial disclosure made or credit account identified, signed and dated by the individual seeking licensure;

(2) if a bankruptcy proceeding is disclosed, a copy of the order of discharge, or if the proceeding is ongoing, the current bankruptcy petition, and the current financial schedules filed in the proceeding;

(3) if a judgment or lien is disclosed, a copy of such judgment or lien filing; and

(4) if delinquent child support is disclosed, a copy of the most recent statement of account or other documentation reflecting the current amount due, and if the individual is in a payment plan or has otherwise entered into terms for repayment, a copy of such plan or terms.

(d) Effect of Providing Supporting Documentation. By providing documentation to

SML in accordance with subsections (b) and (c) of this section, the applicant certifies that he or she has a good faith belief that such documents are true and correct copies of documents issued by the person that originally created the document that SML may rely on in making a decision on the application. By providing such supporting documentation, the applicant consents to such documentation being admissible at an adjudicative hearing if the Commissioner seeks to deny the application, resulting in a contested case, and the applicant is deemed to have waived any objections concerning the admissibility of such documentation into the administrative record at such adjudicative hearing.

(e) Certified Documents. Notwithstanding subsection (d) of this section, the applicant, at his or her own cost, must obtain and provide SML with certified or exemplified copies of any documents described in subsections (b) and (c) of this section, upon written request by SML.

§55.113. Criminal Conviction Guidelines.

(a) Purpose. This section establishes the criteria used by SML to review an individual's criminal history to determine his or her eligibility and fitness to be licensed by SML as an originator. This section implements the requirements of Occupations Code §53.025, requiring SML to establish guidelines related to such reviews, including designating particular crimes and offenses SML considers to be directly related to the duties and responsibilities of acting as an originator and may constitute grounds for denial of licensure. The Commissioner's authority to deny an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. This section also describes the Commissioner's other statutory authority arising from the Finance Code for denial of licensure based on an individual's

criminal history, including outlining certain offenses deemed by this section to be grounds for denial under the Finance Code.

(b) Ineligibility by Operation of Law. The following individuals are ineligible for licensure by operation of law due to his or her criminal history:

(1) an individual who, within the 7 years preceding the date of the application, has been convicted of, or pled guilty or nolo contendere (no contest) to, a felony in a court of this state, another state or territory of the United States, a federal court of the United States, or other foreign, or military court, in accordance with Finance Code §180.055(a); and

(2) an individual who, at any time, has been convicted of, or pled guilty or nolo contendere to, a felony offense involving an act of fraud, dishonesty, breach of trust, or money laundering, in accordance with Finance Code §180.055(a). Any felony offense listed in the schedule contained in subsection (e) of this section having a nexus to residential mortgage loan origination arising from the categories of criminal offenses related to residential mortgage loan origination under subsection (d)(1) or (2) of this section (concerning crimes involving fraud, falsification, dishonesty, deception and breach of trust, and theft or embezzlement, respectively) is deemed to constitute a crime involving an act of fraud, dishonesty, breach of trust, or money laundering for purposes of Finance Code §180.055(a).

(c) Duties and Responsibilities of a Residential Mortgage Loan Originator. An originator acts as an intermediary between the consumer seeking a residential mortgage loan and the lender or underwriter that determines whether the consumer qualifies for the loan. The originator may assist the consumer in reviewing his or her income, expenses, and credit worthiness to

determine whether he or she will qualify for a loan, and on what terms he or she might qualify. The originator may assist the consumer in completing the loan application, and sometimes directs the consumer to present his or her financial information in the manner to which the lender or underwriter is accustomed. A residential mortgage loan often takes place in the context of a real estate transaction, and as a result, an originator sometimes advises the consumer of his or her financial ability to purchase residential real estate, including providing a conditional pre-qualification letter to establish the consumer's purchasing power while shopping in the marketplace. Once the loan has entered the underwriting process, the originator may assist the consumer in resolving any outstanding conditions of the underwriter to qualify for the loan and obtain approval, including addressing items of concern on a consumer's credit report, immigration/residency status, available cash-on-hand for the transaction, and income which may not be readily established by documentary evidence such as that of an independent contractor. The originator communicates to the consumer the ever-changing loan terms as interest rates in the marketplace fluctuate and is often a key figure in advising the consumer of when and how he or she may "lock" the loan in advance of closing to solidify the loan terms. The originator may serve as communications liaison between the consumer and various parties to the transaction, including the lender, the underwriting department or a third-party underwriter, real estate brokers and sales agents, appraisers, surveyors, insurance providers, closing/settlement agents, and the representatives of various taxing authorities. In performing his or her duties, an originator has access to sensitive information of the consumer, including his or her social security number, date of birth, immigration/residency status, and all the personal financial details of the consumer, including employment, income, assets, and expenses.

(d) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission of Texas and the Commissioner have determined the following categories of criminal offenses are directly related to the duties and responsibilities of acting as an originator:

(1) criminal offenses involving fraud, falsification, dishonesty, deception, and breach of trust;

(2) criminal offenses involving theft or embezzlement; and

(3) criminal offenses involving intoxication by drugs or alcohol.

(e) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission of Texas and the Commissioner have determined the criminal offenses in the following schedule meet one or more of the categories deemed to relate to residential mortgage loan origination by subsection (d) of this section and are directly related to the duties and responsibilities of an individual licensed by SML to act as an originator. The schedule includes those criminal offenses most likely to be encountered by SML and is made from the perspective of the criminal laws of the State of Texas and the United States federal government. However, the schedule is not an exhaustive review of all offenses and does not limit SML from considering a criminal offense not specifically listed in the schedule. The schedule should be construed to include any criminal offense meeting one or more of the categories deemed to relate to residential mortgage loan origination, as provided by subsection (d) of this section. The schedule should further be construed to include the substantially similar or functionally equivalent crime of any state or territory of the United States, violations of the Texas Code of Military Justice (Government Code Chapter 432),

violations of the Uniform Code of Military Justice (10 U.S.C. §801 et seq.), or crimes of a foreign country or governmental subdivision thereof. In determining whether a criminal offense of another jurisdiction is substantially similar or functionally equivalent, an inquiry will be made comparing the subject offense with an offense on the schedule to determine whether the subject offense has similar elements, including intent and classification of punishment, and whether the crime would have been punishable had the acts been committed in Texas.

Figure: 7 TAC §55.113(e)

(f) Factors. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in determining whether a criminal offense is directly related to the duties and responsibilities of an individual licensed by SML to act as an originator, the Commissioner will consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to act as an originator;

(3) the extent to which an originator license might offer an opportunity for the individual to engage in further criminal activity of the same type as that in which the individual has previously been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed originator; and

(5) any correlation between the elements of the crime and the duties and responsibilities of licensed originator.

(g) In addition to the factors in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Finance Code §157.0131 and subsection (h) of this section) is unfit and ineligible for licensure, will consider:

(1) the extent and nature of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

(3) the amount of time that has elapsed since the individual's criminal activity;

(4) the amount of time that has elapsed since the individual's release from incarceration;

(5) the conduct and work activity of the individual before and after the criminal activity;

(6) evidence of the individual's rehabilitation or rehabilitative efforts;

(7) letters of recommendation, signed and dated, by a current employer, if the individual is employed, or a previous employer, stating that the employer has specific and complete knowledge of the individual's criminal history and the reasons the employer is recommending that the individual be considered fit to be licensed by SML; and

(8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and his or her character and fitness, with specific and complete knowledge of the individual's criminal history, able to offer competent information about the nature and extent of the applicant's rehabilitative efforts.

(h) Convictions Considered. The determination of whether a criminal proceeding is considered to

have resulted in a conviction for purposes of this section will be made in accordance with Finance Code §157.0131, which states that an individual is considered to have been convicted of a criminal offense if:

(1) a sentence is imposed on the individual;

(2) the individual received probation or community supervision, including deferred adjudication or community service; or

(3) the court deferred final disposition of the individual's case.

(i) Consideration of Disciplinary Actions. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, SML may consider the individual's past history of disciplinary actions with SML, or another regulatory body or official of another jurisdiction regulating residential mortgage loan origination or other financial services, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure.

(j) Consideration of Financial Responsibility, Character and General Fitness. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, the Commissioner may consider the individual's financial responsibility, and other evidence of character and general fitness, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure. A conviction for a criminal offense having a nexus to residential mortgage loan origination arising from the categories of criminal offenses deemed to relate to residential mortgage loan

origination under subsection (d) of this section is indicative of a failure to demonstrate requisite character and general fitness to command the confidence of the community in accordance with Finance Code §180.055(a)(3), and honesty, trustworthiness and integrity in accordance with Finance Code §157.012(c)(1).

§55.114. Request for Criminal History Eligibility Determination.

(a) Purpose and Applicability. This section establishes the procedures by which an individual may seek a preliminary review of his or her eligibility to be licensed by SML with respect to his or her criminal history prior to formally applying with SML for licensure, as authorized by Occupations Code Chapter 53. Pursuant to Occupations Code §53.102, this section applies to an individual who has reason to believe he or she is ineligible to be licensed by SML due to a conviction or deferred adjudication for a felony or misdemeanor offense, and who is enrolled or is planning to enroll in an educational program that prepares an individual to be licensed by SML. The Commissioner will not offer advisory opinions concerning criminal convictions or sentences that have not actually occurred.

(b) Request for Preliminary Eligibility Determination; Supporting Documentation. The request must be made using the current form prescribed by SML and posted on its website (sml.texas.gov). The fee to make a request under this section is determined by the Commissioner and posted on SML's website. 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.

(c) Review of Request for Preliminary Evaluation. A request made under this section

will be reviewed by SML to determine the requestor's eligibility using the same procedures for review of an individual's criminal history when making an application for licensure and is subject to SML's criminal conviction guidelines in §55.113 of this title (relating to Criminal Conviction Guidelines). As a result, the requestor, in making the request, must list all offenses that actually resulted in a criminal conviction or that otherwise constitute a criminal conviction for purposes of Finance Code §157.0131 and §55.113 of this title. The requestor's incarcerated status that would render the individual ineligible for licensure pursuant to Occupations Code §53.021(b) will be disregarded; however, SML will consider the implications of the requestor's anticipated release from incarceration in making its determination.

(d) Determination of Eligibility. Within 90 days after the date the fully-completed request is received, SML will notify the requestor of his or her eligibility to receive a license issued under Finance Code Chapters 157 and 180.

(e) Effect of Determination. In the absence of new evidence known but not disclosed by the requestor, or not reasonably available to SML in consideration of the disclosures made by the requestor, the Commissioner's decision regarding eligibility of the requestor concerning his or her criminal history will be determinative for purposes of reviewing a subsequent application for licensure from the requestor. However, the Commissioner's decision regarding eligibility will not be determinative to the extent the request for preliminary eligibility determination contained fraudulent or misleading information or supporting documentation or otherwise failed to list a criminal conviction of the requestor that was not otherwise discovered by SML in investigating the request, regardless of whether or not the requestor was aware of the conviction at the time of the request, and including any subsequent

conviction received by the requestor. A decision that the requestor is eligible will not be determinative if the requestor is determined to be ineligible for licensure by operation of law as provided by Finance Code §180.055(a) and §55.113 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

**7 TAC §§55.200 - 55.205**

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§55.200. Required Disclosures.

(a) Specific Notice to Applicant. An originator sponsored by a mortgage company licensed by SML must provide a mortgage applicant with the notice required by §56.200(b) of this title (relating to Required Disclosures). An originator sponsored by a mortgage banker registered with SML must provide a mortgage applicant with the notice required by §57.200(b) of this title (relating to Required Disclosures). The notice must be sent at the time the originator takes the initial application for a residential mortgage loan.

(b) Posted Notice on Websites. An originator sponsored by a mortgage company licensed by SML must comply with the requirements of §56.200(c) of this title. An originator sponsored by a mortgage banker registered with SML must comply with the requirements of §57.200(c) of this title.

(c) Disclosures in Correspondence. An originator must provide the following information on all correspondence sent to a mortgage applicant:

(1) the name of the mortgage company or mortgage banker sponsoring the originator and its NMLS ID;

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

(3) the name of the originator and his or her NMLS ID.

§55.201. Conditional Pre-Qualification and Conditional Approval Letters.

(a) Compliance with Mortgage Company and Mortgage Banker Rules. An originator sponsored by a mortgage company licensed by SML must comply with the requirements of §56.201 of this title (relating to Conditional Pre-Qualification

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and Conditional Approval Letters). An originator sponsored by a mortgage banker registered with SML must comply with the requirements of §57.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters).

(b) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the originator.

(c) Duty to Issue Accurate Letters; Caution. A conditional pre-qualification letter or conditional approval letter must be accurate and reflect the actual information that the originator considered in issuing the letter. An originator is cautioned that the issuance of an inaccurate, erroneous, or a negligently-issued conditional pre-qualification letter or conditional approval letter constitutes a violation as provided by §55.202 of this title (relating to Fraudulent, Misleading, or Deceptive Practices, and Improper Dealings) and may result in disciplinary action against the originator. Additionally, if an inaccurate, erroneous, or a negligently-issued conditional pre-qualification letter or conditional approval letter is relied on by the mortgage applicant to incur out-of-pocket costs in connection with the prospective mortgage loan, it may subject the originator to a recovery claim under Finance Code Chapter 156, Subchapter F.

§55.202. *Fraudulent, Misleading, or Deceptive Practices and Improper Dealings.*

(a) Fraudulent, Misleading, or Deceptive Practices. The following conduct by an originator constitutes fraudulent and dishonest dealings for purposes of Finance Code §157.024(a)(3), deceptive practices for purposes of Finance Code §180.153(2), a scheme to defraud a person for purposes of Finance Code §180.153(1), and a false or deceptive statement or representation for purposes of Finance Code §180.153(11):

(1) knowingly misrepresenting the originator's relationship to a mortgage applicant or any other party to a residential mortgage loan transaction or prospective 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;

(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) 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 to make or acquire a residential mortgage loan;

(6) as provided by Regulation X (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan for which the originator receives compensation for services not actually performed or where the compensation received bears no reasonable relationship to the value of the services actually performed;

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

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(8) altering any document produced or issued by SML, unless otherwise permitted by statute or a rule of SML.

(9) 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 originator's name and mortgage company or mortgage banker on behalf of which the originator is acting;

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

(iii) that the originator and his or her sponsoring mortgage company or 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 company or mortgage banker sponsoring the originator;

(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)); or

(10) engaging in any other practice which the Commissioner, by published interpretation, has

determined is fraudulent, misleading, or deceptive.

(b) Improper and Unfair Dealings. The following conduct by an originator constitutes improper dealings for purposes of Finance Code §157.024(a)(3) and unfair practices for purposes of Finance Code §180.153(2):

(1) Acting negligently in performing an act requiring a license under Finance Code Chapters 157 or 180;

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

(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.);

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

(G) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and 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 159 and Chapter 59 of this title; and

(J) 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 §55.201 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) Representing to a mortgage applicant that a charge or fee which is payable to the originator or the mortgage company or mortgage banker sponsoring the originator is a "discount point" or otherwise benefits the mortgage applicant unless the loan closes and;

(A) the mortgage company or mortgage banker sponsoring the originator is making the residential mortgage loan (lender); or

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

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

(7) acting as an originator when the originator is licensed but not sponsored by a mortgage company or mortgage banker, or the license is otherwise in an inactive status.

(c) Related Transactions. An originator engages in fraudulent and deceptive dealings for purposes of Finance Code §157.024(a)(3), deceptive practices for purposes of Finance Code §180.153(2), and a scheme to defraud a person for purposes of Finance Code §180.153(1) when, in connection with the origination of a residential mortgage loan:

(1) the originator:

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

(B) the originator engages in fraudulent, misleading, or deceptive acts in the related transaction; or

(2) the originator:

(A) affiliates with another person that provides goods or services to a mortgage

applicant in a separate but related transaction;

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

(C) the originator knew or should have known of the fraudulent, misleading, or deceptive acts of the affiliated person; and

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

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. An originator 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 performing residential mortgage loan origination services unless otherwise allowable under Regulation X (12 C.F.R. §1024.14) and Regulation Z (12 C.F.R. §1026.36(d)). An originator acting in the dual capacity of an originator and real estate sales broker or agent licensed under Occupations Code Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described by this subsection occurs as a part of closing and is properly reflected in the closing disclosure. If a payment or other transfer described by this subsection occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the originator's fees for residential mortgage loan origination services and constitutes an improper sharing or splitting of fees with the mortgage applicant. The

rebuttable presumption may only be overcome by clear and convincing evidence established by the originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection is deemed to constitute improper dealings for purposes of Finance Code §157.024(a)(3) and unfair practices for purposes of Finance Code §180.153(2).

(e) Education Fraud. The following conduct in connection with the pre-licensing education or examination, or continuing education required by §55.108 of this title (relating to Required Education) constitutes a false or deceptive statement or representation for purposes of Finance Code §180.153(11) and a false statement or omission of material fact for purposes of Finance Code §180.153(12):

(1) claiming credit for a pre-licensing education course, pre-licensing examination, or continuing education course the individual did not take; or

(2) taking a pre-licensing education course, pre-licensing examination, or continuing education course on behalf of another individual.

§55.203. Advertising.

An originator sponsored by a mortgage company licensed by SML must comply with the advertising requirements in §56.203 of this title (relating to Advertising). An originator sponsored by a mortgage banker registered with SML must comply with the advertising requirements in §57.203 of this title (relating to Advertising).

§55.204. Books and Records.

An originator sponsored by a mortgage company licensed by SML must comply with the books

and records requirements in §56.204 of this title (relating to Books and Records). An originator sponsored by a mortgage banker registered with SML must comply with the books and records requirements in §57.204 of this title (relating to Books and Records). An originator fulfills the requirements of §56.204 of this title and §57.204 of this title, as applicable, if his or her sponsoring mortgage company or mortgage banker maintains the required books and records on behalf of the originator. An originator must work diligently and cooperatively with his or her sponsoring mortgage company or mortgage banker to ensure that the records arising from the originator's work are properly maintained by the mortgage company or mortgage banker sponsoring his or her license.

§55.205. Mortgage Call Reports.

(a) Purpose. This section clarifies and establishes requirements related to the mortgage call reports an originator is required to file under Finance Code §180.101.

(b) Fulfillment by Mortgage Company or Mortgage Banker. Mortgage companies licensed by SML and mortgage bankers registered with SML are required to file mortgage call reports. An originator is not expected to and should not attempt to file his or her own mortgage call reports. Instead, the originator's activity must be included in the mortgage call reports filed by the mortgage company or mortgage banker sponsoring the originator. An originator fulfills the requirements of Finance Code §180.101 if his or her sponsoring mortgage company or mortgage banker files mortgage call reports that include the originator's activity. An originator must work diligently and cooperatively with his or her sponsoring mortgage company or mortgage banker to ensure that the originator's activity is included in a mortgage call report filed by his or her sponsoring mortgage company or mortgage banker in compliance with §56.205 of

this title (relating to Mortgage Call Reports), applicable to mortgage companies licensed by SML, and §57.205 of this title (relating to Mortgage Call Reports), applicable to mortgage bankers registered with SML.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**SUBCHAPTER D. SUPERVISION AND ENFORCEMENT**

**7 TAC §§55.300 - 55.303, 55.310, and 55.311**

**Statutory Authority**

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

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§55.300. Examinations.

(a) Purpose. This section clarifies and establishes requirements related to examinations of an originator conducted by SML under Finance Code §157.021.

(b) State Examination System (SES). Examinations are conducted in SES (stateexaminationsystem.org). The mortgage company or mortgage banker sponsoring the originator must use SES to facilitate the examination.

(c) Examinations by Other State Agencies. 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.

(d) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person of the mortgage banker or mortgage company 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 examiners are scheduled to begin the examination. Failure to 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.

(e) Examination Scope. Examinations will be conducted to determine compliance with Finance Code Chapters 156, 157 and 180, and this chapter, and will specifically address whether:

(1) all persons are properly licensed and sponsored;

(2) all office locations are properly licensed or registered, as provided by §56.206 of this title (relating to Office Locations; Remote Work) and §57.206 of this title (relating to Office Locations; Remote Work);

(3) all required books and records are being maintained in accordance with §56.204 of this title (relating to Books and Records) and §57.204 of this title (relating to Books and Records);

(4) legal and regulatory requirements applicable to the originator and the mortgage banker or mortgage company sponsoring the originator are being properly followed (including, but not limited to, the requirements described in §55.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings); and

(5) other matters as SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapters 156, 157, and 180.

(f) Loan Sample. The examiners will review a sample of residential mortgage loan files identified by the examiners from the mortgage transaction log required by §56.204(c)(1) or (d)(1) of this title, applicable to mortgage companies licensed by SML, or §57.204(c)(1) or (d)(1) of this title, applicable to mortgage bankers registered with SML. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(g) Failure to Cooperate; Disciplinary Action. Failure by an originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in disciplinary action

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including, but not limited to, imposition of an administrative penalty.

(h) Reimbursement for Costs. 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. When the examiners must travel outside of Texas to conduct an examination of an originator because the required records are maintained at a location outside of Texas, SML will require reimbursement for the actual costs incurred in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs. Any such costs will be assessed against the originator in NMLS and must be paid in NMLS.

§55.301. Investigations.

(a) Purpose. This section clarifies and establishes requirements related to investigations of an originator conducted by SML under Finance Code §157.021.

(b) Reasonable Cause. 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 no 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.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on

the relevant facts and circumstances then known. An investigation may include:

(1) review of documentary evidence;

(2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;

(3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;

(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and

(5) other lawful investigative methods SML deems necessary or appropriate.

§55.302. Confidentiality of Examination, Investigation, and Inspection Information.

(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.

(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 §156.301 (list is not exhaustive):

(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

inspection;

(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 any violations, deficiencies, or issues identified, or any directives, mandates, or recommendations for action by the regulated entity 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 originator entity under §55.303 of this title (relating to Corrective Action);

(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 regulated entity's compliance with any directives, mandates, or recommendations for action by the mortgage company and any corrective or remedial action taken by the regulated entity to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection.

(c) Loss of Confidentiality. Subsection (b) 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).

§55.303. Corrective Action.

(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, SML may direct the originator to voluntarily 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.

(b) Internal Reviews. If SML determines during an examination, investigation, or inspection that a violation may be systemic, SML may direct the originator to conduct his or her own review to self-identify any other violations, compile information concerning such violations, and report his or her findings to SML. SML may direct the originator to take corrective action for any violations identified

(c) Refunds to Consumers. SML may direct the originator 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 at his or her last known address. The originator must use reasonable diligence to determine the last known address of the mortgage applicant. 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 originator must capture and maintain records evidencing the payment, including a copy of the

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payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation; or

(2) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the mortgage applicant's verified bank account. The originator 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.

§55.310. Appeals.

(a) Purpose. Finance Code Chapter 157 provides that certain decisions of the Commissioner adverse to an originator or other individual may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which an originator or other individual must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) License Denials. A license denial under Finance Code §157.017 must be appealed within

10 days after the date notice of the Commissioner's decision is received by the individual seeking the license.

(2) Order of Suspension for Violation of Final Order. An order of suspension issued by the Commissioner under Finance Code §156.303(h) must be appealed within 15 days after the date the order is issued.

(3) Notice of Suspension for Criminal Offense Involving Fraud, Theft, or Dishonesty. A notice of suspension issued under Finance Code §156.303(k) must be appealed within 15 days after the date the notice is issued.

(4) Notice of Disciplinary Action. A notice of disciplinary action issued under Finance Code §§ 157.023(a), 157.024(a), or 157.024(b) must be appealed within 30 days after the date the notice is issued.

(5) Order for Disciplinary Action (Order to Take Affirmative Action or Order to Cease and Desist). An order of the Commissioner issued under Finance Code §157.024(c) or §157.031(b) must be appealed within 30 days after the date the order is issued. This deadline does not apply to an order for disciplinary action issued by the Commissioner under Finance Code §§ 157.023(a), 157.024(a), or 157.024(b) that was preceded by notice issued under paragraph (4) of this subsection.

(6) Other Deadlines. Any appeal not otherwise addressed by this section must be made within 30 days after the date the notice or order is issued.

(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).

(d) Effect of Not Appealing. An originator or other individual who does not timely appeal the Commissioner's decision is deemed to have irrevocably waived any right he or she 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 him or her 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 originator.

§55.311. Hearings.

(a) Hearings, Generally. Adjudicative hearings conducted under Finance Code Chapters 157 and 180 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 are 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.

(b) Hearing Costs for License Denials. Hearing costs assessed against an individual under Finance Code §157.017(f) include:

(1) filing fees;

(2) the costs of a court reporter;

(3) the costs of the administrative law judge (ALJ) or hearings officer presiding over the hearing;

(4) the expense of SML's staff to prepare for and attend the hearing or any ancillary proceedings (i.e., the hearing of motions, status conferences, etc.), and any related travel expenses;

(5) the cost of any outside counsel retained to represent SML; and

(6) the cost of any expert witness retained by SML.

(c) Determination of Hearing Costs for License Denials. Unless the ALJ makes more specific findings of fact or conclusions of law concerning the hearing costs described by subsection (b)(3) of this section, such costs are deemed to be \$500. Hearing costs described by subsection (b)(4) of this section are measured based on the diversion of productivity of such staff away from their typical duties and toward the hearings process and are calculated by multiplying the number of hours spent by each staff member in furtherance of the hearings process (measured in increments of 1/10 of an hour) by their current hourly compensation rate. The Commissioner may rely on affidavit testimony of such staff members to make appropriate findings of fact and conclusions of law concerning the hearing costs described by subsection (b)(4) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



Figure: 7 TAC §55.113(e)

## Schedule of Criminal Offenses Determined to be Directly Related to Residential Mortgage Loan Origination

### Texas Offenses:

Offense	Statutory Reference	Nexus to Residential Mortgage Loan Origination  (reference to Rule §55.110(e))
Abuse of Official Capacity	Tex. Pen. Code §39.02	(1), (2)
Acceptance of Gift/Honorarium by Public Servant	Tex. Pen. Code §§36.07, 36.08	(1)
Agreement to Abduct Child	Tex. Pen. Code §25.031	(2)
Burglary, in furtherance of theft; Burglary of Vehicle	Tex. Pen. Code §§30.02, 30.04	(2)
Breach of Computer Security	Tex. Pen. Code §33.02	(1), (2)
Bribery	Tex. Pen. Code §36.02	(1)
Bribery, Commercial	Tex. Pen. Code §32.43	(1)
Coercion of Public Servant or Voter	Tex. Pen. Code §36.03	(1)
Counterfeiting Trademark	Tex. Pen. Code §32.23	(1)
Credit Card or Debit Card Abuse	Tex. Pen. Code §32.31	(1), (2)
Credit Card Transaction Record Laundering	Tex. Pen. Code §32.35	(1)
Criminal Attempt, Solicitation, or Conspiracy	Tex. Pen. Code §§15.01, 15.02, 15.03, 15.031	See offense attempted, solicited or conspired
Criminal Simulation	Tex. Pen. Code §32.22	(1)
Criminally Negligent Homicide, arising from intoxication	Tex. Pen. Code §19.05	(3)
Deceptive Business Practices	Tex. Pen. Code §32.42	(1)
Driving/Boating/Flying while Intoxicated	Tex. Pen. Code §§49.04, 49.05, 49.06, 49.09	(3)
Driving while Intoxicated with Child Passenger	Tex. Pen. Code §49.045	(3)
Drug Offenses	Tex. Health & Safety Code Chs. 481, 482, 483	(3)
Escape from Custody	Tex. Pen. Code §38.06	(1)

Figure: 7 TAC §55.113(e)

Evading Arrest or Detention	Tex. Pen. Code §38.04	(1)
Exploitation of Child/Elderly/Disabled	Tex. Pen. Code §32.53	(1), (2)
False Report of Emergency	Tex. Pen. Code §42.06	(1)
False Report to Law Enforcement	Tex. Pen. Code §37.08	(1)
False Statement to Obtain Property, Credit or Services	Tex. Pen. Code §32.32	(1), (2)
Forgery	Tex. Pen. Code §32.21	(1), (2)
Fraudulent Court Record	Tex. Pen. Code §37.13	(1)
Fraudulent Destruction, Removal, or Concealment of Writing	Tex. Pen. Code §32.47	(1)
Fraudulent Filing of Financing Statement	Tex. Pen. Code §37.101	(1)
Fraudulent or Fictitious Military Record	Tex. Pen. Code §32.54	(1)
Fraudulent Use or Possession of Identifying Information	Tex. Pen. Code §32.51	(1)
Fraudulent, Substandard, or Fictitious Degree	Tex. Pen. Code §32.52	(1)
Fraudulent Transfer of a Motor Vehicle	Tex. Pen. Code §32.34	(1)
Hindering Apprehension or Prosecution	Tex. Pen. Code §38.05	(1)
Hindering Secured Creditors	Tex. Pen. Code §32.33	(1), (2)
Impersonating Lawyer	Tex. Pen. Code §38.122	(1)
Impersonating Public Servant	Tex. Pen. Code §37.11	(1)
Impersonating Peace Officer	Tex. Pen. Code §37.12	(1)
Improper Gift to Public Servant	Tex. Pen. Code §36.09	(1)
Improper Influence	Tex. Pen. Code §36.04	(1)
Insurance Fraud	Tex. Pen. Code §35.02	(1)
Intoxication Assault	Tex. Pen. Code §49.07	(3)
Intoxication Manslaughter	Tex. Pen. Code §49.08	(3)
Manslaughter, arising from intoxication	Tex. Pen. Code §19.04	(3)
Medicaid Fraud	Tex. Pen. Code §35A.02	(1), (2)
Misapplication of Fiduciary Property or Property of Financial Institution	Tex. Pen. Code §32.45	(1), (2)
Misuse of Official Information	Tex. Pen. Code §39.06	(1)
Money Laundering	Tex. Pen. Code §34.02	(1), (2)

Figure: 7 TAC §55.113(e)

Official Oppression by Public Servant	Tex. Pen. Code §39.03	(1)
Online Impersonation	Tex. Pen. Code §33.07	(1)
Organized Criminal Activity	Tex. Pen. Code §71.02	See underlying offense
Perjury; Aggravated Perjury	Tex. Pen. Code §§37.02, 37.03	(1)
Prohibited Substances and Items in Correctional Facility	Tex. Pen. Code §38.11	(1), (3)
Robbery; Aggravated Robbery	Tex. Pen. Code §§29.02, 29.03	(2)
Securing Execution of Document by Deception	Tex. Pen. Code §32.46	(1), (2)
Simulating Legal Process	Tex. Pen. Code §32.48	(1)
Smuggling of Persons; Continuous Smuggling of Persons	Tex. Pen. Code §§20.05, 20.06	(1)
Stealing or Receiving Stolen Check	Tex. Pen. Code §32.24	(1), (2)
Tampering of Electronic Data	Tex. Pen. Code §33.023	(1)
Tampering with Consumer Product	Tex. Pen. Code §22.09	(1)
Tampering with Governmental Record	Tex. Pen. Code §37.10	(1)
Tampering with Identification Numbers	Tex. Pen. Code §31.11	(1)
Tampering with or Fabricating Physical Evidence	Tex. Pen. Code §37.09	(1)
Tampering with Witness	Tex. Pen. Code §36.05	(1)
Theft	Tex. Pen. Code §31.03	(2)
Theft – Organized Retail Theft	Tex. Pen. Code §31.16	(2)
Theft of Cargo	Tex. Pen. Code §31.18	(2)
Theft of Petroleum Product	Tex. Pen. Code §31.19	(2)
Theft of Service	Tex. Pen. Code §31.04	(1), (2)
Trafficking of Persons; Continuous Trafficking of Persons	Tex. Pen. Code §§20A.02, 20A.03	(1)
Unauthorized Absence from Corrections Facility	Tex. Pen. Code §38.113	(1)
Unauthorized Acquisition or Transfer of Financial Information	Tex. Pen. Code §31.17	(1), (2)
Unauthorized Use of a Vehicle	Tex. Pen. Code §31.07	(1), (2)
Unlawful Access to Stored Communications	Tex. Pen. Code §16.04	(1), (2)
Unlawful Interception, Use, or Disclosure of Wire, Oral or Electronic Communications	Tex. Pen. Code §16.02	(1)

Figure: 7 TAC §55.113(e)

Unlawful Use of Criminal Instrument or Mechanical Security Device	Tex. Pen. Code §16.01	(1)
Unlawful Use of Pen Register or Trap and Trace Device	Tex. Pen. Code §16.03	(1)

**Federal Offenses:**

<b>Offense</b>	<b>Statutory Reference</b>	<b>Nexus to Residential Mortgage Loan Origination</b> <b>(reference to Rule §55.110(e))</b>
Bankruptcy Fraud	18 U.S.C. §§151-158	(1)
Bribery, Graft and Conflicts of Interest	18 U.S.C. §§201-227	(1)
Conspiracy to Commit Offense or Defraud	18 U.S.C. §§371-373	(1); See also conspired offense, if applicable
Counterfeiting and Forgery	18 U.S.C. §§470-514	(1)
Customs Fraud	18 U.S.C. §§541-555	(1)
Drug Offenses	21 U.S.C. §§841-865	(3)
False Claims Affecting Government	18 U.S.C. §§281-293	(1)
Fraud, False Statements, Identity Theft	18 U.S.C. §§1001-1070	(1)
Mail Fraud, and other fraud offenses (Wire Fraud, bank fraud, health care fraud, securities/investment fraud)	18 U.S.C. §§1341-1351; 15 U.S.C. §§ 78ff(a), 78j, 77x, 80b-17, 80a-48, 77yyy	(1), (2)
Obstruction of Justice / Tampering with Government Records	18 U.S.C. §§1501-1521; 2071-2076	(1)
Passport/Visa Fraud	18 U.S.C. §§1541-1547	(1)
Perjury	18 U.S.C. §§1621-1623	(1)
Racketeering/RICO Offenses/ Money Laundering Offenses	18 U.S.C. §§1951-1990	(1), (2)
Robbery and Burglary	18 U.S.C. §§2111-2119	(2)
Tax Fraud	26 U.S.C. §§7201-7230	(1), (2)
Theft, Embezzlement	18 U.S.C. §§641-670	(2)

**7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 56, Residential Mortgage Loan Companies, Resulting from Rule Review**

**PURPOSE:** The purpose of the new rules in 7 TAC Chapter 56 is to implement changes resulting from SML's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the preamble for the rule proposal.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission approve publication of the new rules in 7 TAC Chapter 56 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve publication of the new rules in 7 TAC Chapter 56 for comment in the *Texas Register*.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 56. RESIDENTIAL MORTGAGE LOAN COMPANIES**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes new rules in 7 TAC Chapter 56: §§56.1 - 56.6, 56.100 - 56.108, 56.200 - 56.206, 56.210, 56.300 - 56.304, 56.310, and 56.311 (proposed rules).

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 80, Residential Mortgage Loan Companies, affect residential mortgage loan companies (mortgage companies) licensed by SML under Finance Code Chapter 156 (Chapter 156).

*Changes Concerning the Reorganization (Relocation) of Mortgage Company Rules from Chapter 80 to Chapter 56*

SML has determined it should reorganize its rules concerning mortgage companies by relocating the rules to Chapter 56, a vacant chapter. The proposed rules, if adopted, would effectuate this change.

*Changes Concerning General Provisions (Subchapter A)*

The proposed rules: in §56.2, Definitions, adopt new definitions for "E-Sign Act," "engage in or conduct the business of a mortgage company," "making a residential mortgage loan," "mortgage banker," "SML," "State Examination System," "trigger lead," "UETA," "wrap lender," and "wrap mortgage loan" while eliminating definitions for "Commissioner's designee," and "Department"; in §56.3, Formatting

Requirements for Notices, adopt formatting requirements for the various disclosures a mortgage company is required to make; in §56.4, Electronic Delivery and Signature of Notices, clarify that any notice or disclosure made by a mortgage company may be delivered and signed electronically; and, in §56.5, Computation of Time, clarify how time periods measured in calendar days are computed.

*Changes Concerning Licensing Requirements (§56.100)*

The proposed rules, in §56.100, Licensing Requirements, clarify when a mortgage company license is required. Subsection (c) of that section clarifies the requirements of Finance Code §156.202(a-1)(3), which provides that an "owner of residential real estate who in any 12-consecutive month period *makes* no more than three residential mortgage loans to purchasers of the property for all or part of the purchase price of the residential real estate against which the mortgage is secured" (emphasis added) is exempt from the requirement to be licensed by SML as a mortgage company under Chapter 156 (meaning, a person who acts as the lender and makes more than three such loans is not exempt and must be licensed). In response to an early precomment draft of the rules published on SML's website, SML received an informal comment from the Texas Land Developers Association (TLDA) asserting that proposed §56.100(c) seeks to impose licensing requirements on certain seller-financed mortgage lenders that are currently operating under the belief that a mortgage company license is not required if the lender secures the services of an entity licensed or registered by SML to provide residential mortgage loan origination services in making the loan, and that lender does not actually originate the mortgage loan. According to TLDA, this belief has its origins in informal guidance posted on SML's website as late as 2016 in the form of an answer to a "frequently asked question," as

follows: "Q: May an individual or entity owner finance more than five properties within a 12 month period without being licensed if they use a licensed RMLO to facilitate the transaction?; A: Yes, assuming that they only act as the lender in the transaction and do not take an application or negotiate rate and terms with potential borrowers" (at that time, the statutory threshold for exempt transactions was five). However, as stated above, the licensing requirements referenced by proposed 7 TAC §56.100(c) are imposed by Finance Code §156.202(a-1)(3), not the proposed rules, and the statute plainly states that a mortgage company license is required for a person that is the lender and "makes" more than the number of exempt mortgage loan transactions allowed under the statute. Proposed §56.100(c), if adopted, would clarify the statutory requirements of Finance Code §156.202(a-1)(3) and dispel the belief that a license is not required under the circumstances described above. Given the apparent pervasiveness of this belief, SML is contemplating a delayed effective date of January 2026 for proposed §56.100, to provide time for industry to move toward compliance and allow the Texas Legislature to consider this issue during the 89th legislative session. SML welcomes comments to the proposal in this regard.

*Other Changes Concerning Licensing (Subchapter B)*

The proposed rules: in §56.102, Fees, clarify that the license fee charged by SML is exclusive of fees charged by the Nationwide Multistate Licensing System (NMLS), and clarify that an insufficient funds fee under Finance Code §156.203(e) may be charged if the mortgage company makes a payment to SML by automated clearing house and that payment fails; in §56.103, Renewal of the License, clarify that a license approved with a pending deficiency is a conditional license and requires the mortgage company to resolve the deficiency within 30 days

after the date the license is approved, and clarify that, if a license is not renewed within the reinstatement period provided by Finance Code §156.2081, a person must apply for a new license; in §56.104, NMLS License Records; Notices Sent to the Mortgage Company, change the contact person in NMLS to whom notices are sent from the contact person under "Identifying Information" to the contact person designated as the "Primary Company Contact" under "Contact Employee"; in §56.105, Conditional License, clarify the terms and conditions under which a conditional license may be granted; in §56.106, Surrender of the License, clarify circumstances under which SML may not grant a request made by the mortgage company to surrender its license; in §56.107, Sponsorship of the Originator; Responsibility for Originator's Actions, provide that a mortgage company license will revert to inactive status if the mortgage company fails to maintain a sponsored individual residential mortgage loan originator; and, in §56.108, Qualified Individual, establish a requirement that the contact information for the Qualified Individual for the mortgage company must match the principal address of the mortgage company in NMLS.

*Changes Concerning Books and Records (§56.204)*

Pursuant to Finance Code §156.301(a), SML may conduct inspections (including an examination) of a mortgage company or an individual residential mortgage loan originator sponsored by a mortgage company (sponsored originator) to determine compliance with the requirements of Chapter 156 and the rules adopted thereunder. Inspections include inspection of the mortgage company's or sponsored originator's "books, records, documents, operations, and facilities . . . and access to any documents required under rules adopted under [Chapter 156]" (Finance Code §156.301(a)). Pursuant to Finance Code

§156.301(b), SML, upon receipt of a signed, written complaint against a mortgage company "shall investigate the actions and records" of the mortgage company or its sponsored originator. Pursuant to Finance Code §156.301(e), the commission "by rule shall . . . determine the information and records to which [SML] may demand access during an inspection or an investigation." Pursuant to Finance Code §156.102(c), the commission may "adopt rules regarding books and records that a [mortgage company] is required to keep, including the location at which the books and records must be kept." Meanwhile, with respect to individual residential mortgage loan originators (originator) sponsored by a mortgage company, pursuant to Finance Code §157.021(a), the SML may conduct inspections (including examinations) of an originator to determine compliance with Chapter 157 and the Texas SAFE Act, or the rules of the department adopted thereunder. Inspections include inspection of the originator's "books, records, documents, operations, and facilities" (Finance Code §157.021(a)). Pursuant to Finance Code §157.021(b), SML, upon receipt of a signed written complaint against an originator, "shall investigate the actions and records" of the originator. Pursuant to Finance Code §157.021(e), the commission "by rule shall . . . determine the information and records [of the originator] to which [SML] may demand access during an inspection or an investigation." Pursuant to Finance Code §157.0215(b), the commission "may adopt rules regarding books and records that [an originator] is required to keep, including the location at which the books and records must be kept." The proposed rules, in §56.204, Books and Records: clarify that a mortgage company must maintain books and records on behalf of the originators it sponsors; establish additional data points for the mortgage transaction log a mortgage company is required to maintain under existing rules; establish a requirement for a mortgage company to maintain books and records concerning home equity line

of credit transactions it originates; establish a requirement for a mortgage company to maintain certain additional records relating to home equity loans; establish a requirement for a mortgage company to maintain a loan processing and underwriting log to track loan processing and underwriting services the mortgage company provides; establish recordkeeping requirements for corrective action taken by the mortgage company under proposed §56.304; and establish recordkeeping requirements for the handling of unclaimed funds of the consumer under proposed §56.305. Most of the records and information a mortgage company is required to maintain under proposed §56.204 are required by other state and federal law or otherwise generated in the ordinary course of doing business. The proposed rules merely require that the mortgage company capture and maintain the records or information, including transposing certain information to the transaction logs required by the rule. Applicable state and federal law a mortgage company is required to comply with and that triggers the maintenance of the records and information includes, but not limited to: Article XVI, Section 50, Texas Constitution; Finance Code Chapter 156; Finance Code Chapter 159; Finance Code Chapter 343; the federal Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.); the federal Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.); the federal Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.); the federal Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.); the federal Gramm-Leach-Bliley Act (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.); the FTC's Standards for Safeguarding Customer Information Rule (16 C.F.R. §314.1 et seq.); the

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

*Changes Concerning Reportable Incidents (§56.210)*

The mortgage industry in recent years, like many other industries, has experienced increasing operational risks to cybersecurity posed threat actors, including third-party service providers subject to such risks. SML has found that, in many instances, regulated persons do not self-report incidents that pose a threat to operations, and SML discovers of the incident through consumer complaints filed with SML, or through media reports, leaving SML in a poor position to mount a regulatory response. The proposed rules in §56.210, Reportable Incidents, establish requirements for a mortgage company to report certain information to SML when the mortgage company experiences a "security event" or a "catastrophic event." A "security event" is defined by the rule to mean "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." A "catastrophic event" is defined by the rule to mean "an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations." For an event to be reportable under the rule, it must present "a material risk, financial or otherwise, to a mortgage company's operations or its customers." SML asserts such information is necessary to facilitate SML's inspection/examination authority described in the Changes Concerning Books and Records (§56.204) section above. Under federal law, pursuant to the Federal Trade Commission's (FTC) Standards for Safeguarding Customer

Information rules (16 C.F.R. §314.1, et seq.), a mortgage company must "develop, implement, and maintain a comprehensive information security program" to safeguard customer information (16 C.F.R. §314.3(a)), and must, among other things: conduct periodic risk assessments of the information system; design and implement safeguards to control risks to the integrity of the information system (including data encryption and controlling access); regularly test or monitor the effectiveness of the safeguards; implement policies and procedures and internal controls to ensure personnel can execute the information security program; oversee service providers to ensure compliance with the information security program; continuously evaluate and adjust the information security program; establish a written incident response plan designed to promptly respond to, and recover from, any security event materially affecting the confidentiality, integrity, or availability of customer information; and, in the event of a breach involving the information of 500 or more consumers, report certain information to the FTC concerning the nature and extent of the breach. Meanwhile, pursuant to Business and Commerce Code §521.052, a mortgage company "shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business." Pursuant to Business and Commerce Code §521.053(i), for a breach involving the information of 250 or more Texas consumers, a mortgage company must report certain information to the attorney general. Considering the foregoing, the existing requirements of state and federal law already require a mortgage company to maintain the information required to be reported to SML under proposed §56.210 in the event of a security event. Moreover, a report made to the FTC or to the attorney general described above generally satisfies the

requirements of the rule, other than the requirement to provide a "root cause analysis" concerning the "results or findings of an audit or investigation to determine the origin or root cause of security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event"; however, SML asserts that a root cause analysis is subsumed under the existing requirements of state and federal law related to security events, as described above, in order to meaningfully comply with such requirements.

*Other Changes Concerning Duties and Responsibilities (Subchapter C)*

The proposed rules: in §56.200, Required Disclosures, remove the requirement that the disclosure to consumers required by Finance Code §156.004(a) or §157.0021(a) be signed by the individual residential mortgage loan originator and the mortgage applicant, remove the requirement that a mortgage company make the disclosure on social media sites, and establish the requirement for a mortgage company to disclose its website address on all correspondence sent to the mortgage applicant; in §56.201, Conditional Pre-Qualification and Conditional Approval Letters, establish the requirement that a conditional pre-qualification letter or conditional approval letter be issued by an individual residential mortgage loan originator acting on behalf of the mortgage company; in §56.202, Fraudulent, Misleading, or Deceptive Practices and Improper Dealings, clarify that a mortgage company commits a violation if the mortgage company knowingly misrepresents the lien position of a residential mortgage loan, create requirements concerning the use of trigger leads, clarify that a mortgage company commits a violation if the originator solicits a consumer on the federal do-not-call registry, clarify that a mortgage company commits a violation if the mortgage company issues a conditional pre-qualification letter or

conditional approval letter that is inaccurate, erroneous, or negligently-issued, and clarify that a mortgage company commits a violation if the mortgage company engages in business when its license is inactive; in §56.203, Advertising, establish the requirement for a mortgage company to state its website address when making an advertisement, and establish requirements for the use of team names by a mortgage company;; in §56.205, Mortgage Call Reports, clarify the required components of the mortgage call report, and clarify that mortgage call reports must be complete and accurate when filed.

*Changes Concerning Supervision and Enforcement (Subchapter D)*

The proposed rules: in §56.300, Examinations, provide that examinations are conducted using the State Examination System, and that SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority; in §56.302, Confidentiality of Examination, Investigation, and Inspection Information, clarify the confidentiality of information arising from an examination, investigation, or inspection by SML; in §56.303, Corrective Action, clarify when SML may direct a mortgage company to take corrective action, and creating requirements for refunds made to consumers; in §56.304, establish requirements concerning the mortgage company's handling of unclaimed funds of the consumer, including requiring the maintenance of a log to track the handling of such funds; in §56.310, Appeals, establish various deadlines by which a mortgage company or other person subject to an enforcement action must appeal; and, in §56.311, Hearings, clarify how hearing assessed against a person under Finance Code §156.209(f) are calculated.

*Other Modernization and Update Changes*

The proposed rules, if adopted, would make changes to modernize and update the rules, including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

#### Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

#### Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing mortgage companies to be easier to find by members of the public; and,

to better protect members of the public who are consumers seeking a residential mortgage loan from a mortgage company licensed by SML.

#### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). However, SML includes in this proposal a note concerning certain potential costs other than direct costs (indirect costs). SML incorporates by reference the Changes Concerning Licensing Requirements (§56.100) section above as if fully set forth herein. TLDA estimates that perhaps as many as 5,000 - 10,000 persons will seek licensure as a mortgage company as a result of proposed §56.100(c). Meanwhile, according to available data from the Texas Comptroller of Public Accounts (Comptroller), there are 2,626 Texas businesses operating in nondepository credit intermediation (a category that includes various lending to consumers). The current fee charged by SML for an initial mortgage company license is \$300, and the renewal fee is \$250. The Nationwide Multistate Licensing System (NMLS) also charges a fee of \$100 for the license. The license must be renewed annually. This would result in indirect costs of \$400 in the first year, and \$350 for each year thereafter, or a total indirect cost of \$1,800 per person for the first five years the proposed rules are in effect. If the TLDA estimate is accurate, then this would result in a total indirect cost to regulated persons in the form of license fees of between \$9m - \$10m over the first five years, or an average of \$1.8m per year. Meanwhile, using the Comptroller's data would result in a total indirect cost to regulated persons in the form of license fees of approximately \$4.7m over the first five

years, or an average of \$945,360 per year. A mortgage company must appoint at least one individual to serve as its Qualified Individual and personal representative under Finance Code §156.201. The Qualified Individual must be licensed by SML as an originator under Finance Code Chapters 157 and 180. The current fee charged by SML for an initial originator license is \$100, plus a \$25 sponsorship fee, and a \$20 recovery fund fee required by Finance Code §156.502(a). The current fee to renew the license is \$70. NMLS also charges a fee of \$30 for the license. The license must be renewed annually. This would result in additional indirect costs of \$175 in the first year, and \$100 per year thereafter, or a total indirect cost of \$575 per person for the first five years the proposed rules are in effect. However, these indirect costs are even more remote (less attributable to the proposed rules) and are borne by the individual, not the person seeking the mortgage company license. In accordance with Finance Code §156.213, a mortgage company is required to file a mortgage call report on a quarterly basis electronically in NMLS. The filing a mortgage call reports may have some attendant costs, however, such costs are imposed by statute, not the proposed rules, and are therefore indirect costs. The persons TLDA asserts would seek licensure under the proposed rules claim to be exempt from licensure requirements because they do not provide residential mortgage loan origination services when acting as a seller-finance mortgage lender. If these persons continue to do so, they will not have reportable origination activity on the mortgage call report and will merely report this inactivity, resulting in reduced costs. A mortgage company that does not have reportable origination activity is also less likely to be examined, thereby reducing indirect costs to related to such examinations. SML incorporates by reference the Changes Concerning Books and Records (§56.204) section above as if fully set forth herein. The proposed rules related to Changes Concerning

Books and Records (§56.204) establish requirements concerning the books and records a mortgage company must maintain. The maintenance of such records may have some attendant costs; however, as stated above, the required records and information are already generated by the mortgage company in complying with other state and federal law or in the ordinary course of doing business. As a result, these indirect costs are insignificant. SML incorporates by reference the Changes Concerning Reportable Incidents (§56.210) section above as if fully set forth herein. The proposed rules related to Changes Concerning Reportable Incidents (§56.210) establish requirements for a mortgage company to report certain information when it experiences a security event or a catastrophic event that materially affects its operations, and may have some attendant costs; however, as stated above, the information required to be reported is already generated by the mortgage company in complying with other state and federal law or in the ordinary course of doing business. As a result, these indirect costs are insignificant.

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules do not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an

increase or decrease in fees paid to the agency. The proposed rules related to Changes Concerning Licensing Requirements (§56.100) may result in additional fees paid to SML to the extent additional persons seek licensure, as described in such section; however, the licensing requirements are imposed by statute, not the proposed rules. The proposed rules related to Changes Concerning Licensing (Subchapter B) may result in additional fees paid to SML in connection with the insufficient funds fee for failed automated clearing house payments sent to SML, as discussed in such section; however, those fees may be avoided entirely and therefore an increase in fees is not required; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning General Provisions (Subchapter A), Other Changes Concerning Licensing (Subchapter B), Changes Concerning Books and Records (§56.204), Changes Concerning Reportable Incidents (§56.210), and Other Changes Concerning Duties and Responsibilities (Subchapter C) establish various rule requirements, as discussed in such sections; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Other Changes Concerning Duties and Responsibilities (Subchapter C) have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability. The proposed rules related to Changes Concerning Licensing Requirements (§56.100) clarify existing statutory licensing requirements which may encourage additional persons to seek licensure; however, the licensing requirements are imposed by statute, not the proposed rules; and (8) the proposed rules do not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required. However, SML includes in this proposal a note concerning the potential fiscal impact of indirect costs on small and micro-businesses and rural communities. SML incorporates by reference the Changes Concerning Licensing Requirements (§56.100) and Probable Economic Costs to Persons Required to Comply with the Proposed Rules sections above as if fully set forth herein. According to available data from the Comptroller, 90.09% of businesses in Texas operating in nondepository credit intermediation constitute a small business for purposes of Government Code §2006. As such, SML assumes a similar percentage of persons TLDA asserts will seek licensure as a result of the proposed rules would be a small or micro-business for purposes of Government Code Chapter 2006. Moreover, seller-financed mortgage lenders that are land developers tend to form separate legal entities for each such development project, making it more likely that such person would be a small or micro-business for purposes of Government Code Chapter 2006. The foregoing notwithstanding, small and micro-businesses will share identical costs per-person as compared to other sized businesses, and their status as a small or micro-business does not impact these costs. The development of land by seller-finance mortgage lenders tends to occur in

unpopulated rural areas or the periphery of population centers located in rural areas, where undeveloped, raw land is available, and restrictions on development are minimal. As a result, SML assumes the activities of seller-finance mortgage lenders TLDA asserts will seek licensure as a result of the proposed rules are predominantly in rural communities and thus the purported indirect costs may be passed on to consumers in those rural communities purchasing land from a seller-financed mortgage lender that becomes licensed as a mortgage company. The foregoing notwithstanding, even these indirect costs are not borne directly by a rural community and therefore do not have an adverse economic effect on rural communities for purposes of Government Code §2006.002. SML considered alternative methods of achieving the objectives of the proposed rules; however, as related above, the licensing requirements referenced by proposed §56.100(c) are imposed by the statute, not the proposed rules. As a result, SML asserts no alternative methods are available.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

#### SUBCHAPTER A. GENERAL PROVISIONS

#### 7 TAC §§56.1 - 56.6

##### Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

##### §56.1. Purpose and Applicability.

This chapter governs SML's administration and enforcement of Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act (other than Subchapters F and G), concerning the licensing, registration, and operations of mortgage companies, financial services companies, credit union subsidiary organizations, auxiliary mortgage loan activity companies, and independent contractor loan processor or underwriter companies (each a residential mortgage loan company). This chapter applies to persons licensed by SML as a residential mortgage loan company or those required to be licensed. Pursuant to Finance Code §156.2012(d) a person registered with SML as a financial services company is subject to the requirements of this chapter as if the company were licensed by SML as a residential mortgage loan company and the rules in this chapter must be construed accordingly.

##### §56.2. Definitions.

For purposes of this chapter, and in SML's

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administration and enforcement of Finance Code Chapter 156 (other than Subchapters F and G), the following definitions apply, unless the contest clearly indicates otherwise:

(1) "Application," as used in Finance Code §156.002(14) and paragraphs (9) and (22) of this section means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, or the mortgage loan amount.

(2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(3) "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 company. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage company, 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) "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) "Engage in or conduct the business of a mortgage company" or "engage in or conduct the business of residential mortgage loan origination," or any similar derivative or variation of those terms, means to contract for (as provider), provide, or offer to contract for or provide, residential mortgage loan origination services for compensation or gain or with the expectation of compensation or gain.

(8) "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.

(9) "Mortgage applicant" has the meaning assigned by Finance Code §156.002 and includes a person who contacts a mortgage company or its sponsored originator in response to a solicitation to obtain a residential mortgage loan, and 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.

(10) "Mortgage banker" has the meaning assigned by Finance Code §156.002.

(11) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as defined by Finance Code §156.002.

(12) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §156.002 in defining "Nationwide Mortgage Licensing System and Registry."

(13) "Offers or negotiates the terms of a residential mortgage loan," as used in Finance Code §156.002(14), 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.

(14) "Originator" has the meaning assigned

by Finance Code §156.002 in defining "residential mortgage loan originator." Paragraphs (13) and (22) 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 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 Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Finance Code §180.051.

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

(16) "Qualified Individual" has the meaning assigned by Finance Code §156.002 in defining "qualifying individual."

(17) "Residential mortgage loan" has the meaning assigned by Finance Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan 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.

(18) "Residential real estate" has the meaning assigned by Finance Code §156.002 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.

(19) "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage company 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 company or sponsored originator posts commercial messages or other content designed to solicit business.

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

(21) "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.

(22) "Takes a residential mortgage loan application," as used in Finance Code §156.002(14) 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.

(23) "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, is 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.

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

(25) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(26) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

*§56.3. Formatting Requirements for Notices.*

Any notice or disclosure (notice) required by Finance Code Chapter 156, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 156, 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 or disclosure 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):

- (1) Arial;
- (2) Aptos;
- (3) Calibri;
- (4) Century Schoolbook;
- (5) Garamond;
- (6) Georgia;
- (7) Lucinda Sans;

(8) Times New Roman;

(9) Trebuchet; and

(10) Verdana.

§56.4. Electronic Delivery and Signature of Notices.

Any notice or disclosure required by Finance Code Chapter 156, 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.

§56.5. Computation of Time.

The calculation of any time period measured in days by Finance Code Chapter 156, 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.

§56.6. Enforceability of Liens.

A violation of Finance Code Chapter 156, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

The agency certifies that counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER B. LICENSING

7 TAC §§56.100 - 55.108

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§56.100. Licensing Requirements.

(a) License Required. A person, unless exempt as provided by Finance Code §156.202, is required to be licensed as a mortgage company under Finance Code Chapter 156 if the person engages in or conducts the business of a mortgage company or advertises or holds that person out to the public as engaging in or conducting the business of residential mortgage loan origination concerning a loan or prospective loan secured or designed to be secured by residential real estate located in Texas, including, but not limited to:

(1) representing or holding that person out to the public through advertising or other means of communication as a mortgage company; and

(2) receiving compensation for engaging in or conducting the business of residential mortgage loan origination (a person must be licensed at the time it receives compensation

even if the compensation relates to services provided when the person was licensed).

(b) Branch Office License Required. A mortgage company must apply for and obtain a branch office license for each office constituting a branch office of the mortgage company for purposes of §56.206 of this title (relating to Office Locations; Remote Work).

(c) Securing the Services of an Originator. A person making a residential mortgage loan (lender), other than a wrap lender making a wrap mortgage loan, or the maker of a secondary mortgage loan subject to the requirements of Finance Code Chapter 342, is not required to be licensed as a mortgage company if the lender secures the services of a licensed mortgage company or registered mortgage banker authorized to originate the loan and that mortgage company or mortgage banker, and not the lender, fulfills the functions of origination by actually providing residential mortgage loan origination services in connection with the loan. However, if the lender owns the residential real estate securing the loan and has exceeded the limit for exempt transactions as provided by Finance Code §156.202(a-1)(3), the lender must be licensed under Finance Code Chapter 156, regardless of whether the lender has secured the services of an originator as provided by this subsection.

§56.101. Applications for Licensure.

(a) NMLS. Applications for licensure 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.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation as deemed necessary or appropriate to determine that the licensing requirements of Finance Code Chapter 156 are met.

(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.

§56.102. Fees.

(a) License Fees. The license fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §156.203(b), exclusive of fees charged by NMLS, as described in subsection (b) of this section. The Commissioner may establish different fee amounts for a new license versus renewal of the license. 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 license fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges a 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 Resource Center website ([nationwidelicensingsystem.org](http://nationwidelicensingsystem.org)).

(c) All fees are nonrefundable and nontransferable.

(d) Insufficient Funds Fee. The Commissioner may collect a fee in an amount determined by the Commissioner not to exceed \$50 for any returned check, credit card chargeback, or failed automated clearinghouse (ACH) payment. A fee assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

§56.103. *Renewal of the License.*

(a) A license may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees; and

(2) a determination by SML that the mortgage company continues to meet the minimum requirements for licensure, including the requirements of Finance Code §§156.2041(a), 156.2042(a), 156.2042(a), 156.2043(a), or 156.2044(a), as applicable, and 156.208(a-1).

(b) Application of §56.101. A renewal request is a license application subject to the requirements of §56.101 of this title (relating to Applications for Licensure). A renewal request withdrawn under §56.101(c) of this title will be rejected in NMLS.

(c) Commissioner's Discretion to Approve with a Deficiency; Conditional License. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the mortgage company to continue conducting regulated

activities while the mortgage company works diligently to resolve the deficiencies. An application 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 company of the obligation to resolve the deficiencies. A license approved under this subsection is deemed to be a conditional license for which the mortgage company, in order to maintain the license, 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 license.

(d) Reinstatement. This section applies to a person seeking reinstatement of an expired license (assigned the license status "Terminated - Failed to Renew") during the reinstatement period described by Finance Code §156.2081 and must be construed accordingly. A mortgage company license cannot be renewed beyond the reinstatement period; instead, the person must apply for a new license and comply with all current requirements and procedures governing issuance of a new license.

§56.104. *NMLS License Records; Notices Sent to the Mortgage Company.*

(a) NMLS License Status. SML is required to assign a status to the license in NMLS. The license status is displayed in NMLS and on the NMLS Consumer Access website ([nmlsconsumeraccess.org](http://nmlsconsumeraccess.org)). SML is limited to the license status options available in NMLS. The NMLS Resource Center ([nationwidelicensingsystem.org](http://nationwidelicensingsystem.org)) describes the available license status options and their meaning.

(b) Amendments to NMLS Records Required. A mortgage company must amend its NMLS license 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:

(1) name (which must be accompanied by supporting documentation submitted to SML establishing the name change);

(2) the addition or elimination of an assumed name (a/k/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);

(3) the contact information under "Identifying Information";

(4) the contact information under "Resident/Registered Agent";

(5) the contact information under "Contact Employee Information"; and

(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(c) Amendments to MU2 Associations Required. A mortgage company must cause the individuals who are required to register an association with the mortgage company (control persons and Qualified Individuals) 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.

(d) Notices Sent to the Mortgage Company. Any

correspondence, notification, alert, message, official notice or other written communication from SML will be sent to the mortgage company in accordance with this subsection using the mortgage company's current contact information of record in NMLS unless another method is required by other applicable law.

(1) Service by Email. Service by email is made using the email address the mortgage company 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 the mortgage company'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. The mortgage company must monitor such email account and ensure that emails sent by SML are not lost in a "spam folder" or similar, or undelivered due to intervention by a "spam filter" or similar. A mortgage company is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. A mortgage company is further deemed to have constructive notice of any NMLS system notifications sent to it by email.

(2) Service by Mail. Service by mail is made using the address the mortgage company 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 company by mail and the document communicates a deadline by or a time during which the mortgage company 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.

§56.105. Conditional License.

(a) Conditional License; Terms and Conditions. The Commissioner may, in his or her sole discretion, issue a license on a conditional basis. A conditional license will be assigned the license status "Approved - Conditional" in NMLS. Reasonable terms and conditions for a conditional license include:

(1) requiring the mortgage company to undergo additional credit checks or provide evidence of satisfaction concerning a debt, judgment, lien, child support obligation, or other financial delinquency affecting its financial condition;

(2) requiring the mortgage company to undergo additional criminal background checks or provide information on a periodic basis or upon request concerning the status of a pending criminal proceeding that might affect its eligibility for licensure;

(3) requiring the mortgage company to take other specific action or provide other specified information to address a known deficiency; and

(4) requiring the mortgage company to surrender the license upon the occurrence of an event that would render the mortgage company ineligible for the license.

(b) Probated Suspensions and Revocations. A license subject to a probated suspension or revocation is deemed to be a conditional license.

(c) Conditional License in Lieu of Denial. The Commissioner may issue a license on a conditional basis in lieu of seeking denial of the

license where the person applying for the license has the capacity to resolve the deficiency serving as grounds for the denial in a reasonable period of time. The granting of a license under this subsection is a voluntarily forbearance from seeking denial of the license and does not operate as a waiver by the Commissioner of any grounds he or she has to seek denial of the license. The Commissioner is under no obligation to continue the license on a conditional basis and may seek denial in the future based on the same or similar circumstances that existed at the time the conditional license was granted.

§56.106. Surrender of the License.

(a) Surrender Request. A mortgage company may seek surrender of the license by filing a license 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:

(1) the mortgage company is the subject of a pending or contemplated examination, inspection, investigation, or disciplinary action;

(2) the mortgage company is in violation of an order of the Commissioner;

(3) the mortgage company has failed to pay any administrative penalty, fee, charge, or other indebtedness owed to SML; or

(4) the mortgage company has failed to file mortgage call reports as required by §56.205 of this title (relating to Mortgage Call Reports).

(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 company's license will be assigned the license status "Approved - Inactive" in NMLS.

§56.107. Sponsorship of Originator; Responsibility for Originator's Actions.

(a) Sponsorship Required. A mortgage company acts through one or more originators who must be sponsored by the mortgage company in NMLS. To sponsor an originator, the mortgage company must first register a relationship with the originator in NMLS. When a relationship has been registered, the mortgage company may then file a request in NMLS to establish sponsorship of the originator. An originator must make corresponding filings in NMLS to establish such sponsorship. Sponsorship is not effective until the sponsorship request has been reviewed and approved by SML. A mortgage company 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).

(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 company and the Qualified Individual for the mortgage company each assumes responsibility for the actions of such originator or individual acting in the capacity of an originator. As provided by Finance Code §156.201, 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 company sponsoring the originator or for which the individual acting as an originator was allowed to act, and the Commissioner may seek disciplinary action against the mortgage company, the Qualified Individual for the mortgage company, and the

originator simultaneously for the same conduct giving rise to the violation. As a result, a mortgage company and its Qualified Individual are both 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 concerning originators in Chapter 55 of this title (relating to Residential Mortgage Loan Originators).

(c) Termination of Sponsorship. Sponsorship may be terminated by the mortgage company 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 show the sponsorship as terminated in the system, as provided by Finance Code §156.211 and §157.019.

(d) Failure to Maintain Sponsored Originator; Inactive Status. If a mortgage company does not have sponsored originators that are licensed, the license will revert to an inactive status ("Approved - Inactive") until a new sponsorship becomes effective, during which time the mortgage company must not conduct regulated activities.

§56.108. Qualified Individual.

(a) Qualified Individual Required. A mortgage company must appoint at least one licensed originator to be the mortgage company's Qualified Individual. As provided by Finance Code §156.002, the Qualified Individual is a personal representative of the mortgage company and is deemed to have authority to bind the mortgage company concerning its operations in Texas. To serve as the Qualified Individual, the originator must hold his or her license in a status which enables him or her to engage in regulated activities with the license and must be sponsored by the mortgage company for which he or she

serves as the Qualified Individual. The contact information for the Qualified Individual listed by the mortgage company in its license records (MU1 filing), in the "Qualifying Individuals" section, must match the principal address (main address) of the mortgage company listed in the "Identifying Information" section of the MU1 filing. A mortgage company may appoint more than one originator as Qualified Individual. If a mortgage company appoints more than one Qualified Individual, each Qualified Individual is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or other individuals acting on its behalf in the capacity of an originator.

(b) Consent Required. The appointment of the Qualified Individual must be consented to by the originator. The originator must acknowledge and confirm his or her consent by making a corresponding filing in NMLS to reflect such appointment, using the current form prescribed by NMLS.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER     C.     DUTIES     AND  
RESPONSIBILITIES

**7 TAC §§56.200 - 56.206, and 56.210**

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance

Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§56.200. Required Disclosures.

(a) Purpose. This section clarifies and establishes requirements related to the disclosure a mortgage company is required to make under Finance Code §156.004.

(b) Specific Notice to Applicant. A mortgage company must send written notice to a mortgage applicant concerning SML's regulatory oversight. The notice must be sent at the time the mortgage company and its sponsored originator receives the initial application for a residential mortgage loan. The notice may be provided to the mortgage applicant by any means allowing for the mortgage company to capture and maintain records reflecting timely delivery, as required by §56.204(c)(2)(A)(iv) of this title (relating to Books and Records). The notice may be signed and dated by the mortgage applicant to evidence receipt. The notice must be in the form adopted by this subsection. However, the form may be modified by adding additional identifying information for the transaction (e.g., loan identification number, or the name and NMLS ID of the mortgage company or the investor); provided, any information added to the form is not misleading and does not contradict or frustrate the purpose of the disclosure:

Figure: 7 TAC §56.200(b)

(c) Posted Notice on Websites. A mortgage company must post a notice concerning SML's

regulatory oversight on each website of the mortgage company, 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 or from which the mortgage company advertises to solicit such business, as provided by §56.203 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.

(d) Disclosures in Correspondence. All correspondence sent to a mortgage applicant must include:

(1) the mortgage company's name and NMLS ID; and

(2) the mortgage company's website address, if it has a website.

§56.201. Conditional Pre-Qualification and Conditional Approval Letters.

(a) Conditional Pre-Qualification Letter. Except as provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant, written confirmation of conditional pre-qualification (conditional pre-qualification letter) must include the information in Form A, Figure: 7 TAC §56.201(a). The information must be provided using Form A or an alternate form approved by the mortgage company that includes all of the information found on Form A. There is no requirement to issue a conditional pre-qualification letter. Form A or an alternate form may be modified by adding any of the following as needed:

Figure: 7 TAC §56.201(a)

(1) Any additional aspects of the loan as long as not misleading;

(2) Any additional items that the originator has reviewed in determining conditional qualifications; or

(3) Any additional terms, conditions, and requirements.

(b) Conditional Approval Letter. 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 (conditional approval letter), must include the information in Form B, Figure: 7 TAC §56.201(b). The information must be provided using Form B or an alternate form approved by the mortgage company that includes all of the information found on Form B. There is no requirement to issue a conditional 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 a 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 approval letter must not be issued unless the mortgage company or its sponsored 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.

Figure: 7 TAC §56.201(b)

(c) Firm Offers of Credit. Subsection (a) of this section does not apply to "firm offers of credit,"

as that term is defined by 15 U.S.C. §1681a(1).

(d) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the mortgage company's sponsored originator acting on behalf of the mortgage company to originate the prospective residential mortgage loan.

§56.202. Fraudulent, Misleading, or Deceptive Practices and Improper Dealings.

(a) Fraudulent, Misleading, or Deceptive Practices. The following conduct by a mortgage company or its sponsored originators constitutes fraudulent and dishonest dealings for purposes of Finance Code §156.303(a)(3):

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

(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) 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 to make or acquire a residential mortgage loan;

(6) as provided by Regulation X (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan for which the mortgage company or sponsored originator receives compensation for services not actually performed or where the compensation received bears no reasonable relationship to the value of the services actually performed;

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

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

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

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

(i) the mortgage company's name;

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

(iii) that the mortgage company 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

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mortgage company;

(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)); or

(10) engaging in any other practice which the Commissioner, by published interpretation, has determined is fraudulent, misleading, or deceptive.

(b) Improper or Unfair Dealings. The following conduct by a mortgage company or its sponsored originators constitutes improper dealings for purposes of Finance Code §156.303(a)(3):

(1) acting negligently in performing an act requiring a license under Finance Code Chapters 156, 157, or 180;

(2) violating any provision of a local, State of Texas, or federal constitution, statute, rule, ordinance, regulation, or final court decision that governs the same or a closely related activity, transaction, or subject matter that is governed by the provisions of Finance Code Chapters 156, 157, or 180, 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) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.);

(G) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and 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 159 and Chapter 59 of this title; and

(J) 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 §56.201 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) representing to a mortgage applicant that a charge or fee which is payable to the mortgage company or sponsored originator is a "discount point" or otherwise benefits the mortgage applicant unless the loan closes and:

(A) the mortgage company is making the residential mortgage loan (lender); or

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

(6) failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant concerning the scope and nature of the mortgage company's services and any costs;

(7) Allowing a licensed originator to act on behalf of the mortgage company when the originator is not sponsored by the mortgage company or otherwise holds his or her license in an inactive status; or

(8) using the services of a mortgage company or mortgage banker to provide loan processing services when the mortgage company or mortgage banker providing the services holds its license or registration in an inactive status.

(c) Related Transactions. A mortgage company engages in fraudulent and dishonest dealings for purposes of Finance Code §156.303(a)(3) when, in connection with the origination of a residential mortgage loan:

(1) the mortgage company or sponsored originator:

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

(B) the mortgage company or sponsored originator engages in fraudulent, misleading, or deceptive acts in the related transaction; or

(2) the mortgage company or sponsored originator:

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

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

(C) the mortgage company or sponsored originator knew or should have known of the fraudulent, misleading, or deceptive acts of the affiliated person; and

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

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage company and its sponsored originators must not offer or agree to share or split any residential mortgage loan origination fees with a mortgage applicant, rebate all or 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 residential mortgage loan origination services unless otherwise allowable under

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Regulation X (12 C.F.R. §1024.14) and Regulation Z (12 C.F.R. §1026.36(d)). A sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent licensed under Occupations Code Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described by this subsection occurs as a part of closing and is properly reflected in the closing disclosure. If a payment or other transfer described by this subsection occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the originator's fees for residential mortgage loan origination services and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption may only be overcome by clear and convincing evidence established by the mortgage company or sponsored originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection is deemed to constitute improper dealings for purposes of Finance Code §156.303(a)(3).

§56.203. Advertising.

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(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 company 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:

(A) any advertisement which indirectly promotes a residential mortgage loan transaction and contains only the name of the mortgage company 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;

(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

(C) signs located on or adjacent to the mortgage company's licensed office as provided by §56.206 of this title (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 company's legal name or a properly registered assumed name typically used by a geographically or administratively distinct group of employees working for the mortgage company as a division or team within the larger organization (e.g., the employees of a branch office).

(b) Compliance with Federal Law. A mortgage company 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).

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

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(1) the mortgage company's name and NMLS ID;

(2) the mortgage company's website address, if it has a website; and

(3) the sponsored originator's name and NMLS ID.

(d) Advertising Directly by a Mortgage Company. A mortgage company may advertise directly to the public and is not required to advertise through a sponsored originator. The requirements of subsection (c)(3) of this section do not apply to an advertisement made directly by a mortgage company.

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

(f) Use of Team Names and Team Logos. A mortgage company and its sponsored originators may use team names and team logos in advertisements if the following requirements are met:

(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 company is required to

maintain under §56.204(c)(2) of this title (relating to Books and Records).

(2) The mortgage company's legal name or an assumed name of the mortgage company 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 company name and NMLS ID)" or "(team name) powered by (mortgage company name and NMLS ID)"). The information must be presented in a manner that makes it readily apparent to the viewer what mortgage company is making the advertisement. The mortgage company may not obscure the information by, among other things, using graphics, shading, or coloration to deemphasize or mask the appearance of the mortgage company'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 company or sponsored originator on the social media site.

(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.

§56.204. Books and Records.

(a) Purpose and Applicability. This section clarifies and establishes requirements related to the books and records a mortgage company and its sponsored originators are required to keep under Finance Code §156.301. Subsection (c) of this section applies to a mortgage company and its sponsored originators in connection with the

origination of residential mortgage loans. Subsection (d) of this section applies to a mortgage company and its sponsored originators in connection with the provision of third-party loan processing or underwriting services (including independent loan processor or underwriter companies).

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

(1) Format. The records required by this section may be maintained 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 company 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 company or the location the mortgage company has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section "main office" has the meaning assigned by §56.206 of this title (relating to Office Locations; Remote Work.)

(3) Production of Records; Disciplinary Action. All records required by this section must be maintained in good order and produced to

SML upon request. Failure by a mortgage company or its sponsored originators to produce records upon request after a reasonable time for compliance may result in disciplinary action against the mortgage company or its sponsored originators, including, but not limited to, suspension or revocation of the mortgage company's or sponsored originator's license.

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law. If a mortgage company terminates operations, the mortgage company must, within 10 days after the date the mortgage company terminates operations, 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 company licensed by the Department, the transferee must provide the Department with written notice within 10 days after the date it receives such records.

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

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

(c) Required Records (Origination). A mortgage company and its sponsored originators must maintain the following items in connection with the origination of residential mortgage loans by the mortgage company:

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(1) Mortgage Transaction Log. A mortgage transaction 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 company;

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

(D) date of the initial loan application;

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

(F) interest rate;

(G) 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) full name of the lender that initially funded or acquired the loan and their NMLS ID, if applicable;

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

(K) closing date;

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

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

(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

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

(iv) the disclosure required by Finance Code §156.004 and §56.200(b) of this title (relating to Required Disclosures), and records reflecting timely delivery of the disclosure to the mortgage applicant;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the conditional pre-qualification letter, or similar, as specified by Finance Code §156.105 and §56.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters);

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the conditional approval letter, or similar, as specified by Finance Code §156.105 and §56.201 of this title;

(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 for the purchase of the consumer report or credit report;

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

(xvii) the initial privacy notice required by Regulation P (12 C.F.R. §1016.4) or the Federal Trade Commission's Privacy of

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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 company made the loan (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 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));

(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) 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 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));

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(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));

(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) 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 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 Section 50(a)(5)(C) (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 Section 50(k)(9);

(ii) the certificate of counseling required by Section 50(k)(8);

(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 company 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 company 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 company;

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

(H) closing date;

(I) description of the owner's or prospective owner's intended occupancy of the

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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, and/or paid by the mortgage applicant for the loan processing or underwriting services provided by the mortgage company; 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 company at closing (e.g., on CD, or not on CD).

(e) Other Records Required by Federal Law. A mortgage company and its sponsored originators 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) the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(2) 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 Federal Trade Commission's (FTC) Privacy of Consumer Financial Information rules (16 C.F.R. §313.1 et seq.);

(3) 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.);

(4) Regulation N (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) General Business Records. A mortgage company and its sponsored originators must capture and maintain the following records generated in the normal course of doing business:

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

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

(5) 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;

(6) 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;

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

(8) all advertisements in the medium (e.g., recorded audio, video, Internet or social media site posting, or print) in which they were published or distributed; and

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

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

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

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

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

(E) quality control policy, if any;

(F) compliance manual, if any; and

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

(g) Records Concerning Administrative Offices. A mortgage company must maintain a list reflecting any office constituting an "administrative office" of the mortgage company

for purposes of §56.206 of this title (relating to Office Locations; Remote Work);

(h) Records Concerning Remote Work. A mortgage company must maintain records reflecting its compliance with the requirements for remote work, as provided by §56.206 of this title;

(i) Records Concerning Corrective Action. A mortgage company must maintain records showing compliance with §56.304 of this title (relating to Corrective Action);

(j) Records Concerning Unclaimed Funds. A mortgage company must maintain records showing compliance with §56.305 of this title (relating to Unclaimed Funds); and

(k) Other Records Designated by SML. A mortgage company and its sponsored originators must maintain such other books and records as SML may, from time to time, specify in writing.

§56.205. Mortgage Call Reports.

(a) Purpose. This section clarifies and establishes requirements related to the mortgage call reports a mortgage company is required to file under Finance Code §156.213.

(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](http://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 company is licensed, including partial periods, and periods during which the mortgage company 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.

(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 company 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 §156.213, and this section, and may result in disciplinary action as described by subsection (g) of this section.

(g) Failure to File; Disciplinary Action. Failure to file a mortgage call report may result in disciplinary action, including, but not limited to, denial, suspension, or revocation of the license, or the imposition of an administrative penalty.

*§56.206. Office Locations; Remote Work.*

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Administrative office" means any office of a mortgage company that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage company conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

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

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

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

(2) "Branch office" means any office a mortgage company 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 company act solely in

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the capacity of a "loan processor or underwriter," as that term is defined by Finance Code §180.002;

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

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

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

(3) "Licensed office" means a physical office of the mortgage company that is licensed by the Department as its main office or a branch office.

(4) "Main office" means the office the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by the Department through the mortgage company's license.

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

(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage company. A mortgage company must also obtain a license for any office or location it advertises or promotes to the general public as an office or location at which the mortgage company's

sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A licensed office 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 company. A sponsored 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 licensed by the Department prior to conducting operations. A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after the date the branch office closes.

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

(1) maintains appropriate safeguards for the mortgage company 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;

(4) ensures that consumer information and records of the mortgage company, including written procedures and training for work from remote locations authorized under this section, are accessible and available to SML on request;

(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

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage company and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a licensed office or administrative office of the mortgage company.

§56.210. Reportable Incidents.

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(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).

(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage company's operations or its customers. A reportable incident includes the following items, provided, it presents a

material risk:

(A) a "catastrophic event" as defined by this subsection; or

(B) a "security event" as defined by this subsection.

(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 company must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage company 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 company to resolve or address the reportable incident;

(4) the measures the mortgage company

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plans to take to resolve or address the reportable incident; and

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

(c) Incidents Reported to Other Agencies. A mortgage company 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 Security Events. For any security event triggering a notification described by subsection (c) of this section, the mortgage company must provide SML with a root cause analysis report within 120 days after the date the mortgage company becomes aware that the security event occurred.

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. Information reported under this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as

provided by Finance Code §156.301 and §56.302 of this title (relating to Confidentiality of Examination, Investigation, and Inspection Information).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER D. SUPERVISION AND ENFORCEMENT

**7 TAC §§56.300 - 56.304, 56.310, and 56.311**

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§56.300. Examinations.

(a) Purpose. This section clarifies and establishes requirements related to examinations of a mortgage company and its sponsored originators conducted by SML under Finance Code §156.301.

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(b) State Examination System (SES). Examinations are conducted in SES (stateexaminationsystem.org). A mortgage company must use SES to facilitate the examination.

(c) Examinations by Other State Agencies. 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.

(d) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person of the mortgage company 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 examiners are scheduled to begin the examination. Failure to 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.

(e) Examination Scope. Examinations will be conducted to determine compliance with Finance Code Chapters 156, 157, and 180, and this chapter, and will specifically address whether:

(1) all persons are properly licensed and sponsored;

(2) all office locations are properly licensed, as provided by §56.206 of this title (relating to Office Locations; Remote Work);

(3) all required books and records are being

maintained in accordance with §56.204 of this title (relating to Books and Records);

(4) legal and regulatory requirements applicable to the mortgage company and its sponsored originators are being properly followed (including, but not limited to, the requirements described in §56.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings)); and

(5) other matters as SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapters 156, 157, and 180.

(f) Loan Sample. The examiners will review a sample of residential mortgage loan files identified by the examiners from the mortgage company's mortgage transaction log required by §56.204(c)(1) of this title or the loan processing or underwriting log required by §56.204(d)(1) of this title. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(g) Failure to Cooperate; Disciplinary Action. Failure by a mortgage company or sponsored originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in disciplinary action including, but not limited to, imposition of an administrative penalty.

(h) Reimbursement for Costs. The examiners may require a mortgage company, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate. When the Department must travel outside of Texas to conduct an examination of a mortgage company or its sponsored originators because the required records are maintained at a location

outside of Texas, the Department will require reimbursement for the actual costs incurred by the Department in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs. Costs assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

§56.301. Investigations.

(a) Purpose. This section clarifies and establishes requirements related to investigations of a mortgage company and its sponsored originators conducted by SML under Finance Code §156.301.

(b) Reasonable Cause. 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 no 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 action taken by SML to address a violation found during the course of an investigation.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. An investigation may include:

- (1) review of documentary evidence;
- (2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;
- (3) obtaining information from other state or federal agencies, regulatory authorities, or self-

regulatory organizations;

(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and

(5) other lawful investigative methods SML deems necessary or appropriate.

§56.302. Confidentiality of Examination, Investigation, and Inspection Information.

(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 §156.301.

(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 §156.301 (list is not exhaustive):

(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 inspection;

(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 any violations, deficiencies, or issues identified, or any directives, mandates, or recommendations for

action by the regulated entity 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 regulated entity under §56.303 of this title (relating to Corrective Action);

(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 regulated entity's compliance with any directives, mandates, or recommendations for action by the mortgage company and any corrective or remedial action taken by the regulated entity to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection.

(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).

§56.303. Corrective Action.

(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, SML may direct the mortgage company to voluntarily 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.

(b) Internal Reviews. If SML determines during an examination, investigation, or inspection that a violation may be systemic, SML may direct the mortgage company 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 company to take corrective action for any violations identified during the review.

(c) Policies and Procedures and Internal Controls. SML may direct the mortgage company to develop and adopt policies and procedures and institutional controls designed to prevent or mitigate future violations.

(d) Refunds to Consumers. SML may direct the mortgage company 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 at his or her last known address. The mortgage company must use reasonable diligence to determine the last known address of the mortgage applicant. 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 company 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. The check must be drawn on a bank account owned by the mortgage company. The check must be sent to the mortgage applicant at his or her last known address. The mortgage company must use reasonable diligence to determine the last known address of the mortgage applicant. The mortgage company 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 fails to cash the check, the mortgage company must comply with requirements of §56.304 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 verified bank account. The mortgage company 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 company is the lender or holds the mortgage servicing rights to the residential mortgage loan related to the refund, the mortgage company may issue a credit against the indebtedness equal to the refund; however, if the refund is related to an improper charge or proceeds improperly held by the mortgage company 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 company began improperly holding the proceeds (typically inception of the residential mortgage loan). The mortgage company 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 as a result of the credit being applied.

§56.304. Unclaimed Funds.

(a) Escheat Suspense Account; Escheat Log. Funds owed to or held for the benefit of a mortgage applicant or other customer of the mortgage company for more than one year (i.e., unclaimed funds) must be transferred to an escheat suspense account. The mortgage company must maintain a log of all transfers made to the escheat suspense account, including, at a minimum:

(1) date of transfer to the escheat suspense account;

(2) date the obligation to pay the funds arose;

(3) full name and last known contact information of the mortgage applicant or other customer to whom funds are owed; and

(4) amount of unclaimed funds.

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(b) Required Records. The mortgage company must maintain records reflecting bona fide attempts to pay the funds to the mortgage applicant or customer.

(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.

(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.

*§56.310. Appeals.*

(a) Purpose. Finance Code Chapter 156 provides that certain decisions of the Commissioner adverse to a mortgage company 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 company or other person must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) License Denials. A license denial under Finance Code §156.209 must be appealed within 10 days after the date notice of the Commissioner's decision is received by the person seeking the license.

(2) Notice of Administrative Penalty for Violation of Final Cease and Desist Order. A notice of administrative penalty issued under Finance Code §156.303(e) must be appealed within 10 days after the date the notice is issued.

(3) Order of Suspension for Violation of Final Order. An order of suspension issued by the

Commissioner under Finance Code §156.303(g) must be appealed within 15 days after the date the order is issued.

(4) Order of Suspension for Criminal Offense Involving Fraud, Theft, or Dishonesty. An order of suspension issued by the Commissioner under Finance Code §156.303(j) must be appealed within 15 days after the date the order is issued.

(5) Notice of Disciplinary Action. A notice of disciplinary action issued under Finance Code §§ 156.302(a), 156.303(a), or 156.303(a-1) must be appealed within 30 days after the date the notice is issued.

(6) Order for Disciplinary Action (Order to Take Affirmative Action or Order to Cease and Desist). An order of the Commissioner issued under Finance Code §156.303(b) or §156.406(c) must be appealed within 30 days after the date the order is issued. This deadline does not apply to an order for disciplinary action issued by the Commissioner under Finance Code §§ 156.302(a), 156.303(a), or 156.303(a-1) that was preceded by notice issued under paragraph (5) of this subsection.

(7) Other Deadlines. Any appeal not otherwise addressed by this section must be made within 30 days after the date notice or order is issued.

(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).

(d) Effect of Not Appealing. A mortgage company 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 company or other person.

§56.311. Hearings.

(a) Adjudicative hearings conducted under Finance Code Chapter 156 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 are 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.

(b) Hearing Costs for License Denials. Hearing costs assessed against a person under Finance Code §156.209(f) include:

(1) filing fees;

(2) the costs of a court reporter;

(3) the costs of the administrative law judge (ALJ) or hearings officer presiding over the hearing and any ancillary proceedings;

(4) the expense of SML's staff to prepare for and attend the hearing or any ancillary proceedings, and any related travel expenses;

(5) the cost of any outside counsel retained to represent SML; and

(6) the cost of any expert witness retained by SML.

(c) Determination of Hearing Costs for License Denials. Unless the ALJ makes more specific findings of fact or conclusions of law concerning the hearing costs described by subsection (b)(3) of this section, such costs are deemed to be \$500. Hearing costs described by subsection (b)(4) of this section are measured based on the diversion of productivity of such staff away from their normal duties and toward the hearings process and are calculated by multiplying the number of hours spent by each staff member in furtherance of the hearings process (measured in increments of 1/10 of an hour) by their current hourly compensation rate. The Commissioner may rely on affidavit testimony of such staff members to make appropriate findings of fact and conclusions of law concerning the hearing costs described by subsection (b)(4) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**TEXAS MORTGAGE COMPANY DISCLOSURE**

Pursuant to Texas Finance Code Section 156.004, you are notified of the following:

- We will either submit your loan application to a participating lender or make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.
- We will be compensated in compliance with the federal Truth in Lending Act and Regulation Z (see 12 C.F.R. § 1026.36(d)) (if applicable).

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE COMPANY OR RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS, OR TO FILE A CLAIM AGAINST A RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS SHOULD SEND A COMPLETED COMPLAINT FORM OR CLAIM APPLICATION TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING (SML): 2601 N. LAMAR BLVD., SUITE 201, AUSTIN, TEXAS 78705; TEL: 1-877-276-5550. INFORMATION AND FORMS ARE AVAILABLE ON SML'S WEBSITE: SML.TEXAS.GOV.

**ISSUED BY:**

Residential Mortgage Loan Originator: \_\_\_\_\_

NMLS ID: \_\_\_\_\_

Form A

Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s)/ Applicant(s):

Mortgage Company:

NMLS ID #:

Loan Details

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage company \_\_\_ has \_\_\_ has not reviewed the prospective applicant's/ applicant's credit report and credit score

The prospective applicant(s) /applicant(s) have provided the mortgage company with the following information:

Income \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Available cash to close \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Debts \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Assets \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) have provided, the mortgage company has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section.

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested;

Figure: 7 TAC §56.201(a)

2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided;
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes;
4. The collateral for the loan to satisfy the lender's requirements;
5. The loan, as described, to remain available in the market;
6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires;
7. The following additional items (list):

This conditional pre-qualification expires on: \_\_\_\_\_

\_\_\_\_\_  
Residential Mortgage Loan Originator Name

\_\_\_\_\_  
Mailing address

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
e-mail address

\_\_\_\_\_  
NMLS ID #

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Company:

NMLS ID #:

Loan Details:

Loan Amount:

Interest Rate\*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

\*Interest rate is subject to change unless it has been locked

Has a subject property been identified? \_\_\_\_Yes \_\_\_\_No

Mortgage company has:

Reviewed prospective applicant's / applicant's credit report and credit score \_\_\_\_Yes \_\_\_\_Not applicable

Verified prospective applicant's / applicant's income \_\_\_\_Yes \_\_\_\_Not applicable

Verified prospective applicant's / applicant's available cash to close \_\_\_\_Yes \_\_\_\_Not applicable

Verified prospective applicant's / applicant's debts and other assets \_\_\_\_Yes \_\_\_\_Not applicable

Prospective applicant(s) / applicant(s) is **approved** for the loan provided that creditworthiness and financial position do not materially change prior to closing and **provided that:**

1. The subject property is appraised for an amount not less than \$\_\_\_\_\_
2. The lender receives an acceptable title commitment
3. The lender receives an acceptable survey
4. The subject property's condition meets lender's requirements

Figure: 7 TAC §56.201(b)

5. The subject property is insured in accordance with lender's requirements
6. The prospective applicant(s) / applicant(s) executes all the documents lender requires and
7. The following additional conditions are complied with (list):

This conditional approval expires on \_\_\_\_\_

\_\_\_\_\_  
Residential Mortgage Loan Originator Name

\_\_\_\_\_  
Mailing address

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
e-mail address

\_\_\_\_\_  
NMLS ID #

**8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 57, Mortgage Bankers, Resulting from Rule Review**

**PURPOSE:** The purpose of the new rules in 7 TAC Chapter 57 is to implement changes resulting from SML's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the preamble for the rule proposal.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission approve publication of the new rules in 7 TAC Chapter 57 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve publication of the new rules in 7 TAC Chapter 57 for comment in the *Texas Register*.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 57. MORTGAGE BANKERS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes new rules in 7 TAC Chapter 57: §§57.1 - 57.6, 57.100 - 57.104, 57.106, 57.107, 57.200 - 57.207, 57.210, 57.300 - 57.304, 57.310, and 57.311 (proposed rules).

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, affect mortgage bankers registered with SML and individual residential mortgage loan originators licensed by SML under Finance Code Chapter 157.

*Changes Concerning the Reorganization (Relocation) of Mortgage Banker Rules from Chapter 81 to Chapter 57*

SML has determined it should reorganize its rules concerning mortgage bankers by relocating the rules to Chapter 57, a vacant chapter, and devoting such chapter exclusively to rules affecting mortgage bankers. The proposed rules, if adopted, would effectuate these changes.

*Changes Concerning General Provisions (Subchapter A)*

The proposed rules: in §57.2, Definitions, adopt new definitions for "control person," "E-Sign Act," "making a residential mortgage loan," "person," "SML," "State Examination System," "trigger lead," "UETA," "wrap lender," and "wrap mortgage loan," while eliminating definitions for "Commissioner's designee," and

"Department"; in §57.3, Formatting Requirements for Notices, adopt formatting requirements for the various disclosures a mortgage banker is required to make; in §57.4, Electronic Delivery and Signature of Notices, clarify that any notice or disclosure made by a mortgage banker may be delivered and signed electronically; and, in §57.5, Computation of Time, clarify how time periods measured in calendar days are computed.

*Changes Concerning Registration (Subchapter B)*

The proposed rules: in §57.100, Registration Requirements, clarify when a mortgage banker registration is required; in §57.101, Applications for Registration, establish requirements for making an application for a mortgage banker registration; in §57.102, Fees, clarify that the registration fee charged by SML is exclusive of fees charged by the Nationwide Multistate Licensing System (NMLS); in §57.103, Renewal of the Registration, clarify the requirements to renew the registration, clarify that a registration approved with a pending deficiency requires the mortgage banker to resolve the deficiency within 30 days after the date the registration is approved, and clarify that, if a registration is not renewed within the reinstatement period provided by Finance Code §157.0062, a person must apply for a new registration; in §57.104, NMLS Records; Notices Sent to the Mortgage Banker, establish requirements for the mortgage banker to update its registration records in NMLS and establish requirements concerning how SML will contact the mortgage banker using such records; in §57.106, Surrender of the Registration, clarify circumstances under which SML may not grant a request made by a mortgage banker to surrender its registration; and, in §57.107, Sponsorship of the Originator; Responsibility for Originator's Actions, establish requirements for which a mortgage banker is responsible for the actions of the individual residential mortgage loan

originators it allows to act on its behalf and provide that a mortgage banker registration will revert to inactive status if the mortgage banker fails to maintain a sponsored individual residential mortgage loan originator.

*Changes Concerning Books and Records (§57.204)*

Pursuant to Finance Code §157.0022, SML "may request documentary and other evidence [from a mortgage banker] considered by [SML] as necessary to effectively evaluate [a consumer] complaint, including correspondence, loan documents, and disclosures . . . [and a] mortgage banker shall promptly provide any evidence requested by the commissioner." Meanwhile, with respect to originators sponsored by a mortgage banker, pursuant to Finance Code §157.021(a), the department's commissioner (commissioner) may conduct inspections (including examinations) of an originator to determine compliance with Chapter 157 and the Texas SAFE Act, or the rules of the department adopted thereunder. Inspections include inspection of the originator's "books, records, documents, operations, and facilities" (Finance Code §157.021(a)). Pursuant to Finance Code §157.021(b), the commissioner, upon receipt of a signed written complaint against an originator, "shall investigate the actions and records" of the originator. Pursuant to Finance Code §157.021(e), the commission "by rule shall . . . determine the information and records [of the originator] to which the commissioner may demand access during an inspection or an investigation." Pursuant to Finance Code §157.02015(b), the commission "may adopt rules regarding books and records that [an originator] is required to keep, including the location at which the books and records must be kept." The proposed rules, in §57.204, Books and Records: clarify that a mortgage banker must maintain books and records on behalf of the individual residential mortgage loan originators it sponsors;

establish additional data points for the mortgage transaction log a mortgage banker is required to maintain under existing rules; establish a requirement for a mortgage banker to maintain books and records concerning home equity line of credit transactions it originates; establish a requirement for a mortgage banker to maintain certain additional records relating to home equity loans; establish a requirement for a mortgage banker to maintain a loan processing and underwriting log to track loan processing and underwriting services the mortgage banker provides; establish recordkeeping requirements for corrective action taken by the mortgage banker under proposed §57.304; and establish recordkeeping requirements for the handling of unclaimed funds of the consumer under proposed §57.305. Most of the records and information a mortgage banker is required to maintain under proposed §57.204 are required by other state and federal law or otherwise generated in the ordinary course of doing business. The proposed rules merely require that the mortgage banker capture and maintain the records or information, including transposing certain information to the transaction logs required by the rule. Applicable state and federal law a mortgage banker is required to comply with and that triggers the maintenance of the records and information includes, but not limited to: Article XVI, Section 50, Texas Constitution; Finance Code Chapter 157; Finance Code Chapter 159; Finance Code Chapter 343; the federal Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.); the federal Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.); the federal Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.); the federal Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.), Regulation P (12 C.F.R. §1016.1

et seq.), and the the Federal Trade Commission's (FTC) Privacy of Consumer Financial Information Rules (16 C.F.R. §313.1 et seq.); the FTC's Standards for Safeguarding Customer Information Rule (16 C.F.R. §314.1 et seq.); the federal 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 Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule)); 12 C.F.R. §1014.1 et seq.).

*Changes Concerning Reportable Incidents (§57.210)*

The mortgage industry in recent years, like many other industries, has experienced increasing operational risks to cybersecurity posed threat actors, including third-party service providers subject to such risks. SML has found that, in many instances, regulated persons do not self-report incidents that pose a threat to operations, and SML discovers of the incident through consumer complaints filed with SML, or through media reports, leaving SML in a poor position to mount a regulatory response. The proposed rules in §57.210, Reportable Incidents, establish requirements for a mortgage banker to report certain information to SML when the mortgage banker experiences a "security event" or a "catastrophic event." A "security event" is defined by the rule to mean "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." A "catastrophic event" is defined by the rule to mean "an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations." For an event to be reportable under the rule, it must present "a material risk, financial or otherwise, to a mortgage banker's operations or its customers." SML asserts such information is necessary to facilitate SML's inspection/examination

authority described in the Changes Concerning Books and Records (§57.204) section above. Under federal law, pursuant to the Federal Trade Commission's (FTC) Standards for Safeguarding Customer Information rules (16 C.F.R. §314.1, et seq.), a mortgage banker must "develop, implement, and maintain a comprehensive information security program" to safeguard customer information (16 C.F.R. §314.3(a)), and must, among other things: conduct periodic risk assessments of the information system; design and implement safeguards to control risks to the integrity of the information system (including data encryption and controlling access); regularly test or monitor the effectiveness of the safeguards; implement policies and procedures and internal controls to ensure personnel can execute the information security program; oversee service providers to ensure compliance with the information security program; continuously evaluate and adjust the information security program; establish a written incident response plan designed to promptly respond to, and recover from, any security event materially affecting the confidentiality, integrity, or availability of customer information; and, in the event of a breach involving the information of 500 or more consumers, report certain information to the FTC concerning the nature and extent of the breach. Meanwhile, pursuant to Business and Commerce Code §521.052, a mortgage banker "shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business." Pursuant to Business and Commerce Code §521.053(i), for a breach involving the information of 250 or more Texas consumers, a mortgage banker must report certain information to the attorney general. Considering the foregoing, the existing requirements of state and federal law already require a mortgage banker to maintain the information required to be reported

to SML under proposed §57.210 in the event of a security event. Moreover, a report made to the FTC or to the attorney general described above generally satisfies the requirements of the rule, other than the requirement to provide a "root cause analysis" concerning the "results or findings of an audit or investigation to determine the origin or root cause of security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event"; however, SML asserts that a root cause analysis is subsumed under the existing requirements of state and federal law related to security events, as described above, in order to meaningfully comply with such requirements.

*Other Changes Concerning Duties and Responsibilities (Subchapter C)*

The proposed rules: in §57.200, Required Disclosures, remove the requirement that the disclosure to consumers required by Finance Code §157.0021(a) be signed by the individual residential mortgage loan originator and the mortgage applicant, remove the requirement that a mortgage banker make the disclosure on social media sites, and establish the requirement for a mortgage banker to disclose its website address on all correspondence sent to the mortgage applicant; in §57.201, Conditional Pre-Qualification and Conditional Approval Letters, establish the requirement for a conditional pre-qualification letter or conditional approval letter be issued by an individual residential mortgage loan originator acting on behalf of the mortgage banker; in §57.202, Fraudulent, Misleading, or Deceptive Practices and Improper Dealings, clarify that a mortgage banker commits a violation if the mortgage banker knowingly misrepresents the lien position of a residential mortgage loan, create requirements concerning the use of trigger leads, clarify that a mortgage banker commits a violation if the mortgage banker solicits a consumer on the federal do-not-

call registry, clarify that a mortgage banker commits a violation if the mortgage banker issues a conditional pre-qualification letter or conditional approval letter that is inaccurate, erroneous, or negligently-issued, and clarify that a mortgage banker commits a violation if the mortgage banker engages in business when its registration is inactive; in §57.203, Advertising, establish the requirement for a mortgage banker to state its website address when making an advertisement, and establish requirements for the use of team names by a mortgage banker; in §57.205, Mortgage Call Reports, clarify the required components of the mortgage call report, and clarify that mortgage call reports must be complete and accurate when filed; and in §57.207, Periodic Statements, establish a requirement that the mortgage banker comply with the requirements of federal law under Regulation Z (12 C.F.R. §1026.41), governing periodic statements sent to the borrower.

*Changes Concerning Supervision and Enforcement (Subchapter D)*

The proposed rules: in §57.300, Examinations, provide that examinations are conducted using the State Examination System, and that SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority; in §57.302, Confidentiality of Examination, Investigation, and Inspection Information, clarify the confidentiality of information arising from an examination, investigation, or inspection by SML; in §57.303, Corrective Action, clarify when SML may direct a mortgage banker to take corrective action, and creating requirements for refunds made to consumers; in §57.304, Unclaimed Funds, establish requirements concerning the mortgage banker's handling of unclaimed funds of the consumer, including requiring the maintenance of a log to track the handling of such funds; and, in §57.310, Appeals, establish various deadlines by which a mortgage

banker or other person subject to an enforcement action must appeal.

*Other Modernization and Update Changes*

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

**Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

**Public Benefits**

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first

five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing mortgage bankers to be easier to find by members of the public; and, to better protect members of the public who are consumers seeking a residential mortgage loan from a mortgage banker registered with SML.

**Probable Economic Costs to Persons Required to Comply with the Proposed Rules**

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). However, SML includes in this proposal a note concerning certain potential costs other than direct costs (indirect costs). SML incorporates by reference the Changes Concerning Books and Records (§57.204) section above as if fully set forth herein. The proposed rules related to Changes Concerning Books and Records (§57.204) establish requirements concerning the books and records a mortgage banker must maintain. The maintenance of such records may have some attendant costs; however, as stated above, the required records and information are already generated by the mortgage banker in complying with other state and federal law or in the ordinary course of doing business. As a result, these indirect costs are insignificant. SML incorporates by reference the Changes Concerning Reportable Incidents (§57.210) section above as if fully set forth herein. The proposed rules related to Changes Concerning Reportable Incidents (§57.210) establish requirements for a mortgage banker to report certain information when it experiences a security event or a catastrophic event that materially affects its operations, and may have some attendant costs; however, as stated above,

the information required to be reported is already generated by the mortgage banker in complying with other state and federal law or in the ordinary course of doing business. As a result, these indirect costs are insignificant.

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement). The proposed rules related to Changes Concerning General Provisions (Subchapter A), Changes Concerning Registration (Subchapter B), Changes Concerning Books and Records (§57.204), Changes Concerning Reportable Incidents (§57.210), and Other Changes Concerning Duties and Responsibilities (Subchapter C) establish various rule requirements, as discussed in such sections; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Other Changes Concerning Duties and Responsibilities (Subchapter C) have the effect of repealing existing rule requirements as discussed in such section. (7) the proposed rules do not increase or decrease the number of individuals subject to the

rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

#### SUBCHAPTER A. GENERAL PROVISIONS

#### 7 TAC §§57.1 - 57.6

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

§57.1. Purpose and Applicability.

This chapter governs 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 registration and operations of mortgage bankers. This chapter applies to persons registered with SML as a mortgage banker or those required to be registered.

§57.2. Definitions.

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 157 (other than Subchapter D), the following definitions apply, unless the context clearly indicates otherwise:

(1) "Application," as used in Finance Code §157.002(6) and paragraphs (8) and (20) of this section means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is

customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, or the mortgage loan amount.

(2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(3) "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) "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,

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

(10) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as defined by Finance Code §157.002.

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

(12) "Offers or negotiates the terms of a

residential mortgage loan," as used in Finance Code §157.002(6) 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) "Originator" has the meaning assigned by Finance Code §157.002 in defining "residential mortgage loan originator." Paragraphs (12) and (20) 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 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 Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Finance Code §180.051.

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

(15) "Residential mortgage loan" has the meaning assigned by Finance Code §157.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan 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) "Residential real estate" has the meaning assigned by Finance 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) "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) "Takes a residential mortgage loan application," as used in Finance Code §157.002(6) 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.

(23) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(24) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

§57.3. Formatting Requirements for Notices.

Any notice or disclosure (notice) required by Finance Code Chapter 157, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. 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):

- (1) Arial;
- (2) Aptos;
- (3) Calibri;
- (4) Century Schoolbook;
- (5) Garamond;
- (6) Georgia;
- (7) Lucinda Sans;
- (8) Times New Roman;
- (9) Trebuchet; and
- (10) Verdana.

§57.4. Electronic Delivery and Signature of Notices.

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.

§57.5. Computation of Time.

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.

§57.6. Enforceability of Liens.

A violation of Finance Code Chapter 157, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

The agency certifies that counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER B. REGISTRATION

**7 TAC §§57.100 - 57.104, 57.106 and 57.107**

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

§57.100. Registration Requirements.

(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:

(1) representing or holding that person out to the public through advertising or other means of communication as a mortgage banker; and

(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).

(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).

§57.101. Applications for Registration.

(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.

(b) Supplemental Information. SML may require

additional, clarifying, or supplemental information or documentation deemed necessary or appropriate to determine that the registration requirements of Finance Code Chapter 157 are met.

(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.

§57.102. Fees.

(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.

(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).

(c) All fees are nonrefundable and nontransferable.

§57.103. Renewal of the Registration.

(a) A registration may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees; and

(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).

(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 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.

(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.

§57.104. NMLS Records; Notices Sent to the Mortgage Banker.

(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 (nationwidelicencingsystem.org) describes the available registration status options and their meaning.

(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:

(1) name (which must be accompanied by supporting documentation submitted to SML establishing the name change);

(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);

(3) the contact information under "Identifying Information";

(4) the contact information under "Resident/Registered Agent";

(5) the contact information under "Contact Employee Information"; and

(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(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.

(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.

(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.

(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.

§57.106. Surrender of the Registration.

(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:

(1) the mortgage banker is the subject of a pending or contemplated investigation or enforcement action;

(2) the mortgage banker is in violation of an order of the Commissioner;

(3) the mortgage banker has failed to pay any fee, charge, or other indebtedness owed to SML; or

(4) the mortgage banker has failed to file mortgage call reports required by §57.205 of this title (relating to Mortgage Call Reports).

(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.

§57.107. Sponsorship of Originator; Responsibility for Originator's Actions.

(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](http://nationwidelicensingsystem.org)).

(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).

(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.

(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 banker must not conduct regulated activities.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

◆ ◆ ◆  
SUBCHAPTER C. DUTIES AND  
RESPONSIBILITIES

7 TAC §§57.200 - 57.206, and 57.210

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

§57.200. Required Disclosures.

(a) Purpose. This section clarifies and establishes requirements related to the disclosures a mortgage banker is required to make under Finance Code §157.0021.

(b) Specific Notice to Applicant (Origination Notice). A mortgage banker 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 may be provided to the mortgage applicant by any means allowing for the mortgage banker to capture and maintain records reflecting timely delivery, as required by §57.204(c)(2)(A)(iv) of this title (relating to Books and Records). The notice may

be signed and dated by the mortgage applicant to evidence receipt. The notice must be in the form adopted by this subsection. However, the form may be modified by adding other identifying information for the transaction (e.g., loan identification number, or the name and NMLS ID of the mortgage banker or the investor); provided, any information added to the form is not misleading and does not contradict or frustrate the purpose of the disclosure.

Figure: 7 TAC §57.200(b)

(c) Posted Notice on Websites. A mortgage banker must post a notice concerning SML's regulatory oversight on each website of the mortgage banker, 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 or from which the mortgage banker advertises to solicit such business, as provided by §57.203 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](http://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.

(d) Disclosures in Correspondence. All correspondence sent to a mortgage applicant or borrower must include:

(1) the mortgage banker's name and NMLS ID; and

(2) the mortgage banker's website address, if it has a website.

(e) 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.

§57.201. Conditional Pre-Qualification and Conditional Approval Letters.

(a) Conditional Pre-Qualification Letter. Except as provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant, written confirmation of conditional pre-qualification (conditional pre-qualification letter) must include the information in Form A, Figure: 7 TAC §57.201(a). The information must be provided using 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 conditional pre-qualification letter. Form A or an alternate form may be modified by adding any of the following as needed:

Figure: 7 TAC §57.201(a)

(1) Any additional aspects of the loan as long as not misleading;

(2) Any additional items that the originator has reviewed in determining conditional qualifications; or

(3) Any additional terms, conditions, and requirements.

(b) Conditional Approval Letter. 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 (conditional approval letter), must include the information in Form B, Figure 7: TAC §57.201(b). The information can be provided using Form B or an alternate form approved by the mortgage banker that includes all of the information found on Form B. There is no requirement to issue a conditional 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 a 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 approval letter must not be issued unless the mortgage banker or its sponsored 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.

Figure: 7 TAC §57.201(b)

(c) Firm Offers of Credit. Subsection (a) of this section does not apply to "firm offers of credit," as defined by 15 U.S.C. §1681a(l).

(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.

§57.202. Fraudulent, Misleading, or Deceptive Practices and Improper Dealings.

(a) Fraudulent, Misleading, or Deceptive Practices. The following conduct by a mortgage banker or its sponsored originators constitutes fraudulent and dishonest dealings for purposes of Finance Code §157.009(d):

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

(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) 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 to make or acquire a residential mortgage loan;

(6) as provided by Regulation X (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan for which the mortgage banker or sponsored originator receives compensation for services not actually performed

or where the compensation received bears no reasonable relationship to the value of the services actually performed;

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

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

(9) 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

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as provided by the FCRA (12 U.S.C. §1681a(l) and §1681b(c)); or

(10) engaging in any other practice which the Commissioner, by published interpretation, has determined is fraudulent, misleading, or deceptive.

(b) Improper or Unfair Dealings. The following conduct by a mortgage banker or its sponsored originators constitutes improper dealings for purposes of Finance Code §157.009(d):

(1) acting negligently in performing an act requiring a registration under Finance Code Chapter 157 or a license under Finance Code Chapters 157 and 180;

(2) violating any provision of a local, State of Texas, or federal constitution, statute, rule, ordinance, regulation, or final court decision that governs the same or a closely related activity, transaction, or subject matter that is governed by the provisions of Finance Code Chapters 156, 157 or 180, 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) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. 1024.1 et seq.);

(G) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and 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 159 and Chapter 59 of this title; and

(J) 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) 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 the mortgage

applicant unless the loan closes and:

(A) the mortgage banker is making the residential mortgage loan (lender); or

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

(6) 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 services and any costs.

(7) 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; or

(8) 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 or registration in an inactive status.

(c) Related Transactions. A mortgage banker engages in fraudulent and dishonest dealings for purposes of Finance Code §157.009(d) 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, misleading, or deceptive acts 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 in a separate but related transaction;

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

(C) the mortgage banker or sponsored originator knew or should have known of the fraudulent, 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.

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage banker and its sponsored originators 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 residential mortgage loan origination services unless otherwise allowable under Regulation X (12 C.F.R. §1024.14) and Regulation Z (12 C.F.R. §1026.36(d)). A sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent licensed under Occupations Code Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the

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extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described by this subsection occurs as a part of closing and is properly reflected in the closing disclosure. If a payment or other transfer described by this subsection occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the originator's fees for residential mortgage loan origination services and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption may only be overcome by clear and convincing evidence established by the mortgage banker or sponsored originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection is deemed to constitute improper dealings for purposes of Finance Code §157.009(d).

§57.203. Advertising.

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(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:

(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;

(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

(C) signs located on or adjacent to the mortgage banker's registered office as provided by §57.206 of this title (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) 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).

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

(1) the mortgage banker's name and NMLS ID;

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

(3) the sponsored originator’s name and NMLS ID.

(d) Advertising Directly by a Mortgage Banker. A mortgage banker may advertise directly to the public and is not required to advertise through a sponsored originator. The requirements of subsection (c)(3) of this section do not apply to an advertisement made directly by a mortgage banker.

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

(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:

(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).

(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.

(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.

§57.204. Books and Records.

(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.

(b) Maintenance of Records, Generally. In order

to ensure a mortgage banker and its sponsored originators have all records necessary to facilitate an inspection (including an examination) by SML of the mortgage banker's sponsored originators, enable SML to investigate complaints against a mortgage banker or its sponsored originators, and otherwise ensure compliance with the requirements of Finance Code Chapter 157, and this chapter, a mortgage banker and its sponsored originators 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 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. (For purposes of this section "main office" has the meaning assigned by §57.206 of this title (relating to Office Locations; Remote Work).)

(3) Production of Records; Disciplinary Action. All records required by this section must be maintained in good order and produced to SML upon request. Failure by a mortgage banker's sponsored 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 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) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage banker or its sponsored originators 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.

(c) Required Records (Origination). A mortgage banker and its sponsored originators are 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

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

(D) date of the initial loan application;

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

(F) interest rate;

(G) 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) full name of the lender that initially funded or acquired the loan and their NMLS ID, if applicable;

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

(K) closing date;

(L) lien position (e.g., first lien, second

lien, or wrap mortgage);

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

(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

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statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

(iv) the disclosure required by Finance Code §157.0021 and §57.200(b) of this title (relating to Required Disclosures), and records reflecting timely delivery of the disclosure to the mortgage applicant;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the conditional pre-qualification letter, or similar, as specified by Finance Code §157.02012 and §57.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters);

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the conditional approval letter, or similar, as specified by Finance Code §157.02012 and §57.201 of this title;

(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 for the purchase of the consumer report or credit report;

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

(xvii) the initial privacy notice required by Regulation P (12 C.F.R. §1016.4) or the Federal Trade Commission's Privacy of

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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), 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 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);

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(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));

(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) 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 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));

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(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));

(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) 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 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

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of lien from the contractor to the lender;

(iii) the residential construction contract;

(iv) notice of the right of rescission required by Section 50(a)(5)(C) (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 Section 50(k)(9);

(ii) the certificate of counseling required by Section 50(k)(8);

(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

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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).

(e) Other Records Required by Federal Law. A mortgage banker and its sponsored originators 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) Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(2) 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) 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.);

(4) Regulation N (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) General Business Records. A mortgage banker and its sponsored originators must capture and maintain the following records generated in the normal course of doing business:

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

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

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

(7) all advertisements in the medium (e.g., recorded audio, video, Internet or social media site posting, or print) in which they were published or distributed; and

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

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

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

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

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

(E) quality control policy, if any;

(F) compliance manual, if any; and

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

(g) 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

of this title (relating to Office Locations; Remote Work);

(h) Records Concerning Remote Work. A mortgage banker must maintain records reflecting its compliance with the requirements for remote work, as provided by §57.206 of this title;

(i) Records Concerning Voluntary Corrective Action. A mortgage banker must maintain records showing compliance with §57.303 of this title (relating to Corrective Action);

(j) Records Concerning Unclaimed Funds. A mortgage banker must maintain records showing compliance with §57.304 of this title (relating to Unclaimed Funds);

(k) Other Records Designated by SML. A mortgage banker and its sponsored originators must maintain such other books and records as SML may, from time to time, specify in writing.

§57.205. 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](http://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.

(g) Failure to File; Disciplinary Action. Failure to file a mortgage call report may result in disciplinary action, including, but not limited to, denial, suspension, or revocation of the registration, or the imposition of an

administrative penalty.

§57.206. Office Locations; Remote Work.

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(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:

(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 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 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;

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(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 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 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.

(4) "Registered office" means a physical office of the mortgage banker that is registered with SML 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 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. A sponsored 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;

(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 on request;

(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

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage banker and its employees and sponsored originators comply with this section; and

(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.

§57.207. Periodic Statements.

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.

§57.210. Reportable Incidents.

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(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).

(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:

(A) a "catastrophic event" as defined by this subsection; or

(B) a "security event" as defined by this subsection.

(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 inquiries 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 Security Events. For any security event triggering a notification described by subsection (c) of this section, 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 security event occurred.

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. Information reported under 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).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



#### SUBCHAPTER D. SUPERVISION AND ENFORCEMENT

#### 7 TAC §§57.300 - 57.304, 57.310, and 57.311

##### Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

##### §57.300. Examinations.

(a) Purpose. This section clarifies and establishes requirements related to examinations of a

mortgage banker's sponsored originators conducted by SML under Finance Code §157.021.

(b) State Examination System (SES). Examinations are conducted in SES. A mortgage banker must use SES to facilitate the examination.

(c) Examinations by Other State Agencies. 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.

(d) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML 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 examiners are scheduled to begin the examination. Failure to 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.

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

(1) all persons are properly licensed and sponsored;

(2) all office locations are properly

registered, as provided by §57.206 of this title (relating to Office Locations; Remote Work);

(3) all required books and records are being maintained in accordance with §57.204 of this title (relating to Books and Records);

(4) legal and regulatory requirements applicable to the mortgage banker and its sponsored originators are being properly followed (including, but not limited to, the requirements described in §57.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings)); and

(5) other matters SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapters 157 and 180.

(f) Loan Sample. The examiners will review a sample of residential mortgage loan files identified by the examiners from the mortgage banker's mortgage transaction log 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. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(g) Failure to Cooperate; Disciplinary Action. Failure by a mortgage banker or sponsored originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in action against the mortgage banker under Finance Code §157.009 and disciplinary action against the originator including, but not limited to, imposition of an administrative penalty.

(h) Reimbursement for Costs. 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. When SML must travel outside of Texas to conduct an examination of a mortgage banker's sponsored originators because the required records are maintained at a location outside of Texas, SML will require reimbursement for the actual costs incurred by SML in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs. Costs assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

§57.301. Investigations.

(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.

(b) Reasonable Cause. 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.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. An investigation may include:

(1) review of documentary evidence;

(2) interviews with complainants, respondents, and third parties, and the taking of

sworn written statements;

(3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;

(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and

(5) other lawful investigative methods SML deems necessary or appropriate.

§57.302. Confidentiality of Examination, Investigation, and Inspection Information.

(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.

(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):

(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 inspection;

(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);

(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.

(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).

§57.303. Corrective Action.

(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, SML may direct the mortgage banker to voluntarily 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.

(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.

(c) Policies and Procedures and Internal Controls. SML may direct the mortgage banker to develop and adopt policies 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 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.

§57.304. Unclaimed Funds.

(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:

(1) date of transfer to the escheat suspense account;

(2) date the obligation to pay the funds arose;

(3) full name and last known contact information of the mortgage applicant, borrower,

or other customer to whom funds are owed; and

(4) amount of unclaimed funds.

(b) Required Records. The mortgage banker must maintain records reflecting bona fide attempts to pay the funds to the mortgage applicant, borrower, or customer.

(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.

(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.

§57.310. Appeals.

(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 decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(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.

(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.

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(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.

(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).

(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.

§57.311. Hearings.

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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

◆       ◆       ◆

**TEXAS MORTGAGE BANKER DISCLOSURE**

Pursuant to Texas Finance Code Section 157.0021, you are notified of the following:

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS, OR TO FILE A CLAIM AGAINST A RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS SHOULD SEND A COMPLETED COMPLAINT FORM OR CLAIM APPLICATION TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING (SML): 2601 N. LAMAR BLVD., SUITE 201, AUSTIN, TEXAS 78705; TEL: 1-877-276-5550. INFORMATION AND FORMS ARE AVAILABLE ON SML'S WEBSITE: SML.TEXAS.GOV.

**ISSUED BY:**

Residential Mortgage Loan Originator: \_\_\_\_\_

NMLS ID: \_\_\_\_\_

Form A

Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage banker \_\_\_ has \_\_\_ has not reviewed the prospective applicant's / applicant's credit report and credit score

The prospective applicant(s) / applicant(s) has provided the mortgage banker with the following information:

Income \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Available cash to close \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Debts \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Assets \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) has provided, the mortgage banker has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section.

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested

Figure: 7 TAC §57.201(a)

2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes
4. The collateral for the loan to satisfy the lender's requirements
5. The loan, as described, to remain available in the market
6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires
7. The following additional items (list):

This conditional pre-qualification expires on \_\_\_\_\_

\_\_\_\_\_  
Residential Mortgage Loan Originator Name

\_\_\_\_\_  
Mailing address

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
e-mail address

\_\_\_\_\_  
NMLS ID #

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Interest Rate\*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

\*Interest rate is subject to change unless it has been locked

Has a subject property been identified?  Yes  No

Mortgage banker has:

Reviewed prospective applicant's / applicant's credit report and credit score:  Yes  Not applicable

Verified prospective applicant's / applicant's income:  Yes  Not applicable

Verified prospective applicant's / applicant's available cash to close:  Yes  Not applicable

Verified prospective applicant's / applicant's debts and other assets:  Yes  Not applicable

Prospective applicant(s) / applicant(s) is **approved** for the loan provided that creditworthiness and financial position do not materially change prior to closing and **provided that**:

1. The subject property is appraised for an amount not less than \$ \_\_\_\_\_
2. The lender receives an acceptable title commitment
3. The lender receives an acceptable property survey
4. The subject property's condition meets lender's requirements

Figure: 7 TAC §57.201(b)

5. The subject property is insured in accordance with lender's requirements
6. The prospective applicant(s) / applicant(s) executes all the documents the lender requires and
7. The following additional conditions are complied with (list):

This conditional approval expires on \_\_\_\_\_.

\_\_\_\_\_  
Residential Mortgage Loan Originator Name

\_\_\_\_\_  
Mailing address

\_\_\_\_\_  
e-mail address

\_\_\_\_\_  
NMLS ID #

**9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 58, Residential Mortgage Loan Servicers, Resulting from Rule Review**

**PURPOSE:** The purpose of the new rules in 7 TAC Chapter 58 is to implement changes resulting from SML's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the preamble for the rule proposal.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission approve publication of the new rules in 7 TAC Chapter 58 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve publication of the new rules in 7 TAC Chapter 58 for comment in the *Texas Register*.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 58. RESIDENTIAL MORTGAGE LOAN SERVICERS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes new rules in 7 TAC Chapter 58: §§58.1 - 58.5, 58.100 - 58.104, 58.106, 58.107, 58.200, 58.207, 58.210, 58.301 - 58.304, 58.310 and 58.311 (proposed rules).

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 79, Residential Mortgage Loan Servicers, affect residential mortgage loan servicers (mortgage servicers) registered with SML under Finance Code Chapter 158, Residential Mortgage Loan Servicers.

*Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Servicer Rules from Chapter 79 to Chapter 58*

SML has determined it should reorganize its rules concerning mortgage servicers by relocating the rules to Chapter 58 (a vacant chapter). The proposed rules, if adopted, would effectuate this change.

*Changes Concerning General Provisions (Subchapter A)*

The proposed rules: in §58.2, Definitions, adopt new definitions for "control person," "dwelling," "E-Sign Act," "mortgage servicer," "mortgage servicer rights," "residential mortgage loan," "residential real estate," "SML," and "UETA," while eliminating definitions for "Commissioner's designee," "Department," and

"the Act"; in §58.3, Formatting Requirements for Notices, adopt formatting requirements for the various disclosures a mortgage servicer is required to make; in §58.4, Electronic Delivery and Signature of Notices, clarify that any notice or disclosure made by a mortgage servicer may be delivered and signed electronically; and, in §58.5, Computation of Time, clarify how time periods measured in calendar days are computed.

*Changes Concerning Registration (Subchapter B)*

The proposed rules: in §58.100, Registration Requirements, clarify when a mortgage servicer registration is required (including as it relates to master servicers); in §58.102, Fees, clarify that the registration fee charged by SML is exclusive of fees charged by the Nationwide Multistate Licensing System (NMLS); in §58.103, Renewal of Registration, clarify that a registration approved with a pending deficiency requires the mortgage servicer to resolve the deficiency within 30 days after the date the registration is approved, and clarify that, if registration is not renewed prior to its expiration, the person must apply for a new registration; in §58.104, NMLS Records; Notices Sent to the Mortgage Servicer, establish requirements for the mortgage servicer to update its registration records in NMLS and establish requirements concerning how SML will contact the mortgage servicer using such records; in §58.106, Surrender of the Registration, clarify circumstances under which SML may not a request made a mortgage servicer to surrender its registration; and, in §58.107, Surety Bond Requirement, establish a requirement to use an electronic surety bond, and establishing requirements governing the required amount of the surety bond;.

*Changes Concerning Reportable Incidents (§58.210)*

The mortgage industry in recent years, like many other industries, has experienced increasing operational risks to cybersecurity posed threat actors, including third-party service providers subject to such risks. SML has found that, in many instances, regulated persons do not self-report incidents that pose a threat to operations, and SML discovers of the incident through consumer complaints filed with SML, or through media reports, leaving SML in a poor position to mount a regulatory response. The proposed rules in §58.210, Reportable Incidents, establish requirements for a mortgage servicer to report certain information to SML when the mortgage servicer experiences a "security event" or a "catastrophic event." A "security event" is defined by the rule to mean "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." A "catastrophic event" is defined by the rule to mean "an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations." For an event to be reportable under the rule, it must present "a material risk, financial or otherwise, to a mortgage servicer's operations or its customers." SML asserts such information is necessary to facilitate SML's inspection authority described in Finance Code §158.102. Under federal law, pursuant to the Federal Trade Commission's (FTC) Standards for Safeguarding Customer Information rules (16 C.F.R. §314.1, et seq.), a mortgage servicer must "develop, implement, and maintain a comprehensive information security program" to safeguard customer information (16 C.F.R. §314.3(a)), and must, among other things: conduct periodic risk assessments of the information system; design and implement safeguards to control risks to the integrity of the information system (including data encryption and controlling access); regularly test or monitor the effectiveness of the safeguards; implement policies and procedures

and internal controls to ensure personnel can execute the information security program; oversee service providers to ensure compliance with the information security program; continuously evaluate and adjust the information security program; establish a written incident response plan designed to promptly respond to, and recover from, any security event materially affecting the confidentiality, integrity, or availability of customer information; and, in the event of a breach involving the information of 500 or more consumers, report certain information to the FTC concerning the nature and extent of the breach. Meanwhile, pursuant to Business and Commerce Code §521.052, a mortgage servicer "shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business." Pursuant to Business and Commerce Code §521.053(i), for a breach involving the information of 250 or more Texas consumers, a mortgage servicer must report certain information to the attorney general. Considering the foregoing, the existing requirements of state and federal law already require a mortgage servicer to maintain the information required to be reported to SML under proposed §58.210 in the event of a security event. Moreover, a report made to the FTC or to the attorney general described above generally satisfies the requirements of the rule, other than the requirement to provide a "root cause analysis" concerning the "results or findings of an audit or investigation to determine the origin or root cause of security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event"; however, SML asserts that a root cause analysis is subsumed under the existing requirements of state and federal law related to security events, as described above, in order to meaningfully comply with such requirements.

*Other Changes Concerning Duties and Responsibilities (Subchapter C)*

The proposed rules: in §55.200, Required Disclosures, remove the requirement that the disclosure to consumers required by Finance Code §158.101 be included on all correspondence sent to the borrower, and instead, establish a requirement to make the disclosure on the first notice sent to the borrower that notifies the borrower of the mortgage servicer's role in servicing the loan; and establish a requirement to include the disclosure on the mortgage servicer's website; and in §58.207, Periodic Statements, establish a requirement that the mortgage servicer comply with the requirements of federal law under Regulation Z (12 C.F.R. §1026.41), governing periodic statements sent to the borrower.

*Changes Concerning Supervision and Enforcement (Subchapter D)*

The proposed rules: in §58.302, Confidentiality of Investigation Information, clarify the confidentiality of information arising from an investigation by SML; in §58.303, Corrective Action, clarify when SML may direct a mortgage servicer to take corrective action, and creating requirements for refunds made to consumers; in §58.304, Unclaimed Funds, establish requirements concerning the mortgage servicer's handling of unclaimed funds of the consumer, including requiring the maintenance of a log to track the handling of such funds; and, in §58.310, Appeals, establish various deadlines by which a mortgage servicer or other person subject to an enforcement action must file an appeal.

*Other Modernization and Update Changes*

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for

clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

*Fiscal Impact on State and Local Government*

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

*Public Benefits*

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing mortgage servicers to be easier to find by members of the public; and, to better protect members of the public who are consumers with a mortgage loan serviced by a mortgage servicer registered with SML.

### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). However, SML includes in this proposal a note concerning certain potential costs other than direct costs (indirect costs). SML incorporates by reference the Changes Concerning Reportable Incidents (§58.210) section above as if fully set forth herein. The proposed rules related to Changes Concerning Reportable Incidents (§58.210) establish requirements for a mortgage servicer to report certain information when it experiences a security event or a catastrophic event that materially affects its operations, and may have some attendant costs; however, as stated above, the information required to be reported is already generated by the mortgage servicer in complying with other state and federal law or in the ordinary course of doing business. As a result, these indirect costs are insignificant.

### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does

not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning General Provisions (Subchapter A), Changes Concerning Registration (Subchapter B), Changes Concerning Reportable Incidents (§58.210), and Other Changes Concerning Duties and Responsibilities (Subchapter C) establish various rule requirements as discussed in such sections; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Other Changes Concerning Duties and Responsibilities (Subchapter C) have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

### Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

### Takings Impact Assessment

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There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

**7 TAC §§58.1 - 58.5**

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

*§58.1. Purpose and Applicability.*

This chapter governs SML's administration and enforcement of Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act, concerning the registration and operations of residential mortgage loan servicers. This chapter applies to persons registered with SML as a residential mortgage loan servicer or those required to be registered.

*§58.2. Definitions.*

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 158, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(2) "Control person" means an individual that directly or indirectly exercises control over a mortgage servicer. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage servicer, 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.

(3) "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 a manufactured home, if it is used as a residence.

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

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(5) "Mortgage servicer" has the meaning assigned by Finance Code §158.002 in defining "residential mortgage loan servicer."

(6) "Mortgage servicing rights" means the contractual obligation to service a mortgage loan and the right to receive compensation for such services in accordance with the contract.

(7) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §180.002 in defining "Nationwide Mortgage Licensing System and Registry."

(8) "Person" has the meaning assigned by Finance Code §158.002.

(9) "Residential mortgage loan" has the meaning assigned by Finance Code §158.002 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 used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(10) "Residential real estate" has the meaning assigned by Finance Code §158.002 and includes 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.

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

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

§58.3. Formatting Requirements for Notices.

Any notice or disclosure (notice) required by

Finance Code Chapter 158, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 158, 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 (this list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

- (1) Arial;
- (2) Aptos;
- (3) Calibri;
- (4) Century Schoolbook;
- (5) Garamond;
- (6) Georgia;
- (7) Lucinda Sans;
- (8) Times New Roman;
- (9) Trebuchet; and
- (10) Verdana.

§58.4. Electronic Delivery and Signature of Notices.

Any notice or disclosure required by Finance Code Chapters 158, 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.

§58.5. Computation of Time.

The calculation of any time period measured in days by Finance Code Chapter 158, 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.

The agency certifies that counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**SUBCHAPTER B. REGISTRATION**

**7 TAC §§58.100 - 58.104, 58.106, 58.107**

**Statutory Authority**

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§58.100. Registration Requirements.

(a) Registration Required. A person, unless exempt as provided by Finance Code §158.052, is required to be registered with SML as a mortgage servicer under Finance Code Chapter 158 if the person:

(1) acts as a mortgage servicer or engages in or conducts the business of a mortgage servicer, concerning a residential mortgage loan secured by residential real estate in Texas; or

(2) advertises or holds that person out to the public as engaging in or conducting the business of a mortgage servicer in Texas.

(b) Wrap Mortgage Servicing. A "wrap lender," as defined by Finance Code §158.001, that holds the mortgage servicing rights for a wrap mortgage loan must be registered under Finance Code Chapter 158 and comply with the requirements of Finance Code Chapter 159, Subchapter F and Chapter 58 of this title (relating to Wrap Mortgage Loans).

(c) Master Servicers and Subservicers. With respect to a residential mortgage loan for which the mortgage servicing rights are held by a person who is not the owner of the note (a/k/a "master servicer"), the holder of the mortgage servicing rights must be registered under Finance Code Chapter 158 even if that person does not actually receive any payments from the borrower but, instead, contracts with another person to service the loan (a/k/a "subservicer").

§58.101. Applications for Registration.

(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

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outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation deemed necessary or appropriate to determine that the registration requirements of Finance Code Chapter 158 are met.

(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.

§58.102. Fees.

(a) Registration Fees. The registration fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §158.053(b), 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. 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.

(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).

(c) All fees are nonrefundable and nontransferable.

§58.103. Renewal of Registration.

(a) A registration may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees; and

(2) a determination by SML that the mortgage servicer continues to meet the minimum requirements for registration, including the requirements of Finance Code §158.058(c).

(b) Application of §58.101. A renewal request is an application subject to the requirements of §58.101 of this title (relating to Applications for Registration). A renewal request withdrawn under §58.101(c) of this title will be rejected in NMLS.

(c) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the mortgage servicer to continue conducting regulated activities while the mortgage servicer works diligently to resolve the deficiencies. A renewal request approved by the Commissioner under this subsection will be assigned the NMLS registration status "Approved - Deficient." Approval under this subsection does not relieve the mortgage servicer of the obligation to resolve the deficiencies noted. A mortgage servicer approved under this subsection must resolve the

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deficiencies within 30 days after the date the registration 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.

(d) No Renewal After Expiration. If a mortgage servicer fails to make a renewal request during the annual renewal period (November 1 to December 31) while the registration is still active and before it expires, then the registration cannot be renewed. Instead, the person must apply for a new registration and comply with all current requirements and procedures governing issuance of a new registration.

§58.104. NMLS Records; Notices Sent to the Mortgage Servicer.

(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 (nationwidelicingsystem.org) describes the available registration status options and their meaning.

(b) Amendments to NMLS Records Required. A mortgage servicer 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:

(1) name (which must be accompanied by supporting documentation submitted to SML establishing the name change);

(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);

(3) the contact information under "Identifying Information";

(4) the contact information listed under "Resident/Registered Agent";

(5) the contact information listed under "Contact Employee Information"; and

(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(c) Amendments to MU2 Associations Required. A mortgage servicer must cause the individuals who are required to register an association with the mortgage servicer (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.

(d) Notices Sent to the Mortgage Servicer. Any correspondence, notification, alert, message, official notice or other written communication from SML will be sent to the mortgage servicer in accordance with this subsection using the mortgage servicer's current contact information of record in NMLS unless another method is required by other applicable law.

(1) Service by Email. Service by email is made using the email address the mortgage servicer 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 servicer'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 servicer 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 servicer is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. A mortgage servicer is further deemed to have constructive notice of any NMLS system notifications sent to it by email.

(2) Service by Mail. Service by mail is made using the address the mortgage servicer 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 servicer 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 servicer by mail and the document communicates a deadline by or a time during which the mortgage servicer 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.

§58.106. Surrender of the Registration.

(a) Surrender Request. A mortgage servicer may seek surrender of the registration by filing a surrender request (request) in NMLS. The filing

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:

(1) the mortgage servicer is the subject of a pending or contemplated investigation or enforcement action;

(2) the mortgage servicer is in violation of an order of the Commissioner; or

(3) the mortgage servicer has failed to pay any fee, charge, or other indebtedness owed to SML.

(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 servicer's registration will be assigned the registration status "Approved - Inactive" in NMLS.

§58.107. Surety Bond Requirement.

(a) Purpose and Applicability. This section clarifies and establishes requirements related to the surety bond certain mortgage servicers are required to have under Finance Code §158.055. This section does not apply to a mortgage servicer excepted from the surety bond requirement under Finance Code §158.055(h).

(b) NMLS Electronic Surety Bond Required. The surety bond must be submitted electronically through NMLS and must be made using the current form prescribed by NMLS. The NMLS Resource Center website ([nationwidelicensingsystem.org](http://nationwidelicensingsystem.org)) explains how to file the electronic surety bond in NMLS.

(c) Required Parties. The surety bond must be

payable to the Commissioner as the sole payee. The name of the principal insured on the bond must match exactly the name filed with the Texas Secretary of State, if applicable.

(d) Authorized Surety Provider. The surety bond must be issued by a surety company authorized to transact business in Texas and comply with the applicable requirements of the Insurance Code.

(e) Minimum Bond Amount. Except as provided by paragraph (4) of this subsection, the minimum amount for the surety bond is determined based on the mortgage servicer's volume of loans serviced in Texas. The loan volume is calculated by adding the total unpaid principal balance of all residential mortgage loans serviced by the mortgage servicer secured by real property located in Texas as of October 31 of the year preceding the calendar year of the mortgage servicer's registration. The minimum amount for the surety bond is:

(1) New Applicants for Registration. If the applicant has never been registered with the Department as a mortgage servicer or was not registered within the 12 months preceding the date of application, the minimum amount for the surety bond is \$25,000. If the mortgage servicer was registered within the Department within the 2 years preceding the date of application, the minimum amount for the surety bond is determined based on the mortgage servicer's loan volume on the day the mortgage servicer's registration lapsed.

(2) Volume less than or equal to \$25,000,000. If the mortgage servicer's volume of loans is less than or equal to \$25,000,000, the minimum amount for the surety bond is \$25,000.

(3) Volume greater than \$25,000,000. If the mortgage servicer's volume of loans is greater than \$25,000,000, the minimum amount for the

surety bond is \$50,000.

(4) Servicers of Unimproved Real Property or Foreclosed Properties. Paragraphs (2) and (3) of this subsection notwithstanding, and as provided by Finance Code §158.055(c), if a mortgage servicer services only residential mortgage loans secured by unimproved real property or services only residential mortgage loans secured by foreclosed properties with a dwelling, or both, the minimum amount for the surety bond is \$25,000, regardless of the cumulative value of sales of property by the mortgage servicer.

(f) Duty to Maintain and Update Surety Bond. The surety bond must remain active for as long as the mortgage servicer's registration is active. The mortgage servicer must recalculate the minimum amount for the surety bond before requesting renewal of the registration during the annual renewal period (November 1 to December 31). If the mortgage servicer is required to increase the amount of the surety bond as provided by this section, the new surety bond reflecting the higher surety bond amount must be active before the registration will be renewed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§58.200, 58.207, 58.210

Statutory Authority

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This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§58.200. Required Disclosures.

(a) Purpose. This section clarifies and establishes requirements related to the disclosure a mortgage servicer is required to make under Finance Code §158.101.

(b) Specific Notice to Borrower. A mortgage 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 SML and posted on its website (sml.texas.gov). The notice must be included in the first notice sent to the borrower that notifies the borrower of the mortgage servicer'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 servicers servicing a residential mortgage loan not secured by real property located in Texas must not provide the notice described by this section.

(c) Posted Notice on Websites. A mortgage servicer must post the notice required by subsection (b) of this section on each website of the mortgage servicer, other than a social media site, that is accessible by a borrower. 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 page with the link to such page displayed on the initial or home

page.

(d) Disclosures in Correspondence. All correspondence sent to the borrower must include:

(1) the mortgage servicer's name and NMLS ID; and

(2) the mortgage servicer's website address, if it has a website.

§58.207. Periodic Statements.

A mortgage servicer that 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.

§58.210. Reportable Incidents.

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(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).

(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage servicers' operations or its customers. A reportable incident includes the following items, provided, it presents a material risk:

(A) a "catastrophic event" as defined by this subsection

(B) a "security event" as defined by this

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subsection;

(C) the termination or curtailment of a line of credit or funding source; or

(D) the termination or curtailment of a service provided to the mortgage servicer by a third-party service 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 servicer must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage servicer 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 servicer to resolve or address the reportable incident;

(4) the measures the mortgage servicer plans

to take to resolve or address the reportable incident; and

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

(c) Incidents Reported to Other Agencies. A mortgage servicer 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 Security Events. For any security event triggering a notification described by subsection (c) of this section, the mortgage servicer must provide SML with a root cause analysis report within 120 days after the date the mortgage servicer becomes aware that the security event occurred.

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. 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 §158.102 and §58.302 of this title (relating to Confidentiality of Investigation Information).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER D. SUPERVISION AND ENFORCEMENT

7 TAC §§58.301 - 58.304, 58.310, and 58.311

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§58.301. Investigations.

(a) Purpose. This section clarifies and establishes requirements related to investigations of a mortgage servicer conducted by SML under Finance Code §158.102.

(b) Reasonable Cause. 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 no 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.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. Such investigation may include:

(1) review of documentary evidence;

(2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;

(3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;

(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and

(5) other lawful investigative methods as SML deems necessary or appropriate.

(d) Investigation Fee. The Commissioner may collect a fee for conducting an investigation on a mortgage servicer. The amount of the fee is determined by the Commissioner not to exceed \$975 per complaint. The investigation fee, if any, is assessed at the time SML closes the complaint. The investigation fee, if any, will be invoiced in NMLS and must be paid in NMLS.

§58.302. Confidentiality of Investigation Information.

(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of

information obtained by SML during an investigation, as provided by Finance Code §158.102.

(b) Confidential Information. All information obtained by SML during an investigation 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 §158.102 (list is not exhaustive):

(1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or generated during an investigation;

(2) information that is derived from or is the product of the confidential information described by subparagraph (1), including any reports or other information chronicling or summarizing the results, conclusions, or other findings of an investigation, including assertions of an actual or apparent violation of law or any directives, mandates, or recommendations for action by the mortgage servicer to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the investigation;

(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 servicer's compliance with any directives, mandates, or recommendations for action by the mortgage servicer and any corrective or remedial action taken by the mortgage servicer to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the investigation.

(c) Loss of Confidentiality. Subsection (b) 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).

§58.303 Corrective Action

(a) Corrective Action, Generally; Purpose. During an investigation, SML may determine that violations, deficiencies, or compliance issues (collectively, violations) occurred. Within the confidential environment of the investigation, SML may direct the mortgage servicer to voluntarily take corrective action to address the violations identified during the investigation. This section clarifies and establishes requirements related to such corrective action.

(b) Internal Reviews. If SML determines during an investigation that a violation may be systemic, SML may direct the mortgage servicer 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 servicer to take corrective action for any violations identified during the review.

(c) Policies and Procedures and Internal Controls. SML may direct the mortgage servicer to develop and adopt policies and procedures and institutional controls designed to prevent or mitigate future violations.

(d) Refunds to Consumers. SML may direct the mortgage servicer 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

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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 borrower at his or her last known address. The mortgage servicer must use reasonable diligence to determine the last known address of the 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 servicer 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 borrower. The check must be drawn on a bank account owned by the mortgage servicer. The check must be sent to the borrower at his or her last known address. The mortgage servicer must use reasonable diligence to determine the last known address of the borrower. The mortgage servicer 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 borrower fails to cash the check, the mortgage servicer must comply with requirements of §58.304 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 borrower's verified bank account. The mortgage servicer 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, at the time of the refund, the mortgage servicer holds the mortgage servicing rights to the residential mortgage loan related to the refund, the mortgage servicer may issue a credit against the indebtedness equal to the refund; however, if the refund is related to an improper charge or proceeds improperly held by the mortgage servicer 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 servicer began improperly holding the proceeds. The mortgage servicer 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.

§58.304. Unclaimed Funds.

(a) Escheat Suspense Account; Escheat Log. Funds owed to or held for the benefit of a borrower or other customer of the mortgage servicer for more than one year (i.e., unclaimed funds) must be transferred to an escheat suspense account. The mortgage servicer must maintain a

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log of all transfers made to the escheat suspense account, including, at a minimum:

(1) date of transfer to the escheat suspense account;

(2) date the obligation to pay the funds arose;

(3) full name and last known contact information of the borrower other customer to whom funds are owed; and

(4) amount of unclaimed funds.

(b) Required Records. The mortgage servicer must maintain records reflecting bona fide attempts to pay the funds to the borrower or customer.

(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.

(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.

§58.310. Appeals.

(a) Purpose. Finance Code Chapter 158 provides that certain decisions of the Commissioner adverse to a mortgage servicer 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 servicer or other person must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) Registration Denials. A registration denial under Finance Code §158.058(c), or otherwise, must be appealed on or before 10 days after the date notice of the Commissioner's decision is received by the person seeking the registration.

(2) Order to Take Affirmative Action or Order to Cease and Desist. An order issued by the Commissioner under Finance Code §§158.103(a), 158.105(a), or 158.106 must be appealed within 30 days after the date the order is issued.

(3) Notice of Revocation. A notice of revocation issued under Finance Code §158.059 must be appealed on or before 30 days after the date the notice is issued.

(4) Other Deadlines. Any appeal not otherwise addressed by this section must be made on or before 30 days after the date notice or order is issued.

(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).

(d) Effect of Not Appealing. A mortgage servicer 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 servicer or other person.

§58.311. Hearings.

Adjudicative hearings conducted under Finance Code Chapter 158 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 are 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 59, Wrap Mortgage Loans, Resulting from Rule Review**

**PURPOSE:** The purpose of the new rules in 7 TAC Chapter 59 is to implement changes resulting from SML's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the preamble for the rule proposal.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission approve publication of the new rules in 7 TAC Chapter 59 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve publication of the new rules in 7 TAC Chapter 59 for comment in the *Texas Register*.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 59. WRAP MORTGAGE LOANS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes new rules in 7 TAC Chapter 59: §§59.1 - 59.5, 59.100 - 59.102, 59.200, 59.201, 59.300 - 59.303, 59.400 - 59.403 (proposed rules).

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 78, Wrap Mortgage Loans, affect wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan under Finance Code Chapter 159, Wrap Mortgage Loan Financing.

*Changes Concerning the Reorganization (Relocation) of Wrap Mortgage Loan Rules from Chapter 78 to Chapter 59*

SML has determined it should reorganize its rules wrap mortgage loans by relocating the rules to Chapter 59, a vacant chapter. The proposed rules, if adopted, would effectuate this change.

*Changes Concerning General Provisions (Subchapter A)*

The proposed rules: in §59.2, Definitions, adopt a new definitions for "SML," while eliminating a definition for "Department"; in §59.3, Formatting Requirements for Notices, adopt formatting requirements for the various disclosures required under Finance Code Chapter 159; in §59.4, Electronic Delivery and Signature of Notices, clarify that any notice or disclosure

made by an originator may be delivered and signed electronically; and, in §59.5, Computation of Time, clarify how time periods measured in calendar days are computed.

*Other Modernization and Update Changes*

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

**Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

**Public Benefits**

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing wrap mortgage loans to be easier to find by members of the public.

#### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning General Provisions (Subchapter A) establish various rule requirements as discussed in such

section; (6) the proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

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SUBCHAPTER A. GENERAL PROVISIONS

**7 TAC §§59.1 - 59.5**

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§59.1 Purpose and Applicability

This chapter governs the Commissioner's administration and enforcement of Finance Code Chapter 159, governing wrap mortgage loans concerning residential real estate located in Texas. This chapter applies to wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan.

§59.2. Definitions.

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 159, the following definitions apply, unless the context clearly indicates otherwise:

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

real estate, or the mortgage loan amount.

(2) "Attorney" has the meaning assigned by Insurance Code §2501.003.

(3) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

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

(5) "Inspection" includes examination.

(6) "Legal holiday" means the federal legal public holidays specified in 5 U.S.C. §6103(a).

(7) "Make a wrap mortgage loan," means when a person determines the credit decision to provide the wrap mortgage loan, or the act of funding the wrap mortgage loan or transferring money to the wrap borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the wrap mortgage loan.

(8) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §180.002 in defining "Nationwide Mortgage Licensing System and Registry."

(9) "Residential mortgage loan" has the meaning assigned by Finance Code §159.001. The term does not include a loan secured by 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.

(10) "Residential mortgage loan originator" has the meaning assigned by Finance Code §180.002.

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(11) "Residential mortgage loan servicer" has the meaning assigned by Finance Code §158.002.

(12) "Residential real estate" has the meaning assigned by Finance Code §159.001. For purposes of Finance Code §159.002(b)(1), the term does not include "unimproved residential estate," as that term is defined by Finance Code §159.002(a).

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

(14) "Superior lien" refers to any lien described by Finance Code §159.001(7)(A).

(15) "Superior lienholder" means the holder of any lien described by Finance Code §159.001(7)(A).

(16) "Third-party servicer" means a person other than the wrap lender acting as residential mortgage loan servicer for a wrap mortgage loan.

(17) "Title company" means a "title insurance company" as that term is defined by Insurance Code §2501.003.

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

(19) "Wrap borrower" has the meaning assigned by Finance Code §159.001.

(20) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(21) "Wrap lender registrant" means a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

(22) "Wrap mortgage applicant" means an applicant for a wrap mortgage loan or a person who is solicited (or contacts a wrap lender in response to a solicitation) to obtain a wrap 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 Mortgage Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(23) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

§59.3. Formatting Requirements for Notices.

Any notice or disclosure (notice) required by Finance Code Chapter 159, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 159, 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 or disclosure 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):

(1) Arial;

(2) Aptos;

(3) Calibri;

(4) Century Schoolbook;

(5) Garamond;

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(6) Georgia;

(7) Lucinda Sans;

(8) Times New Roman;

(9) Trebuchet; and

(10) Verdana.

§59.4. Electronic Delivery and Signature of Notices.

Any notice or disclosure required by Finance Code Chapter 156, 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.

§59.5. Computation of Time.

The calculation of any time period measured in days by Finance Code Chapter 159, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of 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.

The agency certifies that counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER            B.            LENDER  
REQUIREMENTS AND RESPONSIBILITIES

**7 TAC §§59.100 - 59.102**

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§59.100. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to a wrap lender's requirements and responsibilities under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter C, and §159.105.

§59.101. Required Disclosure.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the written disclosure a wrap lender is required to provide the wrap borrower in accordance with Finance Code §159.101 (disclosure).

(b) Model Disclosure Form. In accordance with Finance Code §159.101(c), the following form (Figure: 7 TAC §59.101(b)(3); model disclosure form) is deemed to satisfy the substantive requirements of Finance Code §159.101(a). Interested persons should visit SML's website (sml.texas.gov) for a form-fillable version of the model disclosure form and an editable version in Word format (including for purposes of attaching additional sheets to supplement the form with additional information, as necessary). A wrap lender may modify and customize the model

disclosure form; provided, the form:

(1) contains all substantive information contained in the model disclosure form that is applicable to the person issuing the disclosure;

(2) conforms to the formatting requirements of §59.3 of this title (relating to Formatting Requirements for Notices); and

(3) otherwise fulfills the requirements of Finance Code §159.101(a).

Figure: 7 TAC §59.101(b)(3)

(c) Effective Date. The disclosure is deemed to be provided by the wrap lender and received by the wrap borrower for purposes of Finance Code §159.101 on the date the disclosure is dated and signed by the wrap borrower, as provided by Finance Code §159.101(b).

(d) Foreign Language Requirement. The wrap borrower must be provided an English-language version of the disclosure in addition to and contemporaneously with the foreign-language version required by Finance Code §159.102, if applicable. A wrap lender may provide the English-language and foreign-language disclosure in a single, combined disclosure. A wrap borrower receiving a foreign-language version of the disclosure may, but is not required to, date and sign the foreign-language disclosure. A wrap borrower receiving a foreign-language version of the disclosure must date and sign the English-language version of the disclosure, which determines the effective date the disclosure is received by the wrap borrower, as provided by subsection (c) of this section. A Spanish-language version of the model disclosure form is available on SML's website ([sml.texas.gov](http://sml.texas.gov)) and is deemed to satisfy the substantive requirements of Finance Code §159.101(a) and §159.102, with respect to

negotiations with a wrap borrower conducted primarily in Spanish.

(e) Computation of Time. Computation of the time period for a wrap lender to provide the disclosure required by Finance Code §159.101(a) is made using calendar days, irrespective of any Saturdays, Sundays, or legal holidays.

§59.102. Closing Requirements.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement that a wrap mortgage loan be closed by an attorney or title company, as provided by Finance Code §159.105.

(b) Closing by Title Company. For purposes of Finance Code §159.105, a wrap mortgage loan may only be closed by a title company issuing an owner's title insurance policy to the wrap borrower for the residential real estate secured or designed to be secured by the wrap mortgage loan.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER C. BORROWER'S RIGHTS  
AND RESPONSIBILITIES

**7 TAC §59.200, §59.201**

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the

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commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§59.200. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to a wrap borrower's rights under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter E.

§59.201. Right to Deduct; Notice of Deduction.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to a wrap borrower's right to make deductions from the amounts the wrap borrower owes to the wrap lender under the terms of a wrap mortgage loan, as provided by Finance Code §159.202.

(b) Notice of Deduction. To the extent the wrap borrower seeks to exercise its right to deduct amounts owed to the wrap lender pursuant to Finance Code §159.202, the wrap borrower must, at the time the wrap borrower makes the deduction, provide the wrap lender or its third-party servicer notice of the amounts deducted including:

(1) an itemized list of the deductions made, describing in detail the amounts paid by the wrap borrower on behalf of the wrap lender;

(2) the dates on which such payments were made; and

(3) supporting documentation evidencing paragraphs (1) and (2) of this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER D. WRAP LENDER AND  
SERVICER REQUIREMENTS

**7 TAC §§59.300 - 59.303**

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§59.300. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements applicable to persons who collect or receive a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter D. The rules in this subchapter apply to a wrap lender or any other person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including a third-party servicer servicing a wrap mortgage loan.

§59.301. Fiduciary Duties; Required Accounting.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code §159.152.

(b) Non-Delegation of Duties. A wrap lender or other person collecting or receiving a payment from a wrap borrower under the terms of a wrap mortgage loan may not delegate or assign its fiduciary duties owed under Finance Code §159.152 to another person except as a result of the wrap lender selling, assigning, transferring, or conveying the wrap mortgage loan. Any sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan is deemed to include an assignment of the fiduciary duties owed by the wrap lender to the wrap borrower under Finance Code §159.152. A sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan does not extinguish the assigning wrap lender's fiduciary duties to the wrap borrower in connection with amounts collected or received by the wrap lender from the wrap borrower prior to the effective date of the sale, assignment, transfer, or conveyance of the wrap mortgage loan.

(c) Required Accounting. The wrap lender must, either directly, or through use of a third-party servicer it has contracted with, maintain, on a current basis, separate written accountings for each wrap mortgage loan made by the wrap lender sufficient to account for, track, and retrospectively trace all payments received from the wrap borrower under the terms of the wrap mortgage loan, and all disbursements, transfers, or assignments of such funds, including, but not limited to, disbursements made to a superior lienholder, taxing authority, or insurance company in connection with the residential real estate secured by the wrap mortgage loan. The accounting required by this subsection must be

maintained by the wrap lender or its successor-in-interest until the limitations period for the wrap borrower to bring any cause of action against the wrap lender arising from a violation of law in connection with the wrap mortgage loan transaction has lapsed. To the extent the wrap lender uses the services of a third-party servicer, a wrap lender must establish and maintain policies and procedures that are reasonably designed to acquire from the third-party servicer any information or supporting documentation necessary or prudent to ensure the wrap lender satisfies the accounting required by this subsection. The accounting required by this subsection may be accomplished through administration of and the retention of records in connection with a trust account as provided by §59.302 of this title (relating to Trust Account; Maintenance of Funds Held in Trust).

§59.302. Trust Account; Maintenance of Funds Held in Trust.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement of a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan to hold such funds in trust, as provided by Finance Code §159.151.

(b) Definitions. The following terms in this section have the following meanings, unless the context clearly indicates otherwise:

(1) "Financial institution" has the meaning assigned by Finance Code §201.101(1).

(2) "Trust account" means a custodial, trust, or escrow account managed by one person for the benefit of another person.

(3) "Trust funds" means the funds collected or received from a wrap borrower under the terms of a wrap mortgage loan.

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(4) "Receiver" means a wrap lender or other person collecting or receiving trust funds.

(c) Trust Account Required. Unless otherwise agreed to in writing by the wrap borrower and wrap lender in connection with the wrap mortgage loan, trust funds must be placed in a trust account meeting the requirements of this section, and maintained or disbursed in accordance with this section.

(d) Trust Account Requirements.

(1) The trust account must be clearly identified as such at the financial institution.

(2) The receiver may, but is not required to, maintain separate trust accounts for each wrap mortgage loan or wrap borrower. To the extent the receiver maintains separate trust accounts for each wrap mortgage loan or wrap borrower, the same trust account may also be used for purposes of administering an escrow account for the wrap mortgage loan or wrap borrower.

(3) Funds in the trust account must be capable of being disbursed by the receiver on-demand or in an amount of time sufficient to timely effect disbursements reasonably anticipated from the trust account.

(4) A receiver, in addition to depositing trust funds, may deposit and maintain a limited amount of money in the trust account necessary to avoid or cover potential fees imposed by the financial institution in connection with the trust account including account maintenance fees or fees charged for insufficient funds.

(e) A receiver may not:

(1) commingle trust funds with non-trust funds;

(2) deposit or maintain trust funds in a personal account or any form of business account; or

(3) pay operating expenses or otherwise make withdrawals or disbursements from a trust account for any purpose other than the proper disbursement of trust funds.

(f) Disbursement of Trust Funds.

(1) A receiver may only disburse money from a trust account in accordance with the terms of the wrap mortgage loan or such other agreement as may be entered into with the wrap borrower to govern the disbursement of trust funds.

(2) If a receiver is unable to reasonably determine to which party or parties trust funds should be disbursed, the receiver may tender trust funds into the registry of a court of competent jurisdiction and interplead the relevant party or parties.

§59.303. Use of a Third-Party Servicer.

(a) Purpose. The purpose of this section is to clarify and establish requirements concerning a wrap lender's use of a third party to act as a residential mortgage loan servicer of wrap mortgage loan.

(b) Use of a Third-Party Servicer. A wrap lender is authorized to use the services of a third party to act as the residential mortgage loan servicer of a wrap mortgage loan (also known as a "subservicer").

(c) Handling of Payments and Disbursements. To the extent a wrap lender uses the services of a third-party servicer, the handling of payments and disbursement of funds received by the third-party servicer is governed by the agreement between the wrap lender and third-party servicer.

including:

(1) whether or not and on what terms the third-party servicer makes disbursements to the superior lienholder;

(2) disbursements made to the wrap lender; and

(3) how payments by the wrap borrower in excess of the current amount due under the terms of the wrap mortgage loan are handled, applied, or disbursed.

(d) No Limitation on Liability. As provided by Finance Code §159.107, any agreement between a wrap lender and a third-party servicer may not seek to waive or limit the wrap lender's or third-party servicer's liability to the wrap borrower arising from the fiduciary duties owed to the wrap borrower pursuant to Finance Code §159.152. However, an agreement between a wrap lender and third-party servicer may contain an indemnification agreement concerning potential liability arising from the fiduciary duties owed to the wrap borrower under Finance Code §159.152.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER E. SUPERVISION AND ENFORCEMENT

**7 TAC §§59.400 - 59.303**

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

*§59.400. Purpose and Applicability.*

The purpose of this subchapter is to clarify and establish requirements related to the Commissioner's authority to conduct inspections of, and investigations on, a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 (wrap mortgage registrant), as provided by Finance Code Chapter 159, Subchapter F. This subchapter further clarifies and establishes requirements concerning the Commissioner's authority to seek enforcement action against a wrap mortgage registrant under Finance Code Chapter 159, Subchapter G.

*§59.401. Required Books and Records by a Wrap Lender Registrant.*

(a) Purpose. This section clarifies and establishes requirements related to the wrap lender's requirement to maintain information and records necessary to facilitate the Commissioner's inspection of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252(d)(1). The requirements of this section are in addition to and supplement the requirements a wrap lender registrant or other person is required to maintain as a licensee or registrant under Finance Code Chapters 156, 157, 158, or 342, as applicable.

(b) Maintenance of Records, Generally. Each wrap lender registrant must maintain records

with respect to each wrap mortgage loan under Finance Code Chapter 159 and make those records available for examination under Finance Code §159.252. The records required by this section may be maintained using a paper, manual, electronic, or digitally-imaged recordkeeping system, or a combination thereof, unless otherwise specified by other applicable law. The records must be accurate, complete, current, legible, and readily accessible and sortable. If the requirements of other applicable law governing recordkeeping by the wrap loan registrant differ from the requirements of this section, such other applicable law prevails only to extent this section conflicts with the requirements of this section.

(c) Required Records. A wrap lender registrant must maintain the following items:

(1) Wrap Mortgage Servicing Log. A wrap mortgage servicing log for each wrap mortgage loan serviced by a wrap lender registrant, maintained on a current basis (which means that all entries must be made within seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the loan or account number, or other unique identifier assigned by the wrap lender registrant to the wrap mortgage loan;

(B) the name and contact information of each wrap borrower; and

(C) the date the wrap mortgage loan was entered into by the wrap lender and wrap borrower.

(2) Wrap Borrower Index. The current alphabetical index or a report of outstanding wrap mortgage loans of the wrap lender registrant, regardless of whether or not it services the wrap mortgage loan, reflecting the name of

each wrap borrower and the loan or account number, or other unique identifier assigned by the wrap lender to the wrap mortgage loan. A wrap lender registrant may maintain the wrap borrower index as a part of other records maintained by the wrap lender registrant; provided, the wrap lender registrant is able to sort, generate, and print, as a separate record, the wrap borrower index in strict alphabetical order.

(3) Wrap Mortgage Transaction File. A wrap lender registrant must maintain a wrap mortgage transaction file for each wrap mortgage loan or be able to produce the same information within a reasonable time upon request. The wrap mortgage transaction file must contain documents demonstrating the wrap lender registrant's compliance with applicable law, including Finance Code Chapter 159, and any applicable state and federal statutes, rules, or regulations. The wrap mortgage loan transaction file must include the following records or documents:

(A) for all wrap mortgage loan transactions:

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

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

(iii) the title insurance policy or abstract of title;

(iv) the initial and final mortgage application (including any attachments, supplements, or addenda thereto), signed and dated by the mortgage applicant and the residential mortgage loan originator, and any

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other written or recorded information used to evaluate the mortgage application, as required by Regulation B (12 C.F.R. §1002.4(c));

(v) the real estate contract documenting the sale of the residential real estate securing the wrap mortgage loan;

(vi) the disclosure statement requirement by Finance Code §159.101 and §59.101 of this title (relating to Required Disclosure), including any foreign-language disclosure required by Finance Code §159.102;

(vii) the initial and any revised integrated loan estimate disclosure required by Regulation Z (12 C.F.R. §1026.37);

(viii) the initial, revised, and final closing disclosure as required by Regulation Z (12 C.F.R. §1026.38);

(ix) any rate lock agreements, or similar document;

(x) the records relating to the ability-to-repay the wrap mortgage loan required by Regulation Z (12 C.F.R. §1026.25 and §1026.43);

(xi) copies of any appraisal reports or written valuation reports used to determine the value of the residential real estate;

(xii) the privacy notice required by Regulation P (12 C.F.R. §1016.5); and

(xiii) the wrap borrower's authorization and consent to receive electronic documents as required by the E-Sign Act and Regulation Z (12 C.F.R. §1026.17(a)(1));

(B) with respect to servicing the wrap mortgage loan, the following additional records

are required to be maintained:

(i) any payoff requests received from the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(ii) any payoff statements issued to the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(iii) if the wrap mortgage loan is paid off or otherwise satisfied, a copy of the release of lien;

(iv) receipts or invoices along with proof of payment for any attorneys' fees assessed, charged, or collected in the collection of a delinquent wrap mortgage loan;

(v) if collateral protection insurance is acquired or purchased, a copy of the insurance policy or certificate of insurance and the notice required by Finance Code §307.052;

(vi) any periodic statements or billing invoices sent to the wrap borrower;

(vii) copies of any collection letters or notices sent by the wrap lender registrant or its agent to the wrap borrower;

(viii) any modification, reinstatement, or settlement agreement that is proposed or entered into between the wrap borrower and the wrap lender registrant;

(ix) any records related to a consumer inquiry, complaint, or error resolution;

(x) any records or documents relating to a request for protection under the Servicemembers Civil Relief Act (50 U.S.C. §3901 et seq.); and

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(xi) any other servicing notice, disclosure, or record required by federal or state law;

(C) for wrap mortgage loan transactions involving a foreclosure or attempted foreclosure, the following records:

(i) for transactions involving judicial foreclosure:

(I) any records pertaining to a judicial foreclosure including records from the wrap lender registrant's attorneys, the court, or the wrap borrower or the wrap borrower's agent;

(II) any notice to cure the default sent to the wrap borrower and each superior lienholder as required by Property Code §51.002(d), including verification of delivery of the notice;

(III) any notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(IV) any notice of acceleration sent to the wrap borrower and each superior lienholder; and

(V) any records related to receipt of the foreclosure proceeds;

(ii) for transactions involving non-judicial foreclosure:

(I) the notice to cure the default sent to the wrap borrower and each superior lienholder as required by Property Code §51.002(d), including verification of delivery of the notice;

(II) the notice of intent to

accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(III) the notice of acceleration sent to the wrap borrower and each superior lienholder;

(IV) the notice of sale required by Property Code §51.002(b) including verification of delivery of the notice;

(V) any records related to the foreclosure sale by the trustee including the person purchasing the property, and the dollar amount of the proceeds received from the foreclosure sale;

(VI) any records related to a short sale, deed-in-lieu of foreclosure, or similar disposition;

(VII) proof of payment of reasonable fees or charges paid by the trustee in connection with the deed of trust or similar instrument including fees for enforcing the lien against or posting for sale, selling, or releasing the residential real estate secured by the deed of trust; and

(VIII) the foreclosure deed upon sale of the property;

(D) for wrap mortgage loan transactions where the wrap borrower provided an actionable notice of rescission and the wrap lender registrant did not avoid the rescission, a copy of the notice of rescission and documentation reflecting that the wrap lender registrant refunded to the wrap borrower all amounts required by Finance Code §159.104(c);

(E) for wrap mortgage loan transactions where the wrap lender avoided the rescission,

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documentation reflecting that the wrap lender:

(i) paid the outstanding balance due on the debt owed on the residential real estate to the superior lienholders;

(ii) paid any due and unpaid taxes or other governmental assessments owed on the residential real estate;

(iii) paid to the wrap borrower as damages for noncompliance the sum of \$1,000 and any reasonable attorneys' fees incurred by the wrap borrower; and

(iv) evidence of compliance with clause (i) or (ii) above provided to the wrap borrower;

(F) for wrap mortgage loan transactions where the wrap borrower has deducted from the amount owed to the wrap lender under the terms of the wrap mortgage loan as authorized by Finance Code §159.202, any records related to this action including the written notice from the wrap borrower required by §59.201 of this title (relating to Right to Deduct; Notice of Deduction), and any actions taken to address the deductions;

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

(A) all servicing and sub-servicing agreements entered into by the wrap lender registrant as a residential mortgage loan servicer;

(B) policies and procedures related to the origination and servicing of wrap mortgage loans by the wrap lender registrant, including, but not limited to, Quality Control Policy / Compliance Manual, Identify Theft Prevention Program / Red Flags Rule required by 16 C.F.R. §681 et seq., Anti-Money Laundering Program required by

Title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Personnel Administration / Employee Policies, Ability-to-Repay Underwriting Policies, and an information security program required by 16 C.F.R. §314.1 et seq.;

(C) records reflecting the disbursement of money to pay the superior lienholders and payment of taxes and insurance for which the wrap lender registrant has received from the wrap borrower;

(D) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to disbursements made in connection with wrap mortgage loans by the wrap lender registrant;

(E) complete records (including invoices and supporting documentation) for all expenses and fees paid in connection with the wrap mortgage loan, including the date and amount of all such payments;

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

(G) copies of all contractual agreements or understandings with third parties in any way relating to a wrap mortgage loan transaction;

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

(I) copies of all advertisements in the medium (e.g., recorded audio, video, and print)

in which they were published or distributed;

(5) Record of the wrap borrower's account (payment and collection history). A separate record must be maintained for the servicing account of each wrap borrower and the record must contain at least the following information on each wrap mortgage loan serviced by the wrap lender registrant:

(A) loan identification number;

(B) loan repayment schedule and terms, itemized to reflect:

(i) the date of the loan;

(ii) the number of installments;

(iii) the due date of installments;

(iv) the amount of each installment;  
and

(v) the maturity date;

(C) name, address, and phone number of the wrap borrower(s);

(D) legal description of the residential real estate;

(E) principal amount;

(F) total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(G) amount of official fees for recording or releasing a security interest that are collected at the time the loan is made;

(H) individual payment entries, itemized to show:

(i) the date payment was received (dual postings are acceptable if the date of posting is other than the date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(I) individual entries for disbursements of funds from a wrap borrower under the terms of wrap mortgage loan to superior lienholders, taxing authorities, insurance companies, or other payees, itemized to show:

(i) the actual date of disbursement;  
and

(ii) the actual amounts disbursed;

(J) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to the wrap borrower(s), with refund amounts itemized to show interest charges refunded, including the refund of any unearned points; and

(K) collection contact history, including a record of each contact made by a wrap lender registrant with the wrap borrower or any other person and each contact made by the wrap borrower with the wrap lender registrant, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(d) A wrap lender registrant must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws, rules, and regulations, including, but not limited to: the Real Estate Settlement

Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(e) A wrap lender registrant must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(f) Production of Records. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request.

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

(h) Records Retention After Dissolution. Within ten days of termination of operations, a wrap lender registrant must provide SML with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another wrap lender registrant, the transferee must provide SML with written notice within ten days after receiving such records.

§59.402. Examination of Wrap Lender Registrants.

(a) Purpose. This section clarifies and establishes requirements related to SML's authority to make inspections of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252.

(b) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person of the wrap lender

registrant 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 examiners are scheduled to begin the examination. Failure to 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.

(c) Examination Scope. Examinations will be conducted to determine compliance with Finance Code Chapter 159, and this chapter, and will specifically address whether:

(1) all required books and records are being maintained in accordance with §59.401 of this title (relating to Required Books and Records by a Wrap Lender Registrant);

(2) all legal and regulatory requirements applicable to the wrap lender registrant are being properly followed; and

(3) other matters SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapter 159.

(d) Loan Sample. The examiners will review a sample of wrap mortgage loan files identified by the examiners from the wrap lender registrant's wrap mortgage servicing log required by §59.401(c)(1) of this title. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners may require a wrap lender registrant, at its 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.

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(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 permitted or required by law.

(g) Reimbursement for Costs. When SML must travel outside of Texas to conduct an examination of a wrap lender registrant because the required records are maintained at a location outside of Texas, the Department will require reimbursement for the actual costs incurred by the Department in connection with such travel, including, but not limited to, transportation, lodging, meals, communications, courier service, and any other reasonably related costs.

§59.403. Investigation of Wrap Lender Registrants.

(a) Purpose. The purpose of this section is to implement the requirements of Finance Code §159.252 concerning SML's authority to conduct an investigation of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

(b) Reasonable Cause for Investigation. Pursuant to Finance Code §159.252(b), SML may, upon a finding of reasonable cause, examine a wrap lender registrant to determine whether the wrap lender registrant is complying with Finance Code Chapter 159, and this chapter. Reasonable cause will be deemed to exist if SML has received information from a source the Commissioner has no reason to believe to be other than reliable, including documentary or other evidence, or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code Chapter 159, or this chapter.

(c) Investigations will be conducted as deemed

appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(1) review and consideration of any complaints received by the Department against a wrap lender registrant;

(2) review of documentary evidence;

(3) interviews with complainants, licensees, and third parties;

(4) obtaining reports, advice, and other comments and assistance from other state and/or or federal regulatory, enforcement, or oversight bodies; and

(5) other lawful investigative techniques SML deems necessary or appropriate, including, but not limited to, requesting that complainants or other parties that are the subject of a complaint provide explanatory, clarifying, or supplemental information.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

Figure: 7 TAC §59.101(b)(3)

**NOTICE OF WRAP-AROUND MORTGAGE FINANCING ENCUMBERED BY  
SUPERIOR LIEN PURSUANT TO TEXAS FINANCE CODE SECTION 159.101 AND  
TEXAS PROPERTY CODE SECTION 5.016**

**WARNING:** ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THE PROPERTY REFERENCED BELOW AND WILL BE IN A SUPERIOR POSITION TO ANY LIEN CREATED BY THE FINANCING YOU ARE SEEKING. THIS NOTICE CONTAINS INFORMATION CONCERNING WHETHER OR NOT THE SUPERIOR LIENHOLDER(S) HAVE CONSENTED TO THE PROPERTY BEING TRANSFERRED TO YOU. IF A SUPERIOR LIEN HAS NOT BEEN RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE SUPERIOR LIENHOLDER, IT IS POSSIBLE THE SUPERIOR LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE SECURED BY THE SUPERIOR LIEN AND MAY AFFECT YOUR RIGHTS AS BUYER OF THE PROPERTY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION OR DISCUSS THIS MATTER WITH AN ATTORNEY.

**IMPORTANT NOTICE REGARDING PROPERTY INSURANCE:** ANY INSURANCE MAINTAINED BY A SELLER, LENDER, OR OTHER PERSON WHO IS NOT THE BUYER OF THE PROPERTY MAY NOT PROVIDE COVERAGE TO THE BUYER IF THE BUYER SUFFERS A LOSS OR INCURS LIABILITY IN CONNECTION WITH THE PROPERTY. TO ENSURE YOUR INTERESTS ARE PROTECTED, YOU SHOULD PURCHASE YOUR OWN PROPERTY INSURANCE POLICY TO INSURE THE PROPERTY. BEFORE PURCHASING THIS PROPERTY, YOU MAY WISH TO CONSULT WITH AN INSURANCE AGENT LICENSED BY THE TEXAS DEPARTMENT OF INSURANCE REGARDING THE INSURANCE COVERAGE OPTIONS AVAILABLE TO YOU AS BUYER OF THE PROPERTY.

**PROPERTY INFORMATION:**

Physical Address		
Street:		
City:	State:	Zip:
Legal Description		

## NOTICE OF WRAP-AROUND MORTGAGE FINANCING

**ISSUED BY:**

<b>Lender</b>		
Legal Name:		
<b>Date of Issuance</b>		
Date:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Loan Originator (Company) License/Registration Information (if applicable)</b>		
Legal Name:		
NMLS ID:		

**LIENHOLDER(S) AND LIEN INFORMATION** (list by order of the date the lien was perfected, from oldest to newest; attach additional sheets as necessary):

<b><u>Lien 1:</u></b>		
<b>Lienholder</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Lien Information</b>		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
<b>Consent</b>		
Has the Lienholder Consented to the Transfer?	YES	NO

## NOTICE OF WRAP-AROUND MORTGAGE FINANCING

<b>Lien 2:</b>		
<b>Lienholder</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Cont</b>		
Phone:	Fax:	
Email:	Website:	
<b>Lien I</b>		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
<b>Cons</b>		
Has the Lienholder Consented to the Transfer?	YES	NO

**INSURANCE INFORMATION** (attach additional sheets as necessary):

<b>Policy 1:</b>		
<b>Insurer</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Policy Information</b>		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

**NOTICE OF WRAP-AROUND MORTGAGE FINANCING**

<b>Policy 2:</b>		
<b>Insurer</b>		
Legal Name:		
<b>Mailing Address</b>		
Street:		
City:	State:	Zip:
<b>Contact Information</b>		
Phone:	Fax:	
Email:	Website:	
<b>Policy Information</b>		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

**PROPERTY TAX INFORMATION:**

<b>Property Taxes Due on the Property</b>	
Amount:	
<b>Annual Property Tax Estimate</b>	
Amount:	Tax Year:

**ACKNOWLEDGMENT BY BUYER(S):**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

**11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans, Resulting from Rule Review**

**PURPOSE:** The purpose of the repeals in 7 TAC Chapter 78 is to implement changes resulting from the SML's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the preamble for the rule proposal.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 78 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 78 for comment in the *Texas Register*.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 78. WRAP MORTGAGE LOANS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes to repeal all existing rules in 7 TAC Chapter 78: §§78.1 - 78.3, 78.100 - 78.102, 78.200, 78.201, 78.300 - 78.303, and 78.400 - 78.403 (proposed rules).

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 78, Wrap Mortgage Loans, affect wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan under Finance Code Chapter 159, Wrap Mortgage Loan Financing.

*Changes Concerning the Reorganization (Relocation) of Wrap Mortgage Loan Rules from Chapter 78 to Chapter 59*

SML has determined it should reorganize its rules wrap mortgage loans by relocating the rules to Chapter 59 (a vacant chapter). The proposed rules, if adopted, would repeal all existing rules in Chapter 78. In a related proposal published elsewhere in this issue of the *Texas Register*, SML proposes new rules in Chapter 59 affecting wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan. The new rules are patterned after the existing rules in Chapter 78.

**Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

**Public Benefits**

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing wrap mortgage loans to be easier to find by members of the public.

**Probable Economic Costs to Persons Required to Comply with the Proposed Rules**

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for

purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning the Reorganization (Relocation) of Wrap Mortgage Loan Rules from Chapter 78 to Chapter 59 have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

#### SUBCHAPTER A. GENERAL PROVISIONS

#### 7 TAC §§78.1 - 78.3

#### Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

*§78.1. Purpose and Applicability.*

*§78.2. Definitions.*

*§78.3. Computation of Time.*

The agency certifies that counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**SUBCHAPTER B. LENDER  
REQUIREMENTS AND RESPONSIBILITIES**

**7 TAC §§78.100 - 78.102.**

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

*§78.100. Purpose and Applicability.*

*§78.101. Required Disclosures.*

*§78.102. Closing Requirements.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel

Department of Savings and Mortgage Lending



**SUBCHAPTER C. BORROWER'S RIGHTS  
AND RESPONSIBILITIES**

**7 TAC §§78.200, §78.201**

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

*§78.200. Purpose and Applicability.*

*§78.201. Right to Deduct; Notice of Deduction.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**SUBCHAPTER D. WRAP LENDER AND  
SERVICER REQUIREMENTS**

**7 TAC §§79.300 - 79.303**

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the

intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

*§78.300. Purpose and Applicability.*

*§78.301. Fiduciary Duties; Required Accounting.*

*§78.302. Trust Account; Maintenance of Funds Held in Trust.*

*§78.303. Use of a Third-Party Servicer.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

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## SUBCHAPTER E. COMPLIANCE AND ENFORCEMENT

### 7 TAC §§78.400 - 78.403

#### Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

*§78.400. Purpose and Applicability.*

*§78.401. Required Books and Records by a Wrap*

*Lender Registrant.*

*§78.402. Examination of Wrap Lender Registrants.*

*§78.403. Investigation of Wrap Lender Registrants.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

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**12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 79, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review**

**PURPOSE:** The purpose of the repeals in 7 TAC Chapter 79 is to implement changes resulting from the SML's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the preamble for the rule proposal.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 79 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 79 for comment in the *Texas Register*.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 81. RESIDENTIAL MORTGAGE LOAN SERVICERS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes to repeal all existing rules in 7 TAC Chapter 79: §§79.1 - 79.5, 79.20, 79.30, 79.40, and 79.50 (proposed rules).

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 79, Residential Mortgage Loan Servicers, affect residential mortgage loan servicers (mortgage servicers) registered with SML under Finance Code Chapter 158, Residential Mortgage Loan Servicers.

*Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Servicer Rules from Chapter 79 to Chapter 58*

SML has determined it should reorganize its rules concerning mortgage servicers by relocating the rules to Chapter 58 (a vacant chapter). The proposed rules, if adopted, would repeal all existing rules in Chapter 79. In a related proposal published elsewhere in this issue of the *Texas Register*, SML proposes new rules in Chapter 59 affecting mortgage servicers that are patterned after the existing rules in Chapter 79.

**Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or

administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

**Public Benefits**

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing mortgage servicers to be easier to find by members of the public.

**Probable Economic Costs to Persons Required to Comply with the Proposed Rules**

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

**One-for-One Rule Analysis**

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning the Reorganization (Relocation) of Mortgage Company Rules from Chapter 80 to Chapter 56 have the effect of repealing existing rule requirements as discussed in such sections; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural

communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

### SUBCHAPTER A. REGISTRATION

#### 7 TAC §§79.1 - 79.5

##### Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

##### *§79.1. Definitions.*

##### *§79.2. Required Disclosure.*

*§79.3. Registration – General.*

*§79.4. Bond Requirement.*

*§79.5. Renewal of Registration.*

The agency certifies that counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

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**SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS**

**7 TAC §79.20**

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

*§79.20. Investigations.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

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**SUBCHAPTER C. HEARINGS AND APPEALS**

**7 TAC §79.30**

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

*§79.30. Hearings and Appeals.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

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**SUBCHAPTER D. INTERPRETATIONS**

**7 TAC §79.40**

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

*§79.40. Interpretations.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



SUBCHAPTER E. SAVINGS CLAUSE

**7 TAC §79.50**

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

*§79.50. Savings Clause.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**13. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 80, Concerning Residential Mortgage Loan Companies, Resulting from Rule Review**

**PURPOSE:** The purpose of the repeals in 7 TAC Chapter 80 is to implement changes resulting from the SML's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the preamble for the rule proposal.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 80 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 80 for comment in the *Texas Register*.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 81. RESIDENTIAL MORTGAGE LOAN COMPANIES**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes to repeal all existing rules in 7 TAC Chapter 80: §§80.1 - 80.5, 81.100 - 80.102, 80.105 - 80.107, 80.200 - 80.206, and 80.300 - 80.302 (proposed rules).

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 80, Residential Mortgage Loan Companies, affect residential mortgage loan companies (mortgage companies) licensed by SML under Finance Code Chapter 156.

*Changes Concerning the Reorganization (Relocation) of Mortgage Company Rules from Chapter 80 to Chapter 56*

SML has determined it should reorganize its rules concerning mortgage companies by relocating the rules to Chapter 56 (a vacant chapter). The proposed rules, if adopted, would repeal all existing rules in Chapter 80. In a related proposal published elsewhere in this issue of the *Texas Register*, SML proposes new rules in Chapter 56 affecting mortgage companies that are patterned after the existing rules in Chapter 80.

**Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to

local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

**Public Benefits**

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing originators and mortgage bankers to be easier to find by members of the public.

**Probable Economic Costs to Persons Required to Comply with the Proposed Rules**

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning the Reorganization (Relocation) of Mortgage Company Rules from Chapter 80 to Chapter 56 have the effect of repealing existing rule requirements as discussed in such sections; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

#### SUBCHAPTER A. GENERAL PROVISIONS

#### 7 TAC §§80.1 - 80.5

#### Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

*§80.1. Scope.*

*§80.2. Definitions.*

*§80.3. Interpretations.*

*§80.4. Enforceability of Liens.*

*§80.5. Savings Clause.*

The agency certifies that counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**SUBCHAPTER B. LICENSING**

**7 TAC §§80.100 - 80.102, 80.105 - 80.107**

**Statutory Authority**

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

*§80.100. Licensing - General.*

*§80.101. Sponsorship of Originator; Responsibility for Originator's Actions.*

*§80.102. Qualified Individual.*

*§80.105. Fees.*

*§80.106. Renewals.*

*§80.107. NMLS Records; Notice to Licensee.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**SUBCHAPTER C. DUTIES AND RESPONSIBILITIES**

**7 TAC §§80.200 – 80.206**

**Statutory Authority**

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of

2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

*§80.200. Required Disclosures.*

*§80.201. Loan Status Forms.*

*§80.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.*

*§80.203. Advertising.*

*§80.204. Books and Records.*

*§80.205. Mortgage Call Reports.*

*§80.206. Office Locations; Remote Work.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

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#### SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

#### **7 TAC §§80.300 - 80.302**

#### Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out

the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

*§80.300. Examinations.*

*§80.301. Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions.*

*§80.302. Hearings and Appeals.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending

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**14. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators, Resulting from Rule Review**

**PURPOSE:** The purpose of the repeals in 7 TAC Chapter 81 is to implement changes resulting from the SML's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the preamble for the rule proposal.

**RECOMMENDED ACTION:** SML recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 81 for comment in the *Texas Register*.

**RECOMMENDED MOTION:** I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 81 for comment in the *Texas Register*.

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes to repeal all existing rules in 7 TAC Chapter 81: §§81.1 - 81.5, 81.100 - 81.111, 81.200 - 81.206, and 81.300 - 81.302 (proposed rules).

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, affect mortgage bankers registered with SML and individual residential mortgage loan originators (originators) licensed by SML under Finance Code Chapter 157.

*Changes Concerning the Reorganization (Relocation) of Mortgage Banker Rules from Chapter 81 to Chapter 57*

SML has determined it should reorganize its rules concerning mortgage bankers by relocating the rules to Chapter 57 (a vacant chapter) and devoting such chapter exclusively to rules affecting mortgage bankers. The proposed rules, if adopted, would repeal all existing rules in Chapter 81 concerning mortgage bankers. In a related proposal published elsewhere in this issue of the *Texas Register*, SML proposes new rules in Chapter 57 affecting mortgage bankers that are patterned after the existing rules in Chapter 81.

*Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Originator Rules from Chapter 81 to Chapter 55*

SML has determined it should reorganize its rules concerning originators by relocating the rules to Chapter 55 (a vacant chapter) and devoting such chapter exclusively to rules affecting originators. The proposed rules, if adopted, would repeal all existing rules in Chapter 81 concerning originators. In a related proposal published elsewhere in this issue of the *Texas Register*, SML proposes new rules in Chapter 55 affecting originators that are patterned after the existing rules in Chapter 81.

**Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

**Public Benefits**

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first

five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing originators and mortgage bankers to be easier to find by members of the public.

#### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning the Reorganization (Relocation) of Mortgage

Banker Rules from Chapter 81 to Chapter 57 and Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Originator Rules from Chapter 81 to Chapter 55 have the effect of repealing existing rule requirements as discussed in such sections; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd.,

Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

**SUBCHAPTER A. GENERAL PROVISIONS**

**7 TAC §§81.1 - 81.5**

**Statutory Authority**

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

*§81.1. Scope.*

*§81.2. Definitions.*

*§81.3. Interpretations.*

*§81.4. Enforceability of Liens.*

*§81.5. Savings Clause.*

The agency certifies that counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**SUBCHAPTER B. LICENSING OF  
INDIVIDUAL ORIGINATORS**

**7 TAC §§81.100 - 81.111**

**Statutory Authority**

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

*§81.100. Licensing - General.*

*§81.101. Sponsorship of Originator.*

*§81.102. Temporary Authority.*

*§81.103. Licensing of Military Service Members, Military Veterans, and Military Spouses.*

*§81.104. Required Education.*

*§81.105. Fees.*

*§81.106. Renewals.*

*§81.107. NMLS Records; Notice to Licensee.*

*§81.108. Background Checks.*

*§81.109. Procedures for Review of Background Checks.*

*§81.111. Request for Criminal History Eligibility Determination.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**SUBCHAPTER C. DUTIES AND RESPONSIBILITIES**

**7 TAC §§81.200 – 81.206**

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the

authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

*§81.200. Required Disclosures.*

*§81.201. Loan Status Forms.*

*§81.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.*

*§81.203. Advertising.*

*§81.204. Books and Records.*

*§81.205. Mortgage Call Reports.*

*§81.206. Office Locations; Remote Work.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT**

**7 TAC §§81.300 - 81.302**

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

*§81.300. Examinations.*

*§81.301. Investigations.*

*§81.302. Hearings and Appeals.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Iain A. Berry  
General Counsel  
Department of Savings and Mortgage Lending



**D.**

**Texas Department of Banking**



Charles G. Cooper  
Commissioner

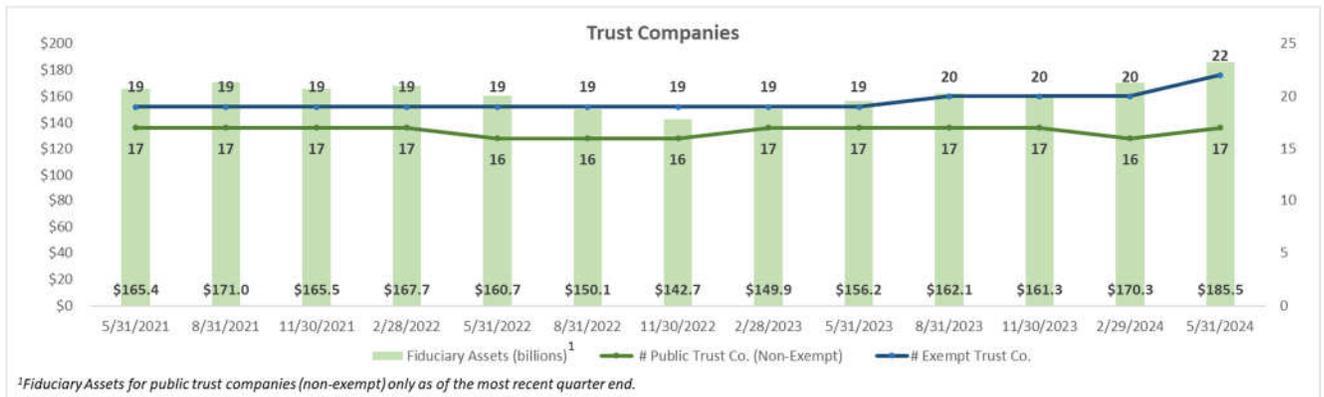
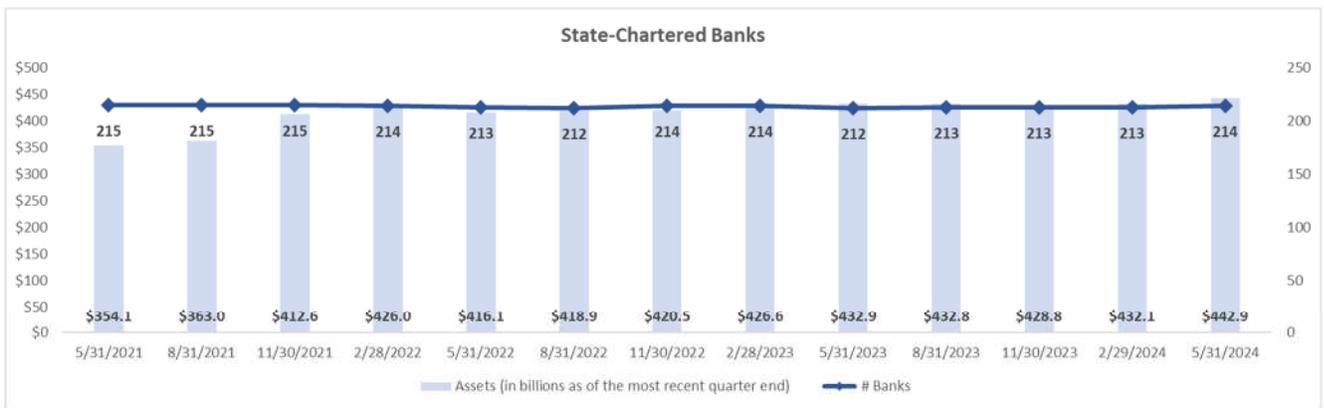
# TEXAS DEPARTMENT OF BANKING

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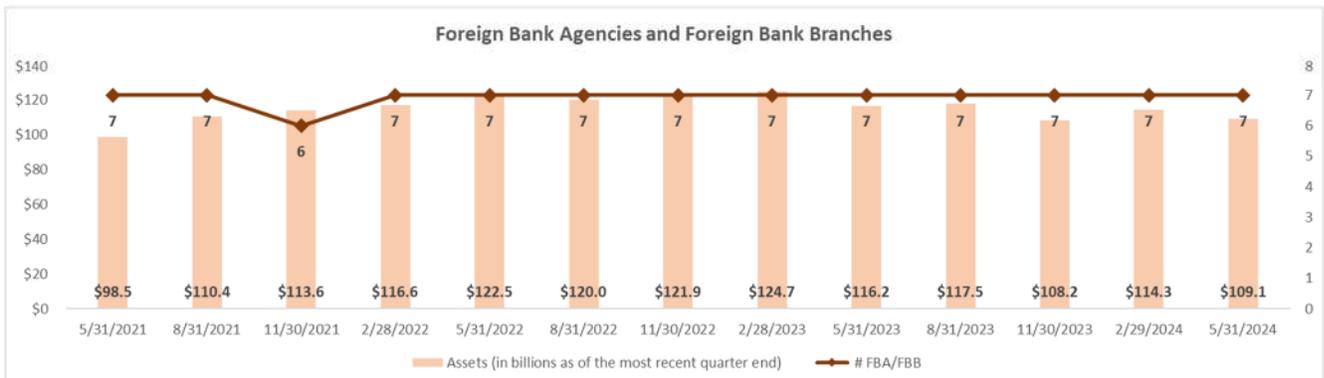
To: Finance Commission Members  
From: Jared Whitson, Director of Bank & Trust Supervision *JW*  
Date: August 1, 2024  
Subject: Summary of the Bank & Trust Supervision Division Activities

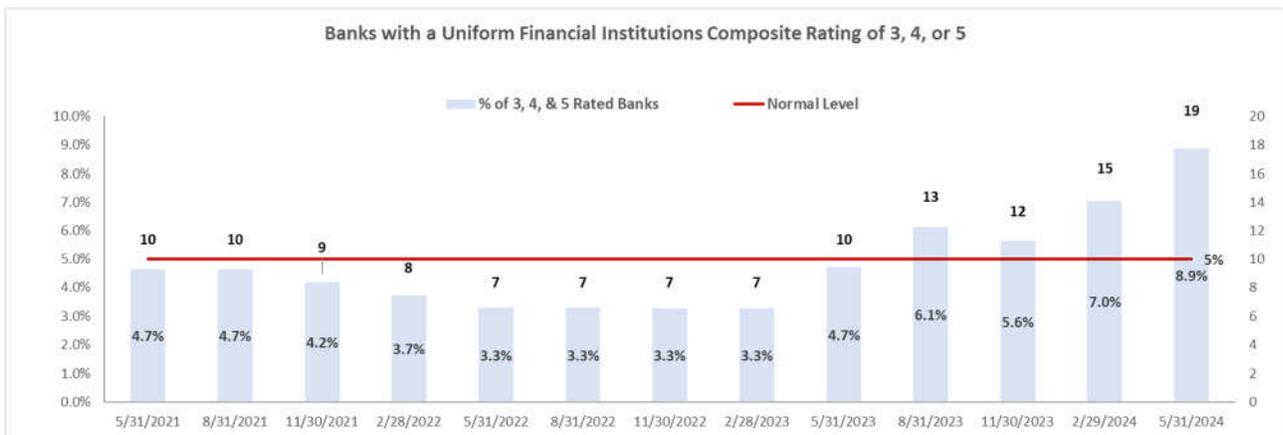
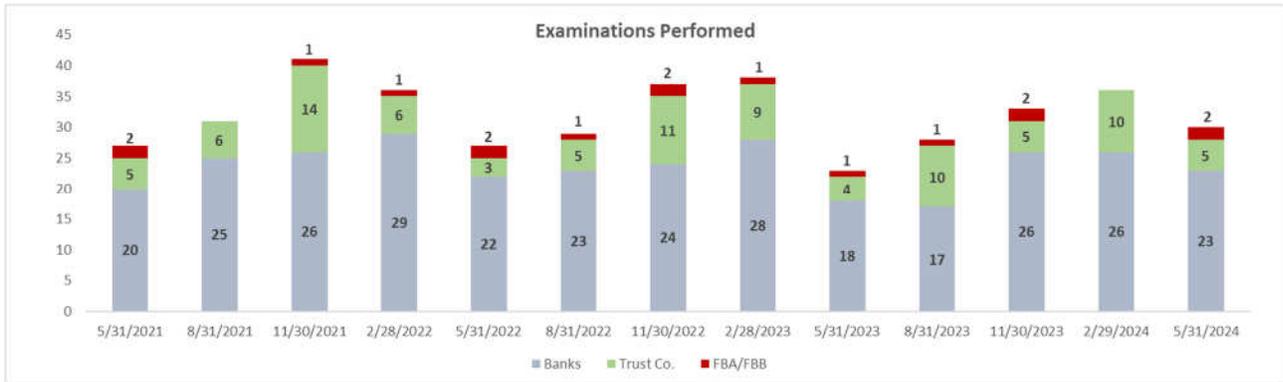
## Bank and Trust Supervision – Industry Profiles

As of fiscal quarter-end (assets as of the preceding calendar quarter)



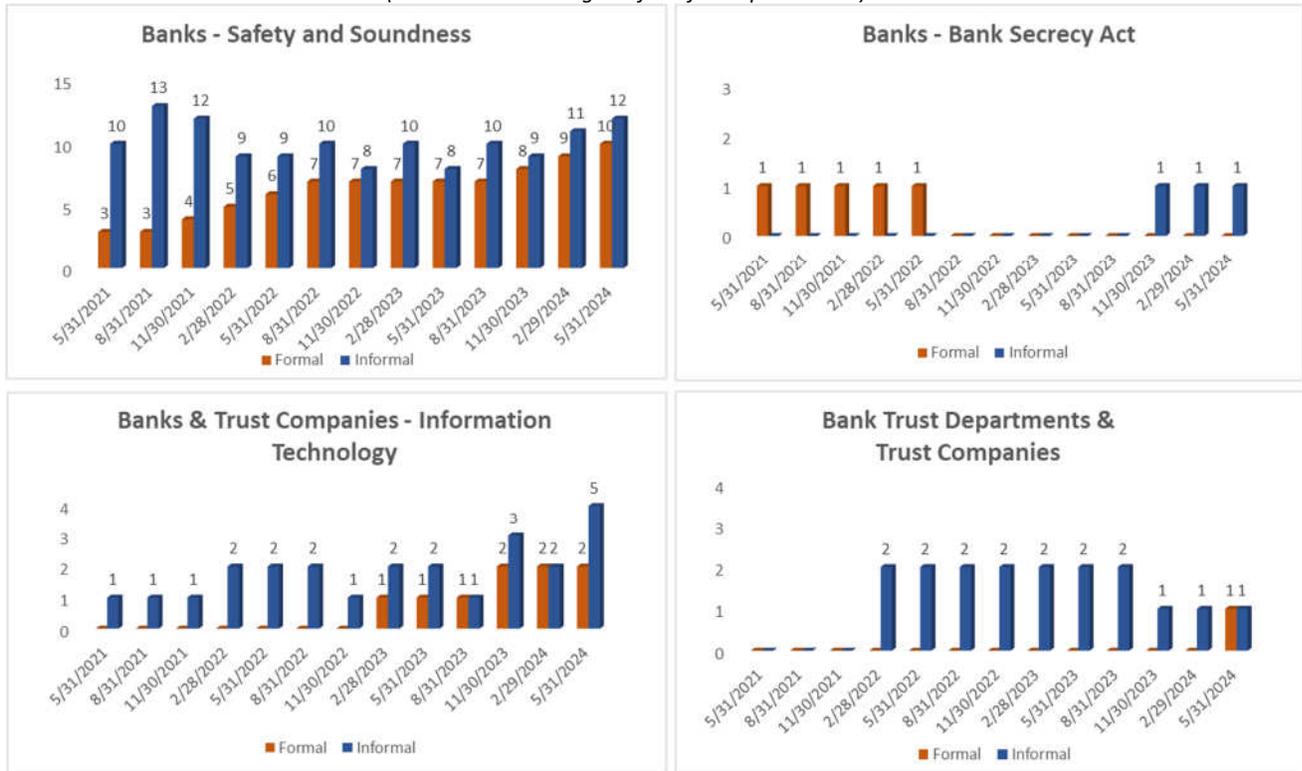
<sup>1</sup>Fiduciary Assets for public trust companies (non-exempt) only as of the most recent quarter end.





The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. As illustrated above, the number of problem banks increased to 19 in May 2024 and above the normal range of 5% of the total number of institutions. As illustrated, the number of problem banks has been on an upward trend over the past year. The rapid increase in interest rates since March 2022 coupled with poor corporate governance and/or inadequate risk management practices have negatively impacted some institutions. In addition, liquidity pressures within the industry and increased competition for deposits is compressing net interest margins, which is likely to continue for the foreseeable future. Due to these pressure points, the Bank and Trust Supervision Division anticipates further increases in the number of problem banks.

**Enforcement Actions Outstanding by Type**  
 (Number outstanding as of the fiscal quarter-end)



Formal actions include Orders to Cease and Desist, Consent Orders, Written Agreements and Supervisor Actions. Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions. Compliance actions are not included.

**Compliance with Examination Priorities**

Percent of examinations conducted within Department guidelines.

Entity Type	FY 2023	FY 2024 (YTD – June 2024)
Commercial Banks	92%	84%
IT	91%	89%
Trust Departments	86%	96%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	81%	96%
IT	82%	90%

Examination categories with less than 95% of examinations conducted within guidelines for FY 2024 include:

- Bank Examinations – 21 exams past due by an average of 21 days.
- IT Examinations of Banks – 14 exams past due by an average of 30 days.
- IT Examinations of Trust Companies – 1 exam past due by 9 days.

Compliance with commercial bank and IT examination priorities are expected to be challenging for the remainder of the fiscal year due to an increase in problem bank and IT examinations being performed coupled with staffing constraints.

## Division Highlights

- **Interest Rate and Liquidity Risks:** The Department continues monitoring higher interest rates and its effects on banks' financial condition. Banks' net interest margins generally improve in a rising rate environment as short-term assets reprice at higher yields. However, competition for deposits is evident as consumers are much more rate sensitive. Furthermore, financial institutions with a sizable portion of their assets in long-term securities and/or loans are experiencing net interest margin compression as funding costs are increasing faster than asset yields. Finally, banks' fixed rate investments decline in value in a rising rate environment placing pressure on capital levels.
  
- **Special Operations and Conferences:**
  - Commissioner Charles G. Cooper and Director of Bank and Trust (B&T) Supervision Jared Whitson held Regional Director Meetings in Austin, Texas on June 3 - June 5, 2024, with select staff to discuss the state of the Department and B&T Division.
  - Regional Director Tom Susany represented the Department at the Southwest Graduate School of Banking (SWGSB) in Dallas, Texas, on June 7, 2024, discussing a variety of topics impacting our regulated entities.
  - Director of Cybersecurity and Technology Strategy (CSTS) Phillip Hinkle represented the Department (virtually) as a speaker at the Indiana Information Technology Huddle on June 13, 2024, discussing emerging cyber threats.
  - CSTS Director Hinkle attended (virtually) the Bankers' Electronic Task Force on July 23, 2024.
  - Commissioner Cooper represented the Department at the Texas Bankers Association (TBA), Central States Conference held in Fort Worth, Texas on June 24 – June 26, 2024. He was a panelist along with commissioners from Indiana and North Dakota, discussing Bank Regulation in America's Heartland.
  - Commissioner Cooper, Chairman of the Federal Financial Institutions Examination Council State Liaison Committee (FFEIC), attended the Second Quarter meeting in Washington, D.C., on June 27, 2024.
  - Commissioner Cooper represented the Department at the Joint Federal Reserve Bank of Dallas and Atlanta, Exploring Conventional Bank Funding Regimes in an Unconventional World Conference held in Dallas, Texas, on July 18 – 19, 2024. Commissioner Cooper was the Chair and Moderator of the "Academic/Banker/Policy maker Roundtable: Where Next?" Panel.

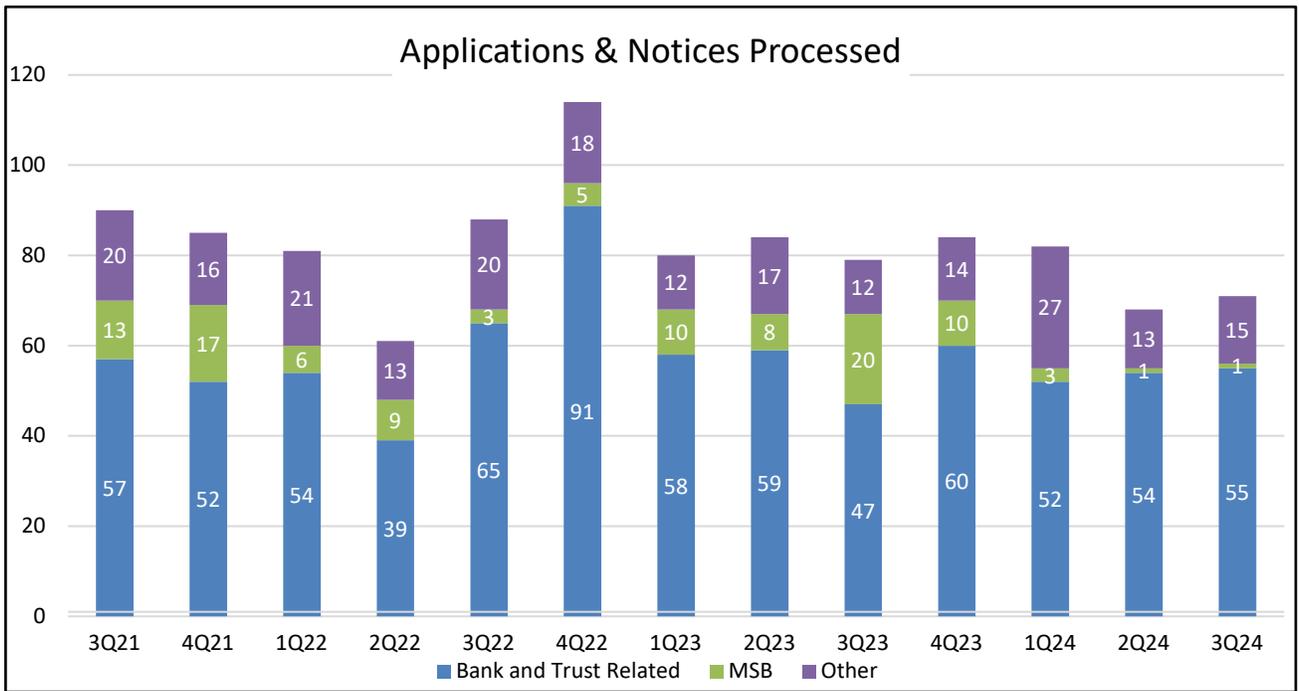


# TEXAS DEPARTMENT OF BANKING

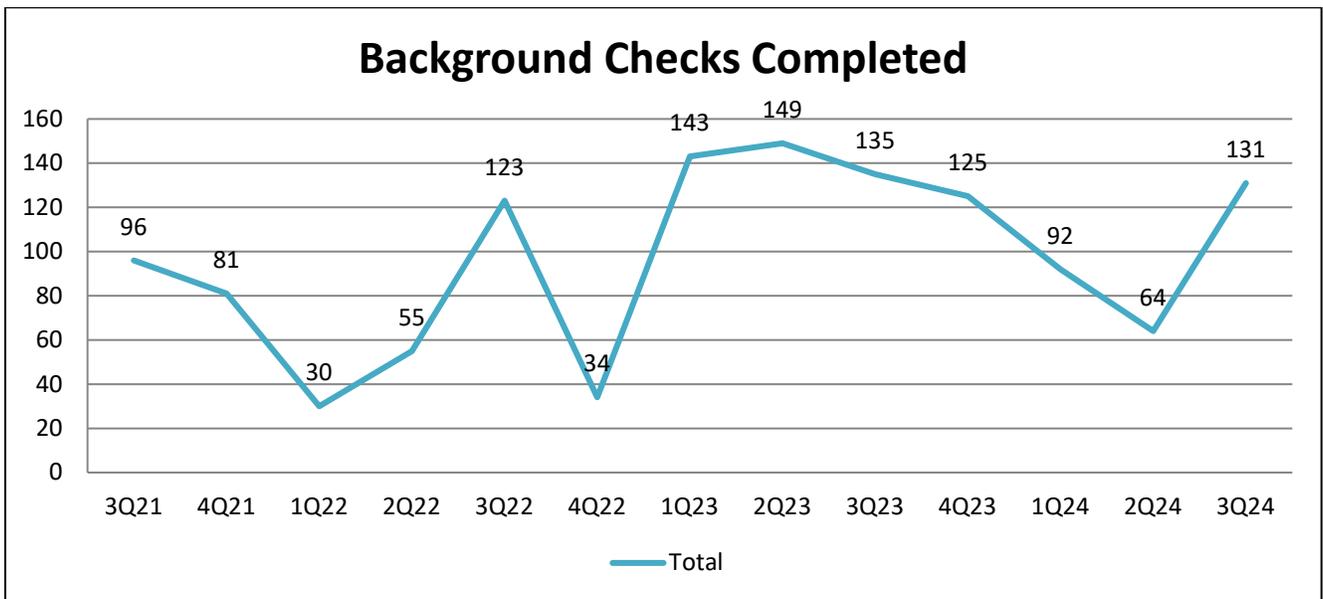
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Charles G. Cooper  
 Commissioner

To: Finance Commission Members  
 From: Dan Frasier, Director of Corporate Activities and Financial Innovation *DBF*  
 Date: August 1, 2024  
 Subject: Summary of Corporate Division Activities



Information on a Fiscal Quarter Basis.



Information on a Fiscal Quarter Basis.

Entities	Applications and Notices Currently Under Review (as of June 30, 2024)	Change Since Last Finance Commission Report	
		Change in Open Filings	Percent Change
<b>Bank Related</b>	19	6	46%
<b>Trust Companies</b>	3	2	200%
<b>Money Services Business (MSB)</b>	33	3	10%
<b>Others</b>	5	0	0%
<b>Totals</b>	60	11	22%

The number of open filings under review increased by 22% as compared to the level reported at the last Finance Commission meeting. The increase results from bank, trust, and MSB filings which have recently come in quicker than we can resolve outstanding filings.

### Division Highlights

- **Significant Applications:** Since the last report, the following significant bank and trust applications have been received:
  - SouthState Bank, N.A., Winter Haven, Florida, has submitted notice to acquire Independent Bank, McKinney, Texas, via merger [estimated loss in state banking assets of \$18.9 billion]
  - First Texas Bank, Georgetown, Texas, has applied to acquire affiliate First Texas Bank, Killeen, Texas, via merger [no estimated change in state banking assets].
  - Oakwood Bank, Dallas, Texas, has submitted notice to merge with and into b1Bank, Baton Rouge, Louisiana [estimated loss in state banking assets of \$838 million].
  - Quest Trust Company, Houston, Texas, has applied for voluntary dissolution.
- **Charter, Conversion, and Merger Activity:** Since the last report, the following transactions have consummated:
  - *Banks*
    - None
  - *Trust Companies*
    - None



# TEXAS DEPARTMENT OF BANKING

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Charles G. Cooper  
Commissioner

To: Finance Commission Members  
From: Jesus "Jesse" Saucillo, Director of Non-Depository Supervision  
Date: August 1, 2024  
Subject: Summary of Non-Depository Supervision (NDS) Activities

		<b>FY 2024</b>								
Entity	FY 2023		1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		4 <sup>th</sup>	
<b>Industry Profile (# / Assets (billions))</b>										
Money Services Businesses (MSB)	194	\$342.5	195	\$342.7	191	\$342.5	188	\$349.3		
Prepaid Funeral Contract (PFC)	337	\$4.9	337	\$4.9	333	\$4.9	330	\$4.9		
Perpetual Care Cemeteries (PCC)	244	\$460.7*	245	\$469.1*	245	\$468.7*	245	\$474.5*		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a		
<b>Examinations Performed</b>										
MSB	98		23		22		25			
MSB Limited Scope	2		0		0		0			
MSB Accepted other State	4		0		1		3			
PFC	220		50		53		36			
PFC Limited Scope	2		0		0		0			
PCC	138		41		34		49			
PCC Limited Scope	1		1		0		0			
<b>Ratings (# / %) Assigned to All Regulated Entities</b>										
<b>1</b>	277	36.84%	267	35.41%	257	34.50%	246	33.11%		
<b>2</b>	414	55.05%	423	56.10%	419	56.24%	428	57.60%		
<b>3</b>	55	7.31%	56	7.43%	58	7.79%	59	7.94%		
<b>4 &amp; 5</b>	6	0.80%	8	1.06%	11	1.47%	10	1.35%		
<b>Noncompliance with Examination Priorities (Past Due)</b>										
MSB	6		10		8		14			
PFC	18		15		7		10			
PCC	12		22		9		19			

**NOTES:**

Limited scope examinations do not receive a rating.

\*PCC \$ amounts reflected in the millions.

## Industry Profile and Ratings

Since the June 2024 Finance Commission meeting, the prior page has been updated to reflect industry statistics and examination activities through the third quarter of fiscal year 2024. An analysis of the three quarters of fiscal year 2024 reveals that while the number of MSB and PFC license holders has decreased slightly, the total MSB assets reported has slightly increased and the PFC contract liability remained relatively consistent. The decline in MSB license holders was due to the surrender of licenses primarily as a result in changes in business strategies along with some that were unable to maintain ongoing compliance with applicable regulations. Other than an increase in the total amount of perpetual care funds on deposit, no material changes were noted in the PCC overall statistics.

## MSB Highlight

The division is in the process of finalizing the review of the 2023 Year-End Annual Report (Annual Report) required to be submitted by MSB license holders. Further analysis of the Annual Report information revealed that the 10 largest MSBs, as determined by asset size, account for approximately 80% of the total assets of Texas licensees. A reduction in the total asset size of the two largest issuers of fiat-backed stablecoins, as determined by asset size, was noted. The reduction in reported total assets for these two entities parallels the overall reduction in stablecoins in circulation from calendar years 2022 to 2023. Stablecoins, which are utilized for payments and cross-border remittances, have experienced growth in 2024 after months of stagnation. The other industry statistics remain comparable with no material variations.

## Examination Activities

As anticipated in the division's prior Finance Commission memorandum, NDS did not meet one of its performance measures – *Quarterly Output Measure – Number of Licensees Examined* – for the third quarter of fiscal year 2024. To be within the acceptable variance of this output measure and achieve this goal, the division needs to conduct approximately 120 examinations quarterly. Even considering divisional staffing challenges since 2023, NDS was only 20 examinations short of being within the acceptable variance of this output measure as of the third quarter of fiscal year 2024.

Below is additional information on the examination activities reflected on the previous page.

- Of the 14 past-due MSB examinations, seven were conducted between June and July 2024, and two will be conducted independently in August 2024. The remaining five examinations will be conducted in coordination with other MSB state regulators as part of a nationwide network multi-state examination process and are anticipated to be completed by no later than October 2024.
- Of the 10 past due PFC examinations, eight were conducted in June and July 2024, and the remaining two are scheduled to be completed in August 2024.
- Of the 19 past due PCC examinations, 18 were conducted in July 2024, and the remaining one is scheduled to be completed in August 2024.

## Staffing

Staffing challenges have resulted in the number of past-due examinations increasing in the third quarter of fiscal year 2024. As of the date of this memorandum, two MSB and one PFC/PCC examiners are in training. It is anticipated that the two MSB and one PFC/PCC financial examiners currently in training will complete their training in early 2025 which should result in an increase in the total number of quarterly examinations conducted on an ongoing basis. Unfortunately, an MSB Financial Examiner IV resigned in July 2024. The division anticipates filling two of the MSB vacancies in the fall of 2024, and the remaining in early 2025 at the latest.

### **Supervisory Activities**

The number of MSB examinations rated 3, 4, or 5 is trending upward due to various factors including financial condition concerns, poor management oversight, and Bank Secrecy Act / Anti-Money Laundering compliance deficiencies. In the last 24 months, the number of 3, 4, or 5 rated MSBs has increased by 42%. Typically, these supervisory concerns are noted in the examinations of the more complex MSBs. Not only are additional resources required to complete these examinations and prepare the corresponding Reports of Examinations, but most also require ongoing coordination with other state regulators as part of the nationwide state supervisory process. These concerns may also result in referrals to the Department's Legal Division for the initiation of administrative proceedings.

Despite the current financial examiner vacancies, NDS performs off-site monitoring of licensed entities which involves reviewing quarterly call report information, consumer complaints, cryptocurrency price fluctuations and its impact on the balance sheets of MSBs that report these assets, including stablecoins, and industry trends and developments. All these off-site monitoring activities are typically coordinated with various multi-state regulatory work groups to ensure the proper oversight of higher risk license holders.

NDS staff routinely participates in multi-state regulatory meetings to discuss various issues impacting MSBs licensed in multiple states. One such activity is the coordinated implementation of the Money Services Modernization Act (MSB Model Law). As of July 2024, 20 states have fully enacted the MSB Model Law and five have enacted parts of it. To ensure MSB state regulatory agencies consistently apply various provisions of this regulation, Department staff participate in discussions regarding its adoption and implementation. Remaining active and involved at the national level with other supervisory states and associations is one the Department's priorities.

During this reporting period, the division also completed the questionnaire and related MSB documents related to the Conference of State Bank Supervisors reaccreditation review scheduled for October 2024.



Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

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[www.dob.texas.gov](http://www.dob.texas.gov)

### Memorandum

**To:** Finance Commission Members  
**From:** Pam Pennington, Human Resources Manager  
**Date:** August 1, 2024  
**Subject:** Summary of the Human Resources Division Activities

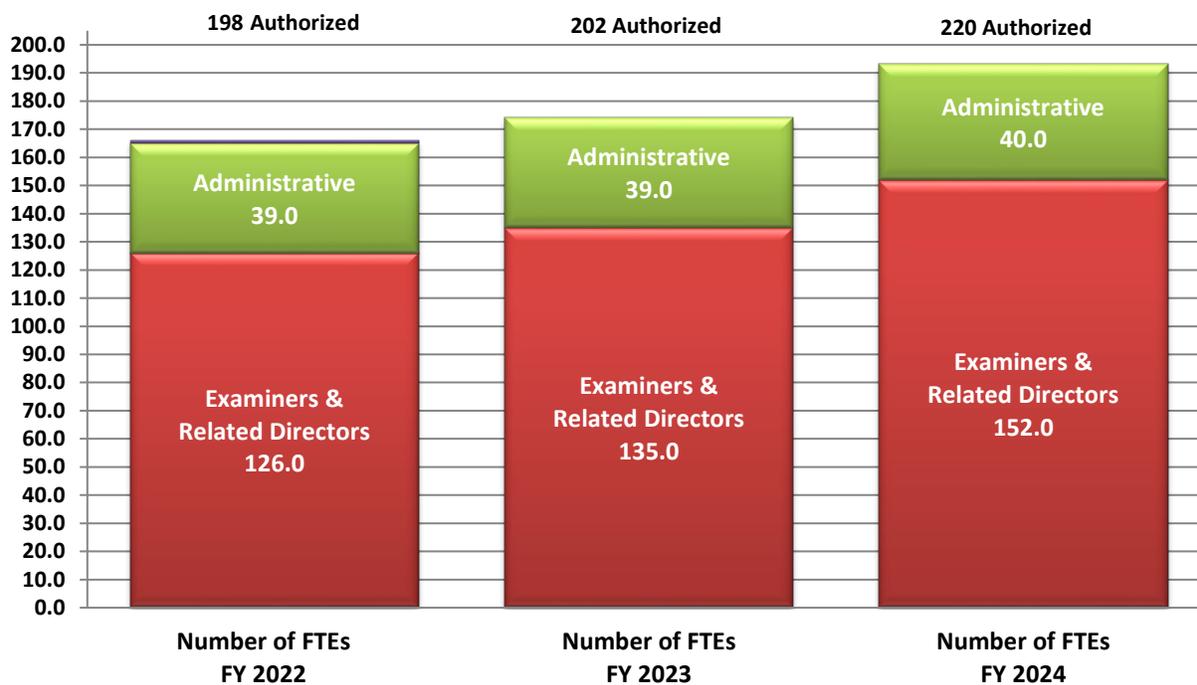
<b>Active Postings</b>				
<i>Number of Positions</i>	<i>Position</i>	<i>Division</i>	<i>Status</i>	<i>Activities</i>
1	Law Clerk	Legal	Closes August 16, 2024	Recruiting
1	Attorney I	Legal	Closes August 16, 2024	Recruiting
1	Attorney II – III	Legal	Closes August 16, 2024	Recruiting
2	Money Services Business (MSB) Financial Examiner I -II (Austin, Houston, Dallas)	NDS	Closes August 12, 2024	Recruiting
2	Money Services Business (MSB) Financial Examiner III – IV (Austin, Houston, Dallas)	NDS	Closes August 12, 2024	Recruiting
1	Financial Examiner V: Bank Secrecy Act/Anti-Money Laundering Specialist (Dallas, Houston, San Antonio)	Bank and Trust	Open Until Filled	Recruiting /Interviewing
1	Payroll/Travel Accountant V	Admin Services	Open Until Filled	Recruiting
1	Financial Examiner VII – Review Examiner	Bank and Trust	Open Until Filled	Recruiting
3	Financial Examiner IV -VII: Information Technology Specialist (Houston)	Bank and Trust – IT	Open Until Filled	Recruiting
1	Financial Examiner V – Credit Review Specialist	Bank and Trust	Open Until Filled	Recruiting
1	Financial Examiner VI – VII: Commercial Bank Examiner (Houston)	Bank and Trust	Open Until Filled	Recruiting
1	Financial Examiner IV – V Commercial Bank Examiner (Houston)	Bank and Trust	Open Until Filled	Recruiting
1	Financial Examiner IV – VI: Financial Analyst / Training Coordinator	DSS	Open Until Filled	Recruiting

<b>Status of Postings that Closed before August 1, 2024</b>				
<i>Number of Positions</i>	<i>Position</i>	<i>Division</i>	<i>Status</i>	<i>Activities</i>
1	Programmer I – II	MIS	Closed June 10, 2024	Filled
1	Chief Information Officer	MIS	Closed July 26, 2024	Screening

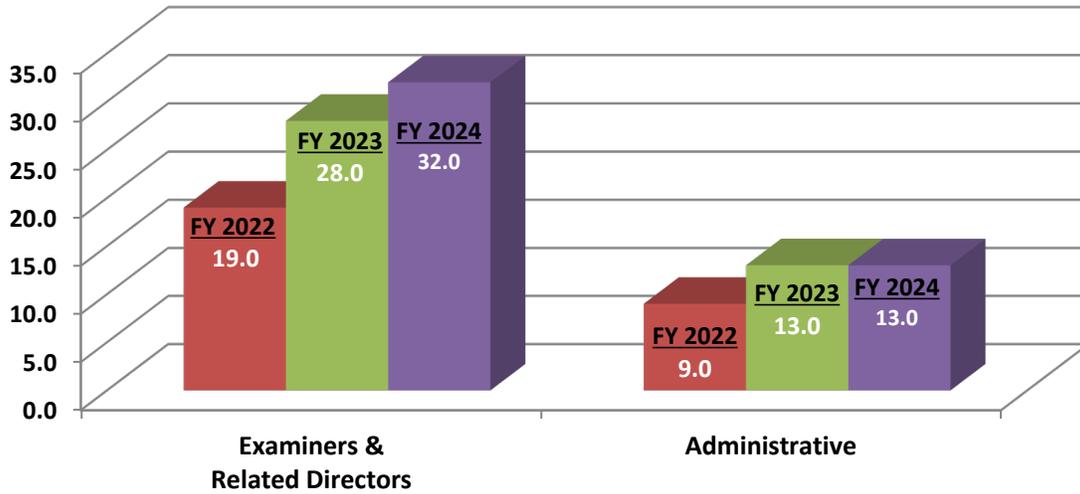
**Division Activities:**

- *Renewals:*
  - Annual Teleworking Request renewals will begin August 1, 2024.
- *Division Personnel:*
  - HR Specialist, Katie Kashyap, was hired August 1, 2024.

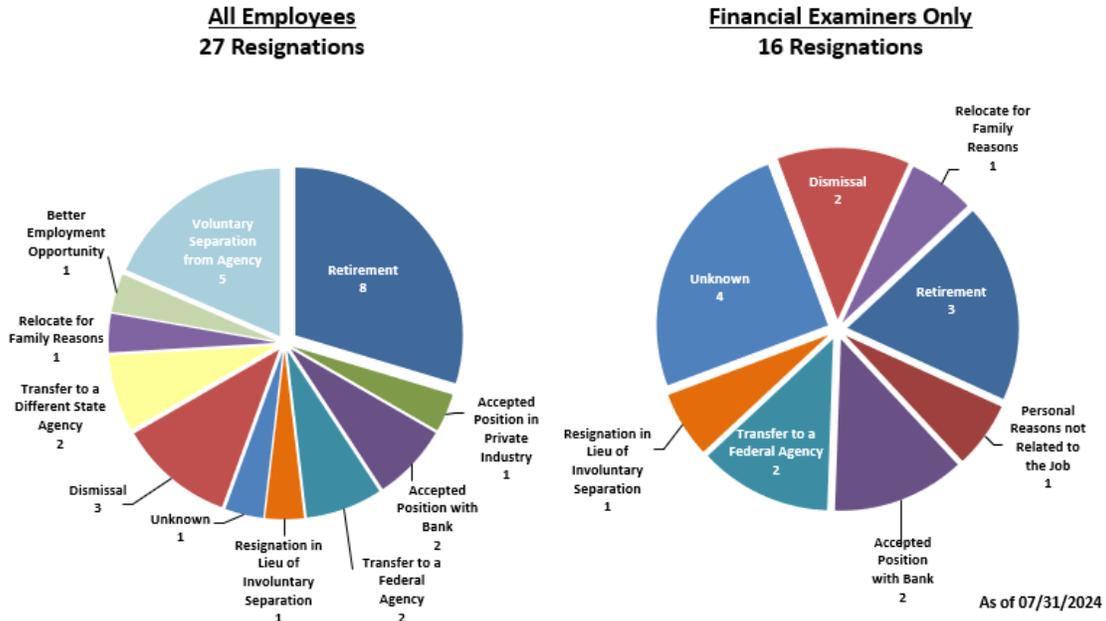
**Texas Department of Banking  
Employee Data for Fiscal Years 2022, 2023 and 2024 as of  
07/31/2024**



### New Hire Data for Fiscal Years 2022, 2023, and 2024



### FY 2024 Employee Turnover Reasons



**Department of Banking  
Actual Performance for Output Measures  
Fiscal Year 2024**

Type/Strategy/Measure	2024 Target	2024 Actual	2024 YTD	Percent of Annual Target	
<b>Output Measures-Key</b>					
<b>1-1-1</b>	<b>Bank Examination</b>				
	<b>1. # Bank Examinations Performed</b>				
<b>Quarter 1</b>	103	26	26	25.24%	
<b>Quarter 2</b>	103	26	52	50.49%	
<b>Quarter 3</b>	103	23	75	72.82%	
	<b>2. # Foreign/Trust/IT Examinations Performed</b>				
<b>Quarter 1</b>	229	45	45	19.65%	*
<b>Quarter 2</b>	229	61	106	46.29%	
<b>Quarter 3</b>	229	57	163	71.18%	
	FY 2024, Quarter 1 - The number of bank examinations is below the target due to performing less IT examinations than anticipated.				
<b>1-2-1</b>	<b>Non-Bank Examination</b>				
	<b>1. # NDS Licensees Examined</b>				
<b>Quarter 1</b>	500	115	115	23.00%	
<b>Quarter 2</b>	500	110	225	45.00%	
<b>Quarter 3</b>	500	113	338	67.60%	*
	FY 2024, Quarter 3 - The number of NDS licensees examined is below the target due to the inability to maintain fully trained PFC/PCC financial examiner staff to conduct examinations.				
<b>1-3-1</b>	<b>Application Processing</b>				
	<b>1. # License Applications Completed</b>				
<b>Quarter 1</b>	315	88	88	27.94%	
<b>Quarter 2</b>	315	72	160	50.79%	
<b>Quarter 3</b>	315	75	235	74.60%	

\*Varies by 5% or more from target.



Charles G. Cooper  
Commissioner

# TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

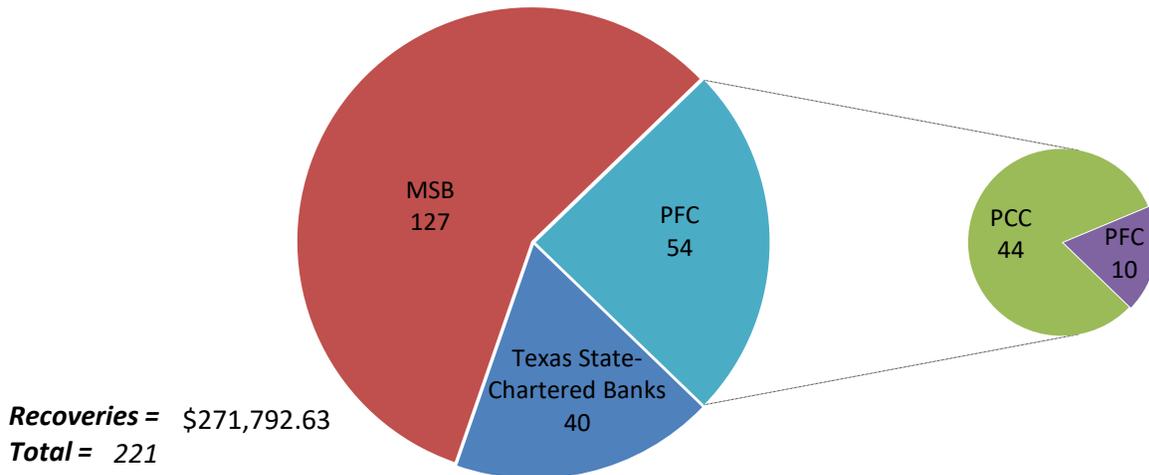
512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

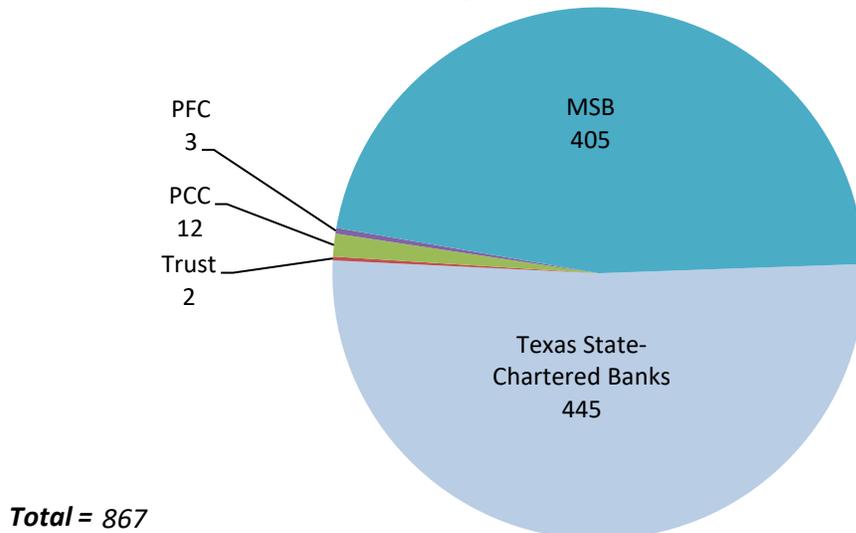
**To:** Finance Commission Members  
**From:** Amber Summers, Financial Examiner  
**Date:** August 1, 2024  
**Subject:** Summary of the Strategic Support Division Activities

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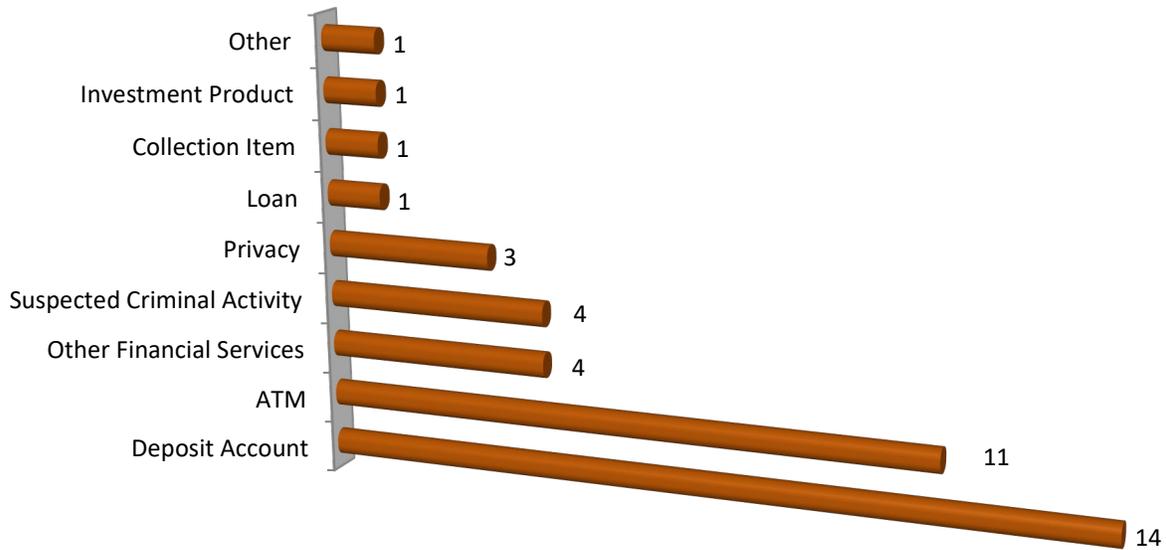
## Jurisdictional Written Complaints September 2023-June 2024



## Inquiries on Jurisdictional Entities September 2023-June 2024

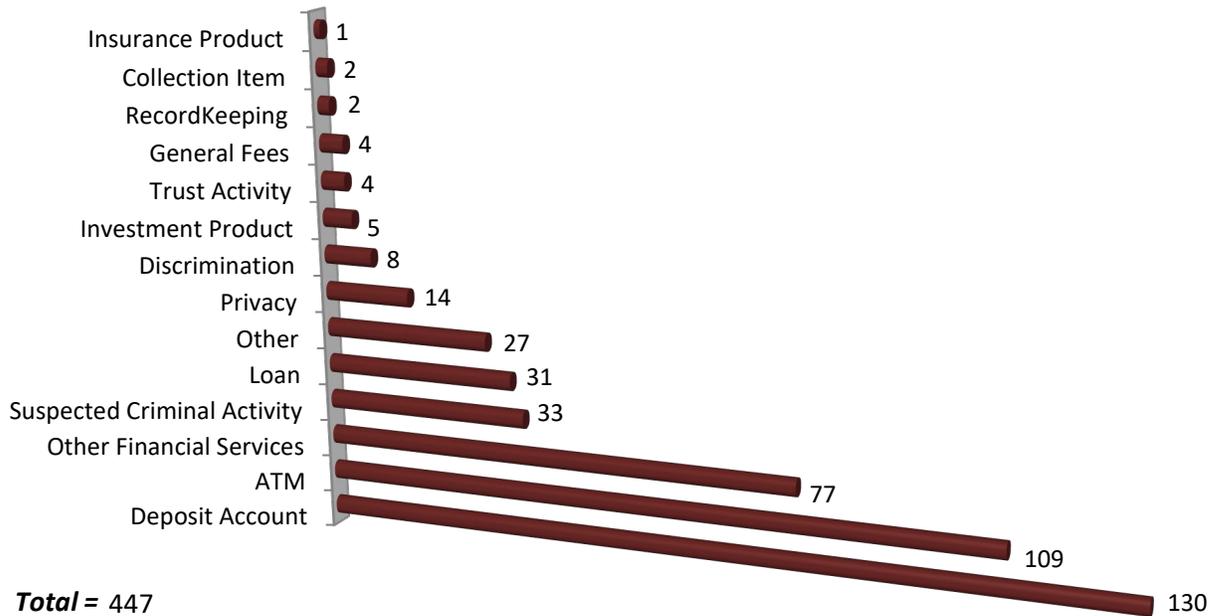


**State-Chartered Banks and Trust Companies  
 Written Complaints by Type  
 September 2023-June 2024**



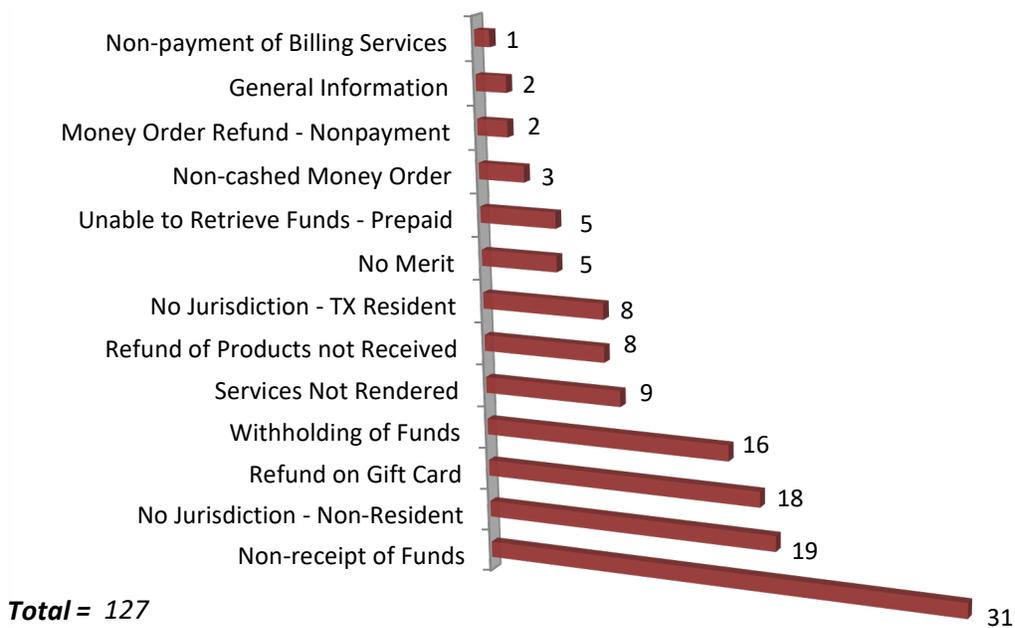
**Total = 40**

**State-Chartered Banks and Trust Companies  
 Inquiries by Type  
 September 2023-June 2024**

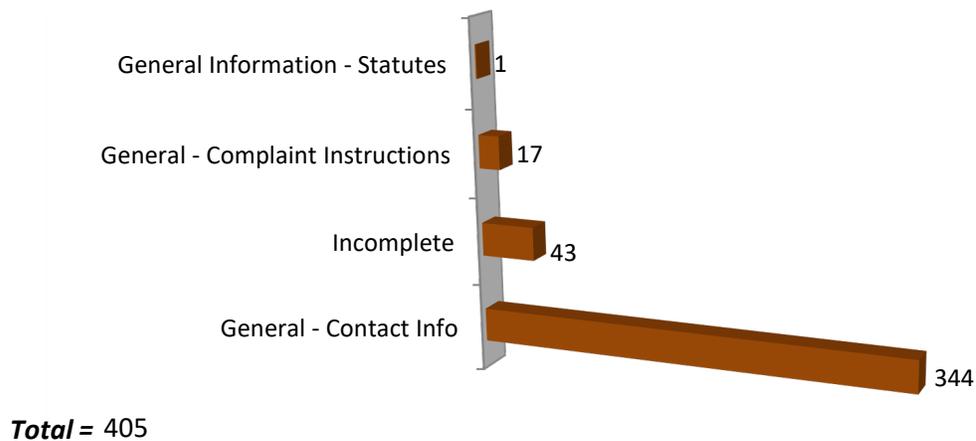


**Total = 447**

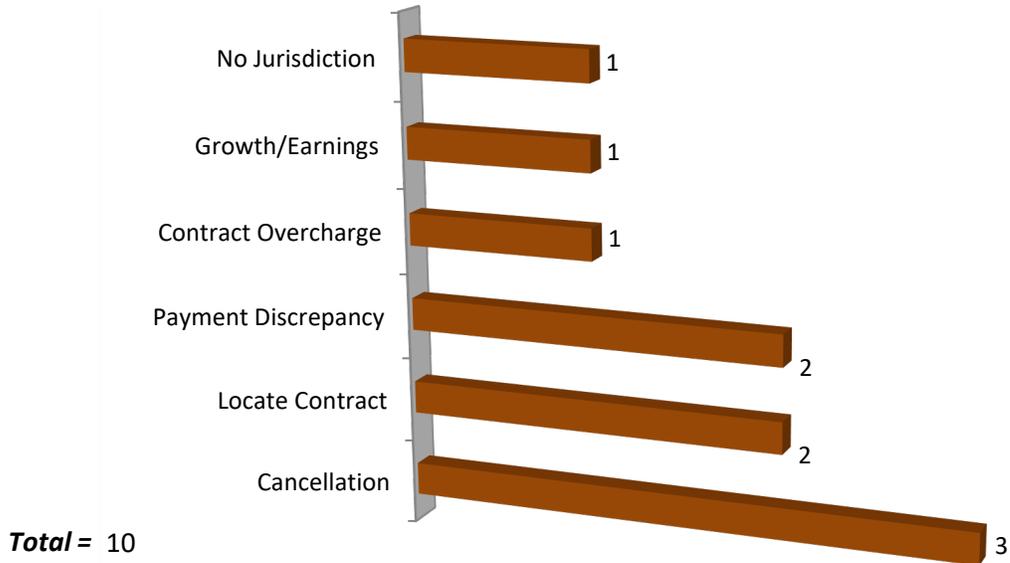
**Money Services Businesses  
 Written Complaints by Type  
 September 2023-June 2024**



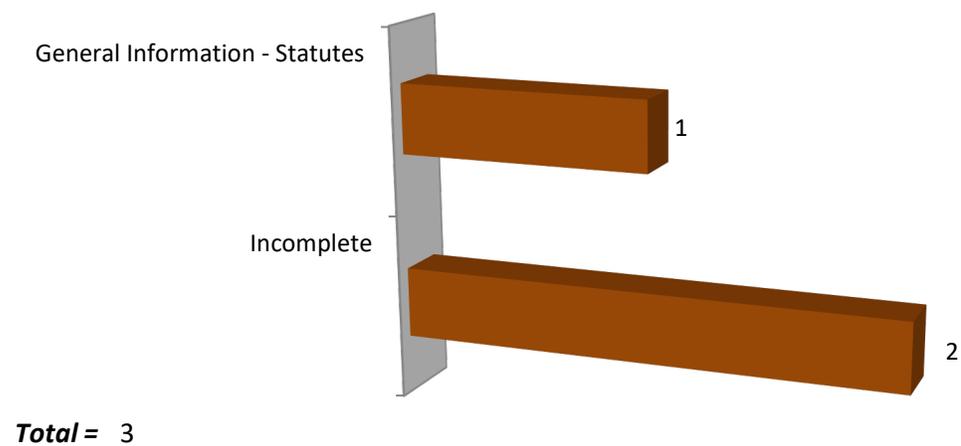
**Money Services Businesses  
 Inquiries by Type  
 September 2023-June 2024**



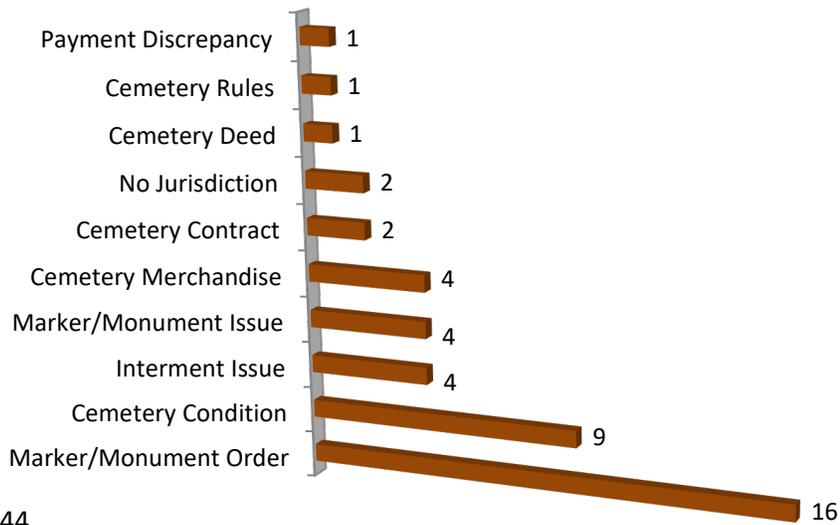
**Prepaid Funeral Contract Sellers  
Written Complaints by Type  
September 2023-June 2024**



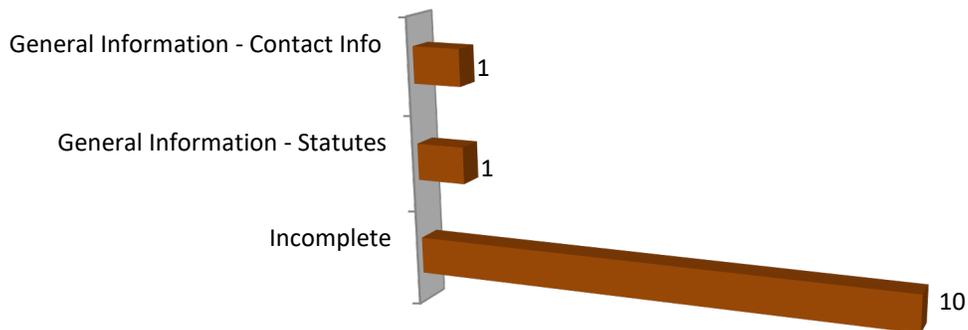
**Prepaid Funeral Contract Sellers  
Inquiries by Type  
September 2023-June 2024**



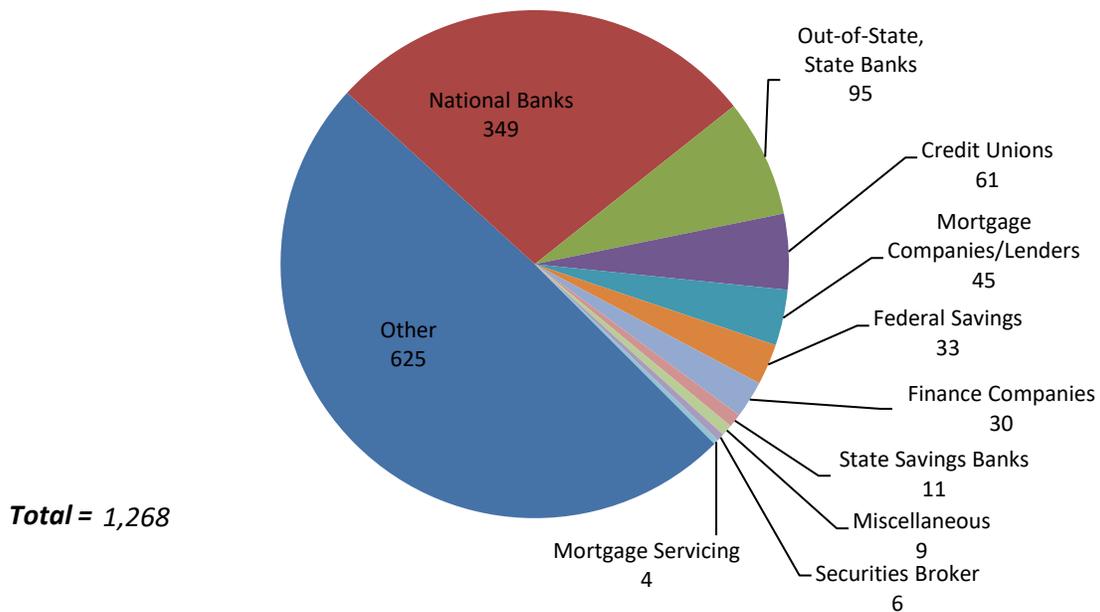
### Perpetual Care Cemeteries Written Complaints by Type September 2023-June 2024



### Perpetual Care Cemeteries Inquiries by Type September 2023-June 2024



### Complaints and Inquiries Against Non-Jurisdictional Entities September 2023-June 2024



Often, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.

### Complaint Activities Information by Quarter

	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.
<b>State-Chartered Banks</b>				
Avg. Number of Days to Close a Written Complaint	17	16	16	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	-
Number of Written Complaints Resolved	14	14	11	-
<b>Trust</b>				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	-
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	-
Number of Written Complaints Resolved	N/A	N/A	N/A	-
<b>PFC/PCC</b>				
Avg. Number of Days to Close a Written Complaint	39	35	30	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	-
Number of Written Complaints Resolved	24	7	20	-
<b>MSB</b>				
Avg. Number of Days to Close a Written Complaint	21	19	18	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	-
Number of Written Complaints Resolved	34	32	45	-

**Closed Account Notification System (CANS) Activity**  
January 1, 2020 – July 31, 2024

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	183	445
Texas State-Chartered Savings Banks	23	68
Federal Savings Banks	10	0
State Credit Unions	135	818
Federal Credit Unions	229	659
National Banks	171	106
Out-of-State State-Chartered Banks	12	73
Out-of-State National Banks	6	0
<b>Total</b>	<b>769</b>	<b>2,169</b>

**Bank Examination Testing System (BETS) Activity**  
Number of Candidates Passing Each Phase

	FY 2021	FY 2022	FY 2023	FY 2024 As of 7/31/2024
I. General Knowledge	6	5	4	7
II. Loan Analysis	1	3	3	3
III. Panel	3	3	4	4
IV. Test Bank	5	3	6	3
<b>Total FE3</b>	<b>17</b>	<b>13</b>	<b>14</b>	<b>13</b>

**Promotions**

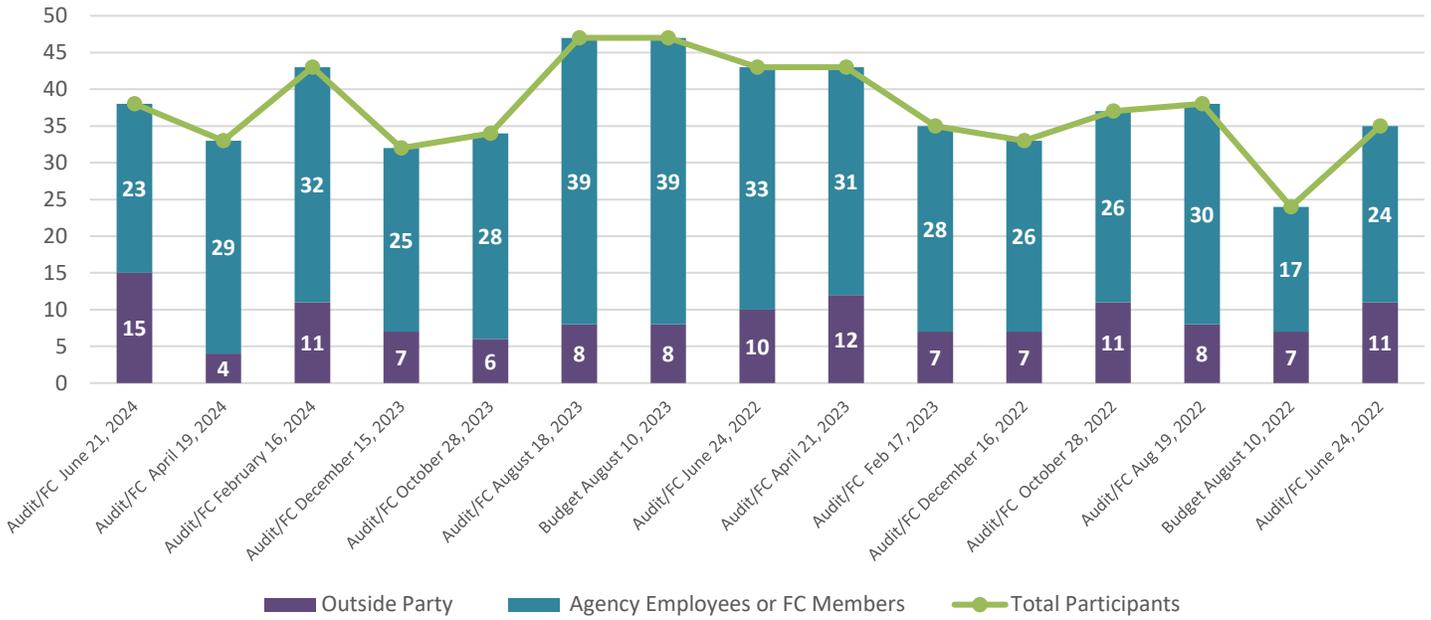
<i>Commissioned Examiners</i>	5	3	5	4
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**Other Divisional Items:**

- *Training:*
  - The New Examiner Training Program began June 24, 2024, with 21 participants. The program is progressing smoothly and will continue through December 5, 2024.
- *Financial Education:*
  - The Texas Department of Banking and the Office of Consumer Credit Commissioner co-hosted a webinar on June 26, 2024. The webinar focused on financially preparing for natural disasters. There were thirty-three registrants and fourteen attendees.
  - The Texas Department of Banking and the Office of Consumer Credit Commissioner participated in the 2024 Texas Financial Literacy Summit as opening speakers. The Summit was held July 11-12 at the Federal Reserve Bank of Dallas with approximately 130 attendees.

- *Accreditation:*
  - The Department has submitted the CSBS Self-Evaluation Questionnaire which is required by their accreditation process. CSBS will review the questionnaire prior to their on-site review which will be conducted October 14-17, 2024.
  
- *Policy Revisions/Updates:*
  - Administrative Memorandums (AM)
    - AM 2027 – Investment Policy for Funds Under the Oversight of the Finance Commission of Texas (July)
  - Supervisory Memorandums (SM)
    - SM 1015 – Outsourcing of Compliance Functions (July)
    - SM 1021 – Consumer Awareness About Fraud Induced Wire Transfers (July)
    - SM 1024 – Accepting Money Services Businesses (MSBs) Reports of Examination (ROEs) of Other State Agencies (July)
    - SM 1035 – Licensing of Foreign-Located Money Transmitters Under Texas Finance Code Chapter 152 (July)
    - SM 1036 – Appointment of an Authorized Delegate to Conduct Money Transmission on Behalf of a License Holder (July)
    - SM 1040 – Recommended File Documentation for Money Services Business License Holders that Conduct Business through Authorized Delegates, Foreign Agents and Counterparties, and Gateway Agents (July)
    - SM 1041 – Examination Policy for Domestic MSBs That Conduct Business from a Non-traditional Office Location (July)
    - SM 1042 – Effect of Criminal Convictions on Licensing (July)
    - SM 1043 – Permissible Uses of “Bank” and Related Terms in Marketing and Other Limits Related to Marketing Regulated Financial Services (July)
  - Examiner Bulletins (XB)
    - XB 2024-07 IT Related Examination Procedures for Bank & Trust Staff (July)
    - XB 2024-08 BSA/AML Transaction Testing Guidance (July)
  
- *Examination Procedure Revisions/Updates:*
  - Information Technology Procedures
    - Examination Scope Form (July)
  - Updated examination reference materials for commercial, trust, and IT procedures (June, July)
  - Drafted examination modernization procedures for review.
    - Interbank Liabilities (July)
    - Other Assets and Liabilities (July)

## Finance Commission Webcast Historical Data





Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

[www.dob.texas.gov](http://www.dob.texas.gov)

**To:** Finance Commission Members  
**From:** Robert Nichols, General Counsel  
**Date:** August 1, 2024  
**Subject:** Legal Division Update

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### **Orders Issued June 1, 2024 – July 31, 2024**

The Commissioner issued no enforcement orders during this period.

### **Public Information Requests**

From June 1, 2024, through July 31, 2024, staff received and responded to 19 requests for public information addressed to the Department of Banking and received 7 inquiries through the “Ask a Question” feature. During the same period, we received one public information request addressed to the Finance Commission.

### **Gifts**

Commissioner Cooper participated as a panelist at the Texas Bankers Association Central States Conference in Fort Worth, Texas, on June 24-26, 2024. The panel discussed banking regulation in America’s Heartland and included Commissioners from Texas, Indiana, and North Dakota. The registration fee of \$550 was waived.

On June 27, 2024, Commissioner Cooper attended the Federal Financial Institutions Examination Council (FFIEC) meeting in Washington, D.C. The FFIEC paid for his airfare, lodging, and per diem in the total amount of \$1,312.43. The Commissioner attended the meeting in his role as the current State Liaison Committee (SLC) Chair.

Commissioner attended a joint Federal Reserve of Dallas and Atlanta Conference on Exploring Conventional Bank Funding Regimes in an Unconventional World in Dallas, Texas, on July 18-19, 2024. The Commissioner was the chair/moderator at a roundtable discussion. The \$149 fee was waived.

**FY 2024 Quarterly Order Activity**

<b>BANK</b>				
<b>Type of Action</b>	<b>1st</b>	<b>2nd</b>	<b>3rd</b>	<b>4th</b>
Consent Order	1	0	0	0
Cease & Desist	0	1	1	0
Supervision	0	0	0	0
Prohibition	0	1	1	0
Total	1	2	2	0

<b>TRUST COMPANY</b>				
Consent Order	0	0	1	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	0	0	1	0

<b>MONEY SERVICES BUSINESS</b>				
Consent Order	5	0	2	0
Cease & Desist	0	0	0	0
Final Order after hearing	0	0	0	0
Total	5	0	2	0

<b>PERPETUAL CARE CEMETERY</b>				
Consent Order	0	0	0	0
Cease & Desist	0	1	0	0
Refusal to Renew Cert/Auth	0	0	0	0
Final Order after Hearing	1	0	0	0
Total	1	1	0	0

<b>PREPAID FUNERAL CONTRACT</b>				
Consent Order	0	0	1	0
Cease & Desist	0	2	1	0
Final Order	0	0	0	0
Total	0	2	2	0

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 2, §33.27, Concerning Fees to Obtain and Maintain a License.

**PURPOSE:** Amendments to Title 7, Part 2, §33.27 of the Texas Administrative Code for the purpose of ensuring fees collected by the Department keep pace with the rising cost of regulation and supervision of money services businesses.

**RECOMMENDED ACTION:** No comments were received regarding the proposed amendments to 7 TAC §33.27. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt the amendments to 7 TAC §33.27 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 33. Money Services Businesses***  
***7 TAC §33.27***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to 7 TAC §33.27 (§33.27), concerning fees to obtain and maintain money transmission and currency exchange licenses. The amended rule is adopted without changes to the proposed text as published in the July 5, 2024, issue of the Texas Register (49 TexReg 4866). The amended rule will not be republished.

The proposed rule amendments were changed slightly from the draft approved for publishing by the commission in response to comments received from the Texas Register staff, at the Texas Secretary of State's office, prior to publication in the Texas Register. In the preamble, the changes were not substantive and were regarding confirmation that there would be no impact on rural communities. In the rule itself, non-substantive updates were made to the way in which paragraphs were designated.

The adopted amendments to §33.27: (i) update the assessment fee schedules in subsections (e)(1) and (e)(2) to reflect the assessments set forth in the attached Figure: 7 TAC §33.27(e)(1) and Figure: 7 TAC §33.27(e)(2), respectively; (ii) add subsection (e)(4) permitting the department to increase assessments based on the percentage change in an inflation index beginning September 1, 2025; and (iii) increase the hourly examination fees in

subsections (d)(1)(A), (e)(3), (f)(1), (g)(3), (h)(2), and (h)(4) to \$120 per hour.

The department determined that key regulatory functions are not adequately funded by the existing fee structure, primarily due to increase in labor and other costs. The amendments to §33.27 increase the allowable annual assessments paid by money services businesses to offset forecasted funding shortfalls.

The department observed increases in operational costs over the past few fiscal years. The department's costs for money services business programs, such as the required periodic examination of each licensed business, have increased over the years due to a variety of factors including the following: rising inflation impacting items such as travel costs; the necessity to attract, hire, and retain qualified personnel; and the additional time, resources, and attention required by the increasing complexity of money services business operations.

As a result, the staffing plan for full-time money services business financial examiners has increased from six in fiscal year 2021 to 12 in fiscal year 2023. Fiscal year 2024's staffing plan further increases the number of examiners to 15 in order to properly, and timely, examine license holders and anticipated new license holders as projected from current applications.

The department is also incurring new costs related to the passage of Chapter 160 of the Finance Code, which became effective September 1, 2023. Chapter 160 charges the department with ensuring money transmitters that qualify as digital asset service providers

comply with certain standards. The build out of an expanded regulatory scheme to administer the new Chapter 160, which includes an expanded examination scope for the eligible digital asset service providers, generate costs to the department which have not been previously incurred.

Based on historical examination data and costs, coupled with the increased complexity of the examinations, the department constructed the adopted fee adjustments, including the inflationary adjustments, to provide the funding required to administer and enforce Finance Code, Chapters 152 and 160 in a manner that is fair and equitable to licensees.

The department received no comments regarding the proposed amendments. Notice of the intent to amend §33.27 was submitted to the Regulatory Compliance Division of the Office of the Governor (Division) as the rule has the potential to affect market competition. The Division also received no comments and approved the amendment without further revision.

The amendment is adopted pursuant to Finance Code, §§152.052 and 160.006, which authorize the commission to adopt rules to administer and enforce Texas Finance Code, Chapter 152, and Chapter 160, respectively. The commission may by rule impose and collect proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to recover the cost of maintaining and operating the department, administering, and enforcing Chapter 152 and other applicable law, and achieve the purposes of Chapter 152 and Chapter 160. Chapter 152 was enacted by Senate Bill 895

and Chapter 160 was enacted by House Bill 1666 during the 88<sup>th</sup> Legislative Session.

Texas Finance Code §§152.107 and 160.005 are affected by the proposed amended sections.

§33.27. What Fees Must I Pay to Get and Maintain a License?

(a)-(c) (No change.)

(d) What fees must I pay to obtain a new license?

(1) You must pay a \$10,000 application fee to obtain a new money transmission license or a \$5,000 application fee to obtain a currency exchange license. If your application is accepted for processing pursuant to Finance Code, §152.106, your application fee will be nonrefundable. You may also be required to pay the following additional fees:

(A) If the commissioner determines that it is necessary to conduct an on-site investigation of your business, you must pay a non-refundable investigation fee at a rate of \$120 per hour for each department examiner required to conduct the investigation and all associated travel expenses;

(B) If the commissioner determines that it is necessary to employ a third-party screening service to assist with the investigation of your license application, you must pay the department for the reasonable costs for the third-party investigation; and

(C) If the commissioner

determines it is necessary to perform background checks using fingerprint identification records, you must either submit payment for the costs of this service at the time you file your application or pay the department upon request.

(2) The commissioner may reduce the fees required under paragraph (1) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 152, and this chapter.

(e) What fees must I pay to maintain my money transmission or currency exchange license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and/or currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §152.107(d)(2).

(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(1)

(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(2)

(3) If you are a new license holder and have not yet filed your first annual report under Finance Code, §152.107(d)(2), you

must pay an examination fee of \$120 per hour for each examiner and all associated travel expenses for an examination.

(4) Adjustments for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(A) Beginning September 1, 2025, and each September 1 thereafter, the tables in paragraphs (1) and (2) of this subsection, as most recently revised before such date pursuant to this subsection, may be revised by the commissioner as follows:

(i) the base assessment amount, listed in column three of each table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars;

(ii) each factor listed in column three of each table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to the number of decimal places set forth in the applicable row; and

(iii) the maximum assessment amount, listed in column three, row eight of

each table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars.

(B) If the table in paragraphs (1) and (2) of this subsection are revised for inflation (or deflation), then not later than August 1 of each year, the department shall calculate and prepare revised tables reflecting the inflation-adjusted values to be applied effective the following September 1, and will provide each license holder with notice of and access to the revised table.

(f) What fees must I pay in connection with a department investigation?

(1) If the commissioner considers it necessary or appropriate to investigate you or another person in order to administer and enforce Finance Code, Chapter 152, as authorized under §152.056, you or the investigated person must pay the department an investigation fee calculated at a rate of \$120 per employee hour for the investigation and all associated travel expenses.

(2) If the commissioner determines that it is necessary to employ a third-party screening service to assist with an investigation, you must pay the department for the costs incurred for the third-party investigation.

(3) If the commissioner determines it is necessary to perform background checks using fingerprint identification records in an investigation, you must pay the department the costs incurred for this service.

(g) What fees must I pay in connection with a proposed change of control of my money

transmission or currency exchange business?

(1) You must pay a non-refundable \$1,000 fee at the time you file an application requesting approval of your proposed change of control.

(2) You must pay a non-refundable \$500 fee to obtain the department's prior determination of whether a person would be considered a person in control and whether a change of control application must be filed. If the department determines that a change of control application is required, the prior determination fee will be applied to the fee required under paragraph (1) of this subsection.

(3) If the department's review of your change of control application or prior determination request requires more than eight employee hours, you must pay an additional review fee of \$120 per employee hour for every hour in excess of eight hours.

(4) The commissioner may reduce the filing fees described in paragraph (1) or (2) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 152, and this chapter.

(h) What other fees must I pay?

(1) If the department does not receive your completed annual report on or before the due date prescribed by the commissioner under Finance Code, §152.107, you must pay a late fee of \$100 per day for each business day after the due date that the department does not receive your completed annual report.

(2) If more than one examination is required in the same fiscal year because of your failure to comply with Finance Code, Chapter 152, this chapter, or a department directive, you must pay for the additional examination at a rate of \$120 per hour for each examiner required to conduct the additional examination and all associated travel expenses. A fiscal year is the 12-month period from September 1st of one year to August 31st of the following year.

(3) If the department travels out-of-state to conduct your examination, you must pay for all associated travel expenses.

(4) If the commissioner determines it is necessary to conduct an on-site examination of your authorized delegate to ensure your compliance with Finance Code, Chapter 152, you must pay an examination fee of \$120 per hour for each examiner and any associated travel expenses.

(i)-(j) (No change.)

Figure: 7 TAC §33.27(e)(1)

**Annual Assessment Fee Schedule for CEX License Holders:**

<b>If the total dollar amount of your annual transactions is:</b>		<b>Then your annual assessment is:</b>
<b>Over --</b>	<b>But not over --</b>	
-----	\$249,999.99	\$3,150.00
\$250,000.00	\$499,999.99	\$3,150.00 plus the amount of your transactions over \$250,000 multiplied by a factor of .00235
\$500,000.00	\$999,999.99	\$3,850.00 plus the amount of your transactions over \$500,000 multiplied by a factor of .00175
\$1,000,000.00	\$9,999,999.99	\$4,900.00 plus the amount of your transactions over \$1 million multiplied by a factor of .000115
\$10,000,000.00	\$24,999,999.99	\$6,000.00 plus the amount of your transactions over \$10 million multiplied by a factor of .0000835
\$25,000,000.00	\$49,999,999.99	\$7,150.00 plus the amount of your transactions over \$25 million multiplied by a factor of .0000735
\$50,000,000.00	\$199,999,999.99	\$9,150.00 plus the amount of your transactions over \$50 million multiplied by a factor of .00001155
\$200,000,000.00	-----	\$10,500.00 plus the amount of your transactions over \$200 million multiplied by a factor of .00001125, but not more than \$24,450.00.

**If the calculation result is greater than \$24,450, your annual assessment is \$24,450.**

Figure 7 TAC §33.27(e)(2)

**Annual Assessment Fee Schedule for MT License Holders:**

<b>If the total dollar amount of your annual transactions is:</b>		<b>Then your annual assessment is:</b>
<b>Over --</b>	<b>But not over --</b>	
-----	\$249,999.99	\$4,500.00
\$250,000.00	\$499,999.99	\$4,550.00 plus the amount of your transactions over \$250,000 multiplied by a factor of .0024675
\$500,000.00	\$999,999.99	\$5,250.00 plus the amount of your transactions over \$500,000 multiplied by a factor of .0018375
\$1,000,000.00	\$9,999,999.99	\$6,250.00 plus the amount of your transactions over \$1 million multiplied by a factor of .00011500
\$10,000,000.00	\$24,999,999.99	\$7,500.00 plus the amount of your transactions over \$10 million multiplied by a factor of .00008768
\$25,000,000.00	\$49,999,999.99	\$9,000.00 plus the amount of your transactions over \$25 million multiplied by a factor of .00007350
\$50,000,000.00	\$199,999,999.99	\$10,750.00 plus the amount of your transactions over \$50 million multiplied by a factor of .00001559
\$200,000,000.00	-----	\$13,000.00 plus the amount of your transactions over \$200 million multiplied by a factor of .00001575, but not more than \$60,000.00.

**If the calculation result is greater than \$60,000, your annual assessment is \$60,000.**

3. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 2, Chapter 33, § 33.51, Concerning How to Provide Information to Customers on How to File a Complaint

**PURPOSE:** Amendment to 7 TAC § 33.51(c) to update a citation referencing Chapter 151 to instead reference Chapter 152 of the Finance Code.

**RECOMMENDED ACTION:** No comments were received regarding the proposed amendment to 7 TAC § 33.51. The Department recommends that the Commission approve adoption of the amendment without changes to the proposal as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt the amendment to 7 TAC § 33.51 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 33. Money Services Businesses***  
***7 TAC §33.51***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts an amendment to 7 TAC §33.51 (§33.51), concerning providing information to customers on how to file a complaint. The amendment is adopted without changes to the proposed text as published in the July 5, 2024, issue of the Texas Register (49 TexReg 4870). The amended rule will not be republished.

The amendment updates a citation referencing Chapter 151 to instead reference Chapter 152 of the Finance Code. The amendment arises from the passage of Senate Bill 895, sponsored by Senator Nathan Johnson, during the 88th legislative session. Effective September 1, 2023, Senate Bill 895 repealed Chapter 151 of the Texas Finance Code (Finance Code) and added Chapter 152 relating to the regulation of money services businesses.

The department received no comments regarding the proposed amendments.

The amendment is adopted pursuant to Finance Code, §152.052, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 152.

§33.51. How do I Provide Information to My Customers about How to File a Complaint?

(a) – (b) (No change.)

(c) Must I provide notice to customers about how to file complaints? Yes. You must tell each of your customers how to file a complaint concerning the money transmission or currency exchange business you conduct under Finance Code, Chapter 152, in accordance with this section.

(d) – (h) (No change.)