

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE**October 25, 2024**

MEETING LOCATIONFinance 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

FUTURE MEETING DATESDecember 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, October 25, 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

Section A.3 will take up agenda items A1, A8, C3, D2, and D6 – D10, 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 August 16, 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 Fourth Quarter Investment Officer Reports

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

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

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

C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Activities of the Texas Financial Education Endowment Fund

6. Discussion of the Condition of the Texas State Banking System

7. Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2024 for the Commissioners of the Texas Department of Banking, the Office of Consumer Credit Commissioner and the Department of Savings and Mortgage Lending

8. ***Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Resulting from Rule Review***

9. 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

10. 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
11. 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
12. 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
13. 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. 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 Anticipated and Pending Litigation

C. 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 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review
3. *Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Chapter 7, Concerning the Texas Financial Education Endowment Fund, 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 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, 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

D. 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 Adoption of New Rules in 7 TAC, Part 4, Chapter 55, Concerning Residential Mortgage Loan Originators, Resulting from Rule Review***
3. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 56, Concerning Residential Mortgage Loan Companies, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 57, Concerning Mortgage Bankers, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 58, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review
6. ***Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 59, Concerning Wrap Mortgage Loans, Resulting from Rule Review***
7. ***Discussion of and Possible Vote to Take Action on the Adoption of Repeals in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans, Resulting from Rule Review***
8. ***Discussion of and Possible Vote to Take Action on the Adoption of Repeals in 7 TAC, Part 4, Chapter 79, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review***
9. ***Discussion of and Possible Vote to Take Action on the Adoption of Repeals in 7 TAC, Part 4, Chapter 80, Concerning Residential Mortgage Loan Companies, Resulting from Rule Review***
10. ***Discussion of and Possible Vote to Take Action on the Adoption of Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators, Resulting from Rule Review***
11. 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

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.

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**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, August 16, 2024**

The Finance Commission of Texas convened at 10:25 a.m., on August 16, 2024, with the following members present:

Finance Commission Members in Attendance:

Phillip Holt, Chairman	Kathleen Fields	Roselyn “Rosie” Morris
Laura Warren, Vice Chairman	Martin “Marty” Green	David Osborn
Bob Borochoff	Troy Lambden	Miguel Romano, Jr.
Hector Cerna	Sharon McCormick	

Commissioner Charles G. Cooper announced there was a quorum with 11 members present. *(0:34 on audio file)*.

Chairman Holt recognized former Finance Commission members Will Lucas, Cliff McCauley and Vincent Puenta for their service to the state of Texas and the Finance Commission of Texas. *(1:00 on the audio file)*. Chairman Holt adjourned the meeting of the Finance Commission for a short recess at 10:30 a.m., and the open meeting resumed at 10:35 a.m. *(3:47 on audio file)*.

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the June 21, 2024 Finance Committee Meeting	On Consent Agenda – Item A1 This item Approved on the Consent Agenda.	n/a
2. General Public Comment	Andrew Moon, CEO, Panacea Lending, LLC, testified on payoffs for property tax lenders. No Action Required.	4:28 Start of Discussion
3. Consent Agenda – Items A1, A8, A9, B2, B3, C2-C5, and D3	Laura Warren made a motion to Approve Consent Agenda items A1, A8, A9, B2, B3, C2-C5, and D3. Marty Green seconded, and the motion passed.	9:04 Start of Discussion 9:28 Vote
4. Finance Commission Operations	No Action Required.	9:44 Start of Discussion
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies’ 2024 Third Quarter Investment Officer Reports for the Office of Consumer Credit Commissioner, Department of Savings and Mortgage Lending and Texas Department of Banking passed.	10:44 Start of Discussion
1. Office of Consumer Credit Commissioner		10:56 Vote
2. Department of Savings and Mortgage Lending		
3. Texas Department of Banking		

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Readoption of the Investment Policies for:</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Department of Savings and Mortgage Lending 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Readoption of the Investment Policies for the Office of Consumer Credit Commissioner, Department of Savings and Mortgage Lending and Texas Department of Banking passed.</p>	<p>11:09 Start of Discussion</p> <p>11:21 Vote</p>
<p>C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2024 Third Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Department of Savings and Mortgage Lending 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2024 Third Quarter Financial Statements passed.</p>	<p>11:34 Start of Discussion</p> <p>11:42 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Fiscal Year 2025 Operating Budgets</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Department of Savings and Mortgage Lending 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner's Fiscal Year 2025 Operating Budgets.</p> <p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending's Fiscal Year 2025 Operating Budget passed.</p> <p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking's Fiscal Year 2025 Operating Budget passed.</p>	<p>11:53 Start of Discussion</p> <p>12:03 Vote</p> <p>12:27 Vote</p> <p>12:47 Vote</p>
<p>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</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Renewal of the Internal Auditor Contract for Garza/Gonzalez and Associates for Fiscal Year 2025 passed.</p>	<p>13:01 Start of Discussion</p> <p>13:10 Vote</p>
<p>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</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve 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 passed.</p>	<p>13:23 Start of Discussion</p> <p>13:37 Vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending’s 2024 Annual Internal Audit and Follow-Up on Prior Year Recommendations as Prepared and Presented by Garza/Gonzalez and Associates passed.	13:50 Start of Discussion 14:03 Vote
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve 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 passed.	14:18 Start of Discussion 14:33 Vote
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Texas Department of Banking’s 2024 Annual Internal Audit Report as Prepared and Presented by Garza/Gonzalez and Associates passed.	14:46 Start of Discussion 14:56 Vote
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)	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Department of Savings and Mortgage Lending’s Mortgage Grant Administration Manual Pursuant to 7 TAC, Part 4, § 51.402(c) passed.	15:09 Start of Discussion 15:21 Vote
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	Coming upon Recommendation from the Strategic Planning Committee, no second is required and the motion to Approve the Finance Commission of Texas 2025-2029 Strategic Plan passed.	15:48 Start of Discussion 17:54 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>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</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Department of Savings and Mortgage Lending 3. Texas Department of Banking 	<p>Marty Green made a motion to Approve the Agency Priorities for Fiscal Year 2025 for the Commissioner of the Office Consumer Credit Commissioner. Laura Warren seconded, and the motion passed.</p> <p>Sharon McCormick made a motion to Approve the Agency Priorities for Fiscal Year 2025 for the Commissioner of the Department of Savings and Mortgage Lending. Troy Lambden seconded, and the motion passed.</p> <p>David Osborn made a motion to Approve the Agency Priorities for Fiscal Year 2025 for the Commissioner of Texas Department of Banking. Kathleen Fields seconded, and the motion passed.</p>	<p>18:17 Start of Discussion</p> <p>19:59 Vote</p> <p>20:20 Vote</p> <p>20:41 Vote</p>
<p>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</p>	<p>On Consent Agenda – Item A8 This item Approved on the Consent Agenda.</p>	<p>n/a</p>
<p>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</p>	<p>On Consent Agenda – Item A9 This item Approved on the Consent Agenda.</p>	<p>n/a</p>
<p>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</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>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</p>	<p>No Discussion.</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	No Discussion.	n/a
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	No Discussion.	n/a
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	No Discussion.	n/a
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	No Action Required.	21:15 Start of Discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors	On Consent Agenda – Item B2 This item Approved on the Consent Agenda.	n/a
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	On Consent Agenda – Item B3 This item Approved on the Consent Agenda.	n/a
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	Laura Warren made a motion to Approve the Proposal and Publication for Comment of Amendments in 7 TAC, Part 5, Chapter 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review. Sharon McCormick seconded, and the motion passed.	35:41 Start of Discussion 43:38 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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</i> , in the First Court of Appeals, Houston, Texas	No Action Required.	n/a
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; e) Legislative Activities	No Action Required.	44:08 Start of Discussion
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	On Consent Agenda – Item C2 This item Approved on the Consent Agenda.	n/a
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	On Consent Agenda – Item C3 This item Approved on the Consent Agenda.	n/a
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	On Consent Agenda – Item C4 This item Approved on the Consent Agenda.	n/a
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	On Consent Agenda – Item C5 This item Approved on the Consent Agenda.	n/a
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	Sharon McCormick made a motion to Approve the Proposal and Publication of New Rules in 7 TAC, Part 4, Chapter 55, Concerning Residential Mortgage Loan Originators, Resulting from Rule Review. Laura Warren seconded, and the motion passed.	58:27 Start of Discussion 1:36:50 Vote
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	Laura Warren made a motion to Approve the Proposal and Publication of New Rules in 7 TAC, Part 4, Chapter 56, Concerning Residential Mortgage Loan Companies, Resulting from Rule Review. Troy Lambden seconded, and the motion passed.	1:37:24 Start of Discussion 2:48:20 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	Kathleen Fields made a motion to Approve the Proposal and Publication of New Rules in 7 TAC, Part 4, Chapter 57, Concerning Residential Mortgage Bankers, Resulting from Rule Review. Troy Lambden seconded, and the motion passed.	2:49:04 Start of Discussion 2:50:20 Vote
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	Laura Warren made a motion to Approve the Proposal and Publication of New Rules in 7 TAC, Part 4, Chapter 58, Concerning Residential Mortgage Loan Servicers, Resulting from Rule Review. Troy Lambden seconded, and the motion passed.	2:50:47 Start of Discussion 2:52:55 Vote
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	Sharon McCormick made a motion to Approve the Proposal and Publication of New Rules in 7 TAC, Part 4, Chapter 59, Concerning Wrap Mortgage Loans, Resulting from Rule Review. Troy Lambden seconded, and the motion passed.	2:53:31 Start of Discussion 2:54:18 Vote
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	David Osborn made a motion to Approve the Proposal and Publication of Repeals in 7 TAC, Part 4, Chapter 78, Concerning Wrap Mortgage Loans, Resulting from Rule Review. Miguel Romano seconded, and the motion passed.	2:54:43 Start of Discussion 2:55:25 Vote
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	Kathleen Fields made a motion to Approve the Proposal and Publication of Repeals in 7 TAC, Part 4, Chapter 79, Concerning Residential Mortgage Loans Servicers, Resulting from Rule Review. Sharon McCormick seconded, and the motion passed.	2:55:49 Start of Discussion 2:56:01 Vote
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	Sharon McCormick made a motion to Approve the Proposal and Publication of Repeals in 7 TAC, Part 4, Chapter 80, Concerning Residential Mortgage Loan Companies, Resulting from Rule Review. Troy Lambden seconded, and the motion passed.	2:56:26 Start of Discussion 2:56:41 Vote
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	Rosie Morris made a motion to Approve 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. Laura Warren seconded, and the motion passed.	2:57:08 Start of Discussion 2:57:26 Vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
15. 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 Action Required.	n/a
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	No Action Required.	2:58:54 Start of Discussion
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	Laura Warren made a motion to Approve the Adoption of Amendments in 7 TAC, Part 2, Chapter 33, § 33.27, Concerning Fees to Obtain and Maintain a License. Kathleen Fields seconded, and the motion passed.	3:14:46 Start of Discussion 3:16:51 Vote
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	On Consent Agenda – Item D3 This item Approved on the Consent Agenda.	n/a
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 1:48 p.m. (3:17:36 on the audio file).

Phillip Holt, Chairman
 Finance Commission of Texas

Charles G. Cooper, Executive Director
 Finance Commission of Texas

Ruth Wright, Executive Assistant
 Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

October 25, 2024

A. Finance Commission Matters

1. Review and Approval of the Minutes of the August 16, 2024 Finance Commission Meeting
8. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Resulting from Rule Review

C. Office of Consumer Credit Commissioner

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Part 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, Resulting from Rule Review

D. Department of Savings and Mortgage Lending

2. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 55, Concerning Residential Mortgage Loan Originators, Resulting from Rule Review
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10. Discussion of and Possible Vote to Take Action on the Adoption of Repeals in 7 TAC, Part 4, Chapter 81, Concerning Mortgage Bankers and Residential Mortgage Loan Originators, Resulting from Rule Review

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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

MEMORANDUM

To: The Finance Commission of Texas

From: Charles G. Cooper, Commissioner

Date: August 31, 2024

RE: Department of Banking Priorities for Fiscal Year 2024

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 interim charge hearings as requested.

Update:

- *No interim charge hearing held in FY 2024.*
- *Responded to legislative inquiries and request for information.*
- *Maintained regular contact with state and federal legislative committees.*

I.2 **Objective:** Maintain accurate, timely, and complete communication with Finance Commission members about significant conditions, trends, and 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.

Update:

- *Important material and updates are provided to members at each Finance Commission meeting and by email. Updates include current trends, laws, and other relevant matters at each Finance Commission meeting.*
- *Briefed and trained three new Finance Commission members over the course of a day in May 2024.*
- *In October 2023, Chief Economist Thomas F. Siems with the Conference of State Bank Supervisors provided a presentation to the Finance Commission on the economic conditions and the impact to the industry.*

- I.3 **Objective:** Monitor legislative interim charges that may affect the Department or its regulated entities. Implement legislative changes from the 88th legislative session that affect the agency.

Measure: Monitor and assist legislative committees with interim charges, if requested. Provide technical assistance and comprehensive resource materials when requested. Implement legislation that directly affects the Department or the industries we regulate by updating or creating rules, policies, or procedures.

Update:

- *Adopted amendments to Title 7, Chapter 33 of the Texas Administrative Code and revised internal policies pursuant to implementation of SB 895, relating to the regulation of money services businesses and HB 1666, regarding digital asset service providers.*
- *Monitor interim charges when released and engaged with legislators on statutory issues and rulemaking.*

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

- II.1 **Objective:** Efficiently structure the agency to meet performance measures. Ensure performance goals are a true evaluation of major functions of the Department (See Attachment A for all performance measures).

Measure: Meet or exceed the strategic planning goals for performance measures. Maintain banking and money services business accreditation from CSBS. Report performance measure results to the Finance Commission quarterly.

Update:

- *The Bank & Trust (B&T) division actively monitors and responds to various risk factors, including risk posed by effects of inflationary pressures and the elevated interest rate environment and its impact to institutions' operations. The Department maintains communication with regulated entities between examinations and performs offsite monitoring of key financial metrics.*
- *The Non-Depository Supervision (NDS) division actively monitors various risk factors affecting licensed entities, including federal and state regulations surrounding cryptocurrency, and related legal actions. The Department also monitors critical financial metrics for licensed money service business (MSB) entities off-site, which includes the review of quarterly call reports.*
- *Through August 31, 2024, all B&T key performance measures were met except for two. The primary reason for not meeting these measures is due to an increase in problem institutions, conversion examinations, less than sufficient staffing, and experienced examiners. The exceptions include:*
 - *01-01.01 Percentage of Bank Receiving Examinations Within Required Timeframes; and*
 - *01-01.07 The number of foreign bank organization, trust company, trust department and information technology and other specialized examinations.*

- *Bank Examinations – 28 exams past due by an average of 23 days.*
- *IT Examinations of Banks – 20 exams past due by an average of 33 days.*
- *IT Examinations of Trust Companies – 3 exams past due by an average of 27 days.*
- *Through August 31, 2024, all NDS key performance measures were either met or exceeded except for one. The primary reason for not meeting the number of examinations output measure is due to having several financial examiner vacancies during the current fiscal year.*
 - *As it relates to past due examinations, NDS continues to closely monitor various factors such as consumer complaints, compliance history of license holders, and current industry trends to ensure the examinations of higher risk license holders are prioritized.*

II.2 **Objective:** Be active and involved at the national level in supervisory issues affecting areas of direct supervisory oversight in Texas.

Measure: Maintain active contact with other states directly and through regulatory associations (CSBS and MTRA), 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.

Update:

- *On September 11, 2023, Department staff attended the 2023 MTRA Annual School & Conference in Portland, Oregon. The conference provided an opportunity for MTRA member states to discuss topics impacting MSB regulation. MSB license holders and industry stakeholders also attend the conference on an annual basis. Presentations impacting MSBs, such as the NMLS Modernization, Fintech partnerships, and Bitcoin ATMs were provided and discussed.*
- *On September 15, 2023, Commissioner Cooper, Chairman of the Federal Financial Institutions Examination Council (FFIEC) State Liaison Committee, attended the FFIEC meeting in Washington, D.C.*
- *Commissioner Cooper and staff represented the Department at the IBAT Annual Convention in Frisco on September 17, 2023. The convention focused on key issues impacting the banking industry, specifically those related to community banks. Commissioner Cooper and Jelena McWilliams, former Chairman of the FDIC, conducted a fireside discussion for the audience.*
- *Commissioner Cooper and Deputy Commissioner Wendy Rodriguez represented the Department at CSBS Districts II and IV Combined Fall Meeting held at the Federal Reserve Bank of St. Louis, Missouri, on October 3, 2023.*
- *Commissioner Cooper attended the FDIC Advisory Committee of State Regulators Meeting held at the FDIC Headquarters in Washington, D.C., on October 18, 2023.*

- *Commissioner Cooper and staff represented the Department at the CSBS Cyber & IT Supervisory Forum held in Austin on November 6, 2023.*
- *Director of Cybersecurity and Technology Strategy Phillip Hinkle attended the Federal Banking Agency Significant Service Provider Strategy Forum on Cybersecurity in Washington, D.C., on November 13, 2023.*
- *On November 14, 2023, Houston Regional Director Greg Wisian represented the Department at a virtual FFIEC International Banking Conference.*
- *Commissioner Cooper represented the Department at the CSBS Board Meeting and Supervisors Symposium in New Orleans, Louisiana, on December 4, 2023, and participated on a regulatory panel.*
- *On December 11, 2023, Commissioner Cooper, Chairman of the FFIEC State Liaison Committee, attended the fourth quarter FFIEC meeting in Washington, D.C.*
- *Director of Bank and Trust Supervision Jared Whitson participated as a panelist at the IBAT Winter Summit in Avon, Colorado, in January 2024.*
- *Director of Cybersecurity and Technology Strategy Phillip Hinkle represented the Department at the CSBS District V Meeting in San Francisco, California, in January 2024.*
- *Commissioner Cooper and staff attended the CSBS NMLS Annual Conference held in San Antonio beginning on February 13, 2024. Various MSB topics related to licensing, regulation and industry trends were discussed.*
- *Director Hinkle participated as a panelist at the TBA Cyber Tech Conference in Horseshoe Bay, Texas on February 16, 2024.*
- *Director Hinkle represented the Department at CSBS District II Meeting in Minneapolis, Minnesota on March 13, 2024.*
- *Director Hinkle represented the Department at CSBS District III Meeting in Chattanooga, Tennessee on March 19, 2024.*
- *On March 25, 2024, Commissioner Cooper and staff represented the Department at the FDIC and State Bank Regulators Leadership Meeting in Dallas, Texas.*
- *Commissioner Cooper and staff represented the Department at the CSBS District IV Spring Meeting in Dallas, Texas, on March 26, 2024.*
- *On April 11, 2024, Commissioner Cooper, Chairman of the FFIEC State Liaison Committee, attended (virtually) the first quarter meeting in Washington, D.C.*
- *On April 30, 2024, Director of NDS Jesse Saucillo participated in the MTRA and the Multistate MSB Examination Taskforce (MMET) annual joint board meeting on April 30, 2024, in Denver, Colorado. The MTRA membership consists of state MSB regulatory agencies dedicated to the efficient and effective regulation of the money transmission industry. The MMET members are MSB multi-state examination regulators appointed by MTRA and Conference of State Bank Supervisors boards that coordinate examination activities.*
- *Commissioner Cooper and select staff presented the Department at the TBA 139th Annual Convention in Arlington, Texas, on May 8, 2024. Commissioner Cooper participated in a fireside discussion with former Consumer Financial Protection Bureau Director Kathy Kraninger on regulatory issues, the economy, and cybersecurity.*

- *On May 13, 2024, Commissioner Cooper and staff presented the Department at the 2024 CSBS State Federal Supervisory Forum in Chicago, Illinois.*
- *Commissioner Cooper and Director Whitson attended the Federal Reserve Bank of Dallas' Director and Executive Regional State Member Bank Conference in Dallas, Texas, on May 21, 2024. Commissioner Cooper participated on a regulatory panel discussing emerging risks.*
- *On June 24, 2024, Commissioner Cooper represented the Department at the TBA Central States Conference in Ft. Worth, Texas, and he participated on a regulatory panel.*
- *On June 27, 2024, Commissioner Cooper, Chairman of the FFIEC State Liaison Committee, attended the second quarter meeting in Washington, D.C.*
- *On July 18, 2024, Commissioner Cooper represented the Department at the Joint FRB Dallas and Atlanta, Exploring Conventional Bank Funding Regimes in an Unconventional World Conference in Dallas, Texas.*
- *The Commissioner and select staff attended the CSBS Strategic Planning meeting held in Bellevue, Washington, the week of August 26, 2024.*
- *The Department is an active member of the MMET. NDS Director Saucillo services as the Vice Chair of MMET.*
- *NDS staff participates in monthly North American Death Care Regulators Association (DCRA) virtual meetings to discuss matters affecting the death care industry.*
- *NDS Director Saucillo continues to serve as a member of the MTRA Board of Directors.*
- *NDS Director Saucillo continues to be a State Coordinating Committee (SCC) member. The SCC is responsible for coordinating the supervision of activities related to MSBs, mortgages, debt collection, and payday lending with the CFPB.*
- *NDS Director Saucillo continues to lead the MSB Enforcement Action Taskforce. The taskforce meets monthly to work with other state regulators to identify and monitor troubled MSBs to coordinate actions and responses to safety and soundness concerns.*
- *Attorneys represent the Department on the State Regulatory Registry (SRR) Lawyers Committee and the Southwest Association of Bank Counsel Program Committee and participated in various MTRA working groups.*
- *Attorneys have participated in multi-state enforcement efforts in a number of matters relating to money services businesses.*

II.3 **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 commercial real estate risk, 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 dialogue with regulatory counterparts, and attend trainings to maintain an understanding of the environments in which our entities operate. Maintain a leadership role in the effort to combat cybersecurity and information security threats. Maintain an off-site monitoring program of the bank and

trust, and money services business industries while initiating appropriate regulatory responses and actions when appropriate. Research and take required actions against institutions with unacceptable profiles who have a heightened risk of becoming a problem bank to minimize the adverse impact on depositors, shareholders, and the banking system in general.

Update:

- *Commissioner Cooper continues to represent the state banking supervisors of the Financial and Banking Information Infrastructure Committee (FBIIIC) and attends the meetings and briefings of this group. Director of Cybersecurity and Technology Strategy Hinkle also attends meetings related to cybersecurity.*
- *Commissioner Cooper continues his role as Chairman of the FFIEC State Liaison Committee and attends periodic meetings of this group.*
- *B&T and NDS continue to monitor cybersecurity incidents and the impact on the regulated entities and consumers. Incidents are reviewed in coordination with an Information Technology (IT) Specialist, as needed.*
- *Based on available resources and certain risk factors, NDS continues to collaborate with the IT examination staff to perform risk-based reviews of MSB license holders' IT systems.*
- *B&T and NDS examiners continue to attend specialized training to ensure Texas has a safe, sound, and competitive financial service system, and provide efficient and effective regulatory oversight of regulated entities.*
- *B&T division continues to monitor the condition of banks and trust companies between examination through our off-site monitoring programs. These programs consist of quarterly reviews of call report data, the use of data analytic tools, and conducting calls to bank management. The division's watch list of institutions exhibiting heightened risk is monitored and adjusted quarterly with appropriate actions taken against organizations when applicable.*
- *In coordination with other states and licensees, NDS division continues to perform off-site monitoring of licensed entities, including the quarterly reviews of MSB call reports, reviews of key financial metrics, consumer complaints, and current events. As part of the review, areas of concerns and trends in supervisory activities are analyzed to determine whether administrative actions are appropriate.*
- *NDS division staff participates in routine calls and various MTRA and CSBS working committees to discuss regulatory supervisory activities involving other agencies, including the U.S. Securities and Exchange Commission, attorneys general, and other state MSB regulators.*

II.4 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 regulated industries and Finance Commission. Issue publications that address topics of interest. Participate in

meetings, seminars, committees, workgroups and other speaking opportunities with regulated industries and other regulatory supervisory groups to provide updates relating to ongoing supervisory issues.

Update:

- *Department staff participated in a combined total of 30 panel discussions, as well as banking and IT/cybersecurity presentations with community bankers and industry representatives during fiscal year 2024.*
- *On May 29, 2024, the Department hosted the FRB's Ask the Fed series on Commercial Real Estate. The first webinar in this series was presented live from the Austin headquarters office. The session focused on the trends and emerging risks in the commercial real estate market affecting financial institutions. Several community bankers participated in the live portion of the event.*
- *NDS staff continues to participate in various MMET, and MTRA committees, including the MTRA Examination Standards Committee and the MTRA Licensing/Emerging Issues calls. The Department participates in routine scheduling calls and meetings facilitated by the MMET to coordinate multi-state examinations as part of the Networked Supervision of MSBs. Various issues impacting the nationwide multi-state examination process and course of actions to address current supervisory issues impacting the MSB area, including cryptocurrency-related matters. The discussions also include the coordinated implementation of the Money Services Modernization Act (MSB Model Law) to ensure MSB state regulatory agencies consistently apply various provisions of this regulation.*
- *NDS staff is a member of the Enforcement Action Taskforce charged with monitoring and coordinating MSB-related issues nationally. In coordination with CSBS and MTRA, the taskforce will identify and monitor troubled institutions and risky behavior, develop enforcement policies and procedures, and coordinate responses to negative news that indicates safety and soundness concerns.*
- *NDS staff is a member-at-large of the Executive Committee of the North American Death Care Regulators Association (DCRA), which strives to promote a forum for death care regulators to discuss problems affecting the public and the death care industry.*

II.5 **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. Refer cases as needed to local, state, or federal law enforcement agencies or the Texas Attorney General.

Update:

- *The Legal and the NDS Divisions monitors for MSB entities that they may be engaged in money transmission without a license; information provided in response to the notification is then reviewed by the Legal Division to*

determine whether further action is necessary. Coordination with other state MSB regulators occurs when appropriate.

- *In October 2023, the Department and 43 other state agencies reached a settlement with an MSB license holder who conducted unauthorized transactions. The settlement was the result of collaboration between state MSB regulators and attorneys general.*
- *Agency staff continues to monitor regulated industries and initiate enforcement actions against both licensed and unlicensed entities that are engaging in apparent illegal practices. From September 2023 through August 2024, the following actions were taken against individuals and entities:*
 - *Issued two prohibition orders against bank employees,*
 - *Issued two multi-state orders against money services businesses conducting improper licensed activity, including one where the Department collaborated with 43 other state agencies to reach a settlement (as mentioned above),*
 - *Issued four orders against money services businesses for unlicensed activity and two orders against money services businesses for other illegal licensed activity,*
 - *Issued one consent order against a bank,*
 - *Issued one consent order against a trust company,*
 - *Issued two cease and desist orders against so-called banks,*
 - *Issued one emergency order and one final order against perpetual care cemeteries, and*
 - *Issued two emergency orders to seize accounts and records against prepaid funeral contract businesses.*

II.6 **Objective:** Process consumer complaints/inquiries professionally, appropriately, and timely.

Measure: Report complaints/inquiries activity at each Finance Commission meeting. Meet or exceed the strategic planning goals for consumer activity performance measures.

Update:

- *All consumer activity was reported at each Finance Commission. For FY 2024, there were 2,796 complaints and inquiries with recoveries totaling \$294,503.*
- *Consumer Assistance Activities met their performance measures for written jurisdictional complaints and complaints resolved within 90 days, which were presented at each Finance Commission meeting.*
- *Open records requests were processed timely and as prescribed by law. Metrics are tracked and presented to the Finance Commission at each meeting.*

II.7 **Objective:** Continue to develop and refine examination procedures, reference materials, and internal guidance to enhance the examination process.

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

Update:

- *Revised and issued Administrative Memorandums (AM):*
 - *AM 2024 – Follow-up on Bank Compliance Examinations Conducted by Federal Regulators (October 2023)*
 - *AM 2006 – Treatment of Matters Requiring Attention in the Report of Examination (October 2023)*
 - *AM 2039 – Examination of Foreign Banking Organizations (November 2023)*
 - *AM 2045 – Institution Review Process for State-Chartered Trust Companies (November 2023)*
 - *AM 2015 – Work Paper Organization, Retention, and Review (April 2024)*
 - *AM 2016 – Investment Policy for Funds Under the Oversight of the Guaranty Fund Advisory Council (May 2024)*
 - *AM 2028 – Background Checks Conducted in Accordance with Statutory Authority (April 2024)*
 - *AM 2031 – Delegation of Authority (April 2024)*
 - *AM 2027 – Investment Policy for Funds Under the Oversight of the Finance Commission of Texas (July 2024)*
 - *AM 2043 – Visitation and Interim Risk Examination Assessment programs (August 2024)*
 - *AM 2046 – Strategic Planning (August 2024)*

- *Issued Examiner Bulletins (XB):*
 - *XB 2024-01 – Guidelines for Imaging Examination Workpapers (January 2024)*
 - *XB 2024-02 – BSA Violation Citations (February 2024)*
 - *XB 2024-03 - Commercial Examination Overview (May 2024)*
 - *XB 2024-04 CML - Guidelines for Procedures and Work Paper Documentation for Commercial Examinations (May 2024)*
 - *XB 2024-05 TR - Guidelines for Procedures and Work Paper Documentation for Trust Examinations (May 2024)*
 - *XB 2024-06 IT - Guidelines for Procedures and Work Paper Documentation for Information Technology Examinations (May 2024)*
 - *XB 2019-01 Law, Policy, and Asset Quality Procedures (Rescinded) (May 2024)*
 - *XB 2024-07 IT Related Examination Procedures for Bank & Trust Staff (July 2024)*
 - *XB 2024-08 BSA/AML Transaction Testing Guidance (July 2024)*

- *Reviewed and revised commercial examination procedures:*
 - *Planning & Control*
 - *Request Lists*
 - *Audit*
 - *Investment Securities*
 - *Loans and Leases*
 - *Management*
 - *Other Real Estate Owned*
 - *Premises and Equipment*
 - *Bank Owned Life Insurance*
 - *Related Organizations and Bank Holding Company*
 - *Overdrafts*
- *Reviewed and revised trust examination procedures*
 - *Planning (May 2024)*
 - *Examination Scope Form (May 2024)*
 - *Small Trust Department (May 2024)*
 - *Request List*
- *Reviewed and revised Information Technology examination procedures:*
 - *Request List – Nonbank*
 - *Development & Acquisition*
 - *Management*
 - *Support & Delivery*
 - *Examination Scope Form (July 2024)*
 - *Summary of Findings (May 2024)*
- *Reviewed and revised Non-Depository Institution Procedures*
 - *PCC Procedures (June 2024)*
 - *Trust Reconciliation (June 2024)*
 - *Perpetual Care Reversal Worksheet (June 2024)*
 - *PFC Trust Procedures (June 2024)*
 - *PFC Trust Reconciliation (June 2024)*
 - *PFCN Insurance Funded Procedures (June 2024)*
 - *PFCN Insurance Funded Reconciliation (June 2024)*
- *Updated examination reference materials for commercial, trust, and IT procedures (Monthly)*
- *Updated Bank of Anytown (February 2024)*
- *Issued industry notice regarding S.B. 895, the Money Services Modernization Act, and H.B. 1666, relating to commingling of funds by digital asset service providers. Both bills were passed in the 88th Legislative Session and will become effective September 1, 2023.*

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, and Legal Opinions in a timely manner as needed.

Update:

- *Revised and issued Supervisory Memorandums (SM)*
 - *SM 1006 – Request for Reconsideration of Examination Finding (September 2023)*
 - *SM 1030 – Policy on Enforcement Actions for Trust Companies (October 2023)*
 - *SM 1005 – Policy on Enforcement Actions for State-Chartered Banks (October 2023)*
 - *SM 1003 - Examination Frequency for State-Chartered Commercial Banks (April 2024)*
 - *SM 1004 – Examination Frequency for Trust Companies (April 2024)*
 - *SM 1020 – Information Technology (IT) Examination Frequency and Ratings (April 2024)*
 - *SM 1033 - Level II Full Scope Examinations for Trust Companies (Rescinded) (April 2024)*
 - *SM 1015 – Outsourcing of Compliance Functions (July 2024)*
 - *SM 1021 – Consumer Awareness About Fraud Induced Wire Transfers (July 2024)*
 - *SM 1024 – Accepting Money Services Businesses (MSBs) Reports of Examination (ROEs) of Other State Agencies (July 2024)*
 - *SM 1035 – Licensing of Foreign-Located Money Transmitters Under Texas Finance Code Chapter 152 (July 2024)*
 - *SM 1038 – Appointment of an Authorized Delegate to Conduct Money Transmission on Behalf of a License Holder (July 2024)*
 - *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 2024)*
 - *SM 1041 – Examination Policy for Domestic MSBs That Conduct Business from a Non-traditional Office Location (July 2024)*
 - *SM 1042 – Effect of Criminal Convictions on Licensing (July 2024)*
 - *SM 1043 – Permissible Uses of “Bank” and Related Terms in Marketing and Other Limits Related to Marketing Regulated Financial Services (July 2024)*
 - *SM 1013 – Sharing Examination Reports with a Bank (August 2024)*
 - *SM 1022 – Examination Rating System for Money Services Businesses (August 2024)*
 - *SM 1023 – Examination Frequency Policy for Money Services Businesses (August 2024)*

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 as necessary to timely effect necessary changes. Conduct reviews of all rules every four years to evaluate their continued necessity and applicability.

Update:

- *H.B. 1666, relating to commingling of funds by digital asset service providers, became effective September 1, 2023. The Department has been actively communicating the matter with license holders and provided guidance. The Department is discussing with license holders, American Institute of Certified Public Accountants, and accounting firms to provide additional guidance in the form of new rules.*
- *The following rules were presented and adopted for publication in June 2024:*
 - *7 TAC, Part 1, Chapter 9, §§ 9.1 and 9.12*
 - *7 TAC, Part 1, Chapter 10, § 10.40*
 - *7 TAC, Part 2, Chapter 33, § 33.27*
 - *7 TAC, Part 2, Chapter 33, § 33.51*
 - *7 TAC, Part2, Chapter 33, § 33.81*

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

Measure: Periodically update the Department’s financial education web pages and brochure. Highlight financial institutions with active programs in agency publications. Participate in financial education events and webinars throughout the year.

Update:

- *On December 13, 2023, the Texas Department of Banking and the Office of Consumer Credit Commissioner jointly presented a free financial education webinar focused on money management with tips and strategies to navigate through the holiday season. There were 21 participants.*
- *On February 21, 2024, a free financial education webinar was presented jointly by the Office of Consumer Credit Commissioner and Texas Department of Banking providing information on organizing and best practices for retaining important documents. There were 29 participants.*
- *The Financial Education brochure was updated in October 2023.*
- *On April 3, 2024, the Texas Department of Banking and the Office of Consumer Credit Commissioner jointly presented a free financial education webinar which focused on the 2024 financial literacy’s theme: “Inform,*

Inspire, Ignite” and how to boost public financial know-how and sharpen money management skills. There were 30 participants.

- *On June 26, 2024, a free financial education webinar was presented jointly by the Office of Consumer Credit Commissioner and Texas Department of Banking providing information on how financial setbacks can leave consumers struggling to meet their financial obligations in the short term of natural disasters and what consumers can do to minimize the financial hardships. There were 14 participants.*
- *On July 11, 2024, the Consumer Assistance Activities Supervisor gave the opening remarks at the Texas Financial Literacy Summit at the Federal Reserve Bank of Dallas in conjunction with the Office of Consumer Credit Commissioner Financial Education Coordinator. There were approximately 130 people in attendance.*

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 equal employment opportunity 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. Promptly post vacancies utilizing CAPPS Recruit and other recruiting platforms to reach a wide and diverse talent pool.

Update:

- *Sixty vacancy notices were posted from September 1, 2023, through August 31, 2024.*
- *Hired seventeen Financial Examiner I, one Financial Examiner IV, one Financial Examiner V, and one Financial Examiner VI in Bank & Trust*
- *Hired three Financial Examiner I in IT in Bank & Trust*
- *Hired two Financial Examiner I in Trust in Bank & Trust*
- *Hired one Administrative Assistant III and one Financial Examiner IV in Corporate.*
- *Hired two Compliance Analyst II and an Editor II in Division Strategic Support.*
- *Hired two Human Resources Specialist III and one Human Resources Manager.*
- *Hired one Attorney III, one Legal Assistant III, and one General Counsel V in Legal.*
- *Hired one Information Security Officer and one Programmer I in MIS.*
- *Hired one MSB Financial Examiner I, one MSB Financial Examiner II, one MSB Financial Examiner V, and one PFC/PCC Financial Examiner I in NDS.*
- *Utilized CAPPS Recruit and LinkedIn to post open positions and actively recruit qualified candidates.*
- *Agency representatives attended twenty-four career fairs.*

- *Revised Administrative Memorandum 2031 to reflect staffing changes (September, February, and July).*
- *Completed Equal Employment Opportunity/Sexual Harassment Training in October 2023.*

IV.2 **Objective:** Work towards 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 as reported in exit interviews, with a goal to have the agency turnover rate (excluding retirements and intern separations) not exceed 9% for the fiscal year. Maintain a competitive examiner salary program comparable to the FDIC.

Update:

- *Agency fiscal year 2024 turnover rate through August 31, 2024, was 15.37%. Financial Examiner turnover was 13.28%. There were eight retirements during this period.*
- *Through August 31, 2024, the agency hired 47 employees and incurred 28 separations.*
- *Promoted 34 individuals to positions with increased responsibility and qualifications.*
- *Administered Annual Employee Performance Appraisals in February 2024 using NEOGOV Perform system.*
- *UT Survey of Employee Engagement was completed and released to staff in February 2024.*
- *Updated policies and procedures to improve employee benefits.*
 - *AM 2038 – Frequent Overnight Stay-Out Stipend (FOSTS) Program (October 2023)*
 - *Section 3-09 – Employee Education Reimbursement Program (January 2024)*
 - *Section 8-05.5 FMLA Paid Parental Leave (January 2024)*

IV.3 **Objective:** Maintain up-to-date computer hardware and software to enhance the effectiveness, availability, speed, and quality of the work products that are compatible with our federal counterparts. Provide timely technical support and training to staff.

Measure: Provide technology tools necessary for staff to perform their job functions efficiently, effectively, and securely. Provide support for remote work in accordance with agency policy. Maintain software in accordance with the Department of Information Resources guidelines. Ensure network, website, and databases function appropriately with limited interruptions.

Update:

- *Multiple applications were deployed or updated in fiscal year 2024 to date:*
 - *Department imaging system was upgraded to a newer version.*
 - *Annual Trust, PFC, and PCC applications were deployed for fiscal year 2024.*
 - *MSB application is near completion and estimated to be released in April 2024.*
 - *The new CHIPS application was completed and will launch by the end of the calendar year.*
- *MIS completed fiscal year 2024 planned laptop replacements for staff as part of refresh cycle with 38 new computers deployed in the first six months.*

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

Measure: Perform a bi-annual external information security risk assessment and initiate corrective actions necessary to maintain data integrity and minimize the risk of unauthorized access or use. Perform annual intrusion testing through 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. Execute quarterly information security tabletop exercises to ensure staff are ready to respond to various incident types, when and if they occur.

Update:

- *The annual Information Security Training for the Department began in February 2024.*
- *Disaster Recovery improvements continue, and on October 24, 2023, one tabletop exercise was conducted by the MIS team.*
- *In May and June, MIS worked to refine the volume level recovery procedures in the cloud between regions and between subnets. Routine snapshots are taken on a set schedule and held for a specified retention period.*
- *Disaster recovery exercises were conducted in May and June 2024, including a roll-back exercise demonstrating that virtual machines can be restored and as well as a server recovery exercise.*
- *The Department participated in the Cybersecurity and Infrastructure Security Agency (CISA) vulnerability scan and web application service in August 2024. The exercise was to assist the agency to further refine its security posture.*

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 so they can progress in the financial examiner series. Adequately prepare assistant examiners to successfully complete the Bank and Trust Supervision

commissioning test. Continue agency efforts to provide continuing education to field examiners.

Update:

- *Sixty-three examiners in the Financial Examiner I–III series attended 22 different training courses in fiscal year 2024.*
- *In fiscal year 2024, four examiners received their commission.*
- *Department held the Financial Examiner II School in Dallas for eight assistant examiners.*

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 2024 to adequately prepare assistant examiners to successfully participate in an examination.

Update:

- *Seventeen students completed the accelerated internal training program in December 2023.*
- *The second training class started in June 2024 for 22 financial examiners. The program will continue through December 2024 and is being taught by three experienced financial examiners.*

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.

Update:

- *Monthly financial statements were provided to all divisions for review and reported to the Finance Commission in February for the fourth quarter of fiscal year 2024.*
- *Budget variances are analyzed quarterly.*
- *For fiscal year 2024, actual revenues were at 110.2% of budget and actual expenditures were at 86.8% of budget.*
- *Cash reserves are within policy guidelines of at least two months, but no more than six months.*

IV.8 **Objective:** Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency. Coordinate, when possible, with the Office of Consumer Credit Commissioner and Department of Savings and Mortgage Lending to minimize duplication of duties and processes.

Measure: Report on improvements identified and implemented.

Update:

- *Imaging system was upgraded and tested by all three agencies to ensure operations continued without interruption.*

IV 9 **Objective:** Work with TXDOT, the Facilities Commission, and 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.

Update:

- *The agencies continued communications with TxDMV and TxDOT regarding the four-acre parcel on the Camp Hubbard campus.*
- *A Phase II Environmental Site Assessment (Phase 2 ESA) was initiated and received in October 2023.*
- *The Finance Commission agencies sent TxDOT an updated letter of intent for the purchase of the four-acre parcel and intends to send a letter requesting approval from the Office of the Governor to purchase the property.*

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.

Update:

- *The plan exercise was conducted and submitted to SORM in January 2024. SORM reviewed the exercise and provided positive feedback. The next exercise is due in January 2026.*

The Department of Banking is considered by our regulatory peers to be one of the top financial regulators in the country. We have worked hard to achieve this position and will continue to improve our processes and techniques to properly supervise the industries that we regulate and serve the citizens of Texas.

Office of Consumer Credit Commissioner

Agency Priorities

FY 2024

1. LEGISLATIVE

1.1. Legislative Interim Studies.

1.1.1. Objective: Participate in legislative interim studies and provide information and research to the Texas Legislature.

Measure: Respond promptly to legislative requests for information. Communicate with the Finance Commission regarding interim legislative activity.

Status: During the legislative interim, the Texas Legislature did not issue an interim charge directly affecting the OCCC and did not request information from the OCCC in connection with an interim charge. Staff monitored interim activity and responded to individual legislative office requests for data and information.

2. REGULATORY ACTIVITIES

2.1. Regulated Entities - Supervision.

2.1.1. Objective: Supervise 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.

Status: The agency completed 3,009 examinations in FY24, which is 100.3% of the annual goal. The overall compliance rate is 91% for all examination areas combined. Restitution from examinations conducted is \$6,682,925.52 in FY24.

2.1.2. Objective: Actively engage in regulatory activities and supervisory issues relating to consumer finance, auto finance, and payday lending at the national and multistate level. 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.

Status: OCCC examination, legal, and executive staff actively participate in the following committees of the National Association of Consumer Credit Administrators (NACCA): Executive Committee (on which the OCCC's general counsel serves as NACCA's second vice president), Multistate Consumer Finance Examinations Committee (chaired by a senior OCCC examiner), Consumer Finance Exams Standards Committee, Emerging Issues Committee, Legislation Committee, Membership Committee, and Nominations Committee (chaired by the OCCC's commissioner). These committees, along with regular monthly member calls and other association events, provide a forum for the OCCC and other state agencies to collaborate and develop solutions to emerging issues, and provide a framework for states to coordinate examinations of multistate companies. In August 2024, the OCCC joined the American Conference of Uniform Consumer Credit Code States (ACUCCCS), which provides an additional forum for financial regulators with similar statutes to collaborate and develop solutions.

- 2.1.3. Objective:** Continue to implement Networked Supervision Program by developing processes for using the State Examination System (SES) and participating in auto and mortgage multistate exams.

Measure: Report on the number of auto finance and mortgage multistate exams in which OCCC participated.

Status: During FY '24, the OCCC finalized five multi-state examinations. The OCCC continues to incorporate and expand the use of SES and 27 exam staff are currently enrolled as agency users 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.

Status: The OCCC closed 147 enforcement cases. 72 cases related to regulated lenders (including 51 injunction actions, 16 administrative penalty actions, 4 license revocations, and 1 application denial); 29 cases related to credit access businesses (including 19 injunction actions and 10 administrative penalty actions); 17 cases related to pawnshops (including 9 injunction actions and 8 administrative penalties); 10 cases related to motor vehicle sales finance (including 5 injunction actions, 4 administrative penalty actions, and 1 license revocation); 10 cases related to debt management services providers (including 7 injunction actions, and 3 administrative penalties); and 9 cases related to property tax lenders (including 6 injunction actions and 3 administrative penalties). OCCC legal staff regularly reports information about enforcement actions to the Finance Commission.

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.

Status: The licensing department processed 1,243 applications, surpassing its FY24 target of 1,175. Of these, 67% were completed within 60 days or less. The average processing time was reduced to 59 days by the end of FY24. The department plans to further improve processing times in FY25.

2.2.2 Objective: Provide quality customer service to licensees and registrants. 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.

Status: The licensing department received almost 11,000 phone calls in FY 24, with an average queue time of 1 minute and 43 seconds, and an abandonment rate of 6.9%. Professional development training will be provided to staff to enhance their skills and further improve customer service quality.

3. POLICY AND RULE DEVELOPMENT

3.1. Rulemaking.

3.1.1. Objective: Complete rule reviews for the following rule chapters: 7 TAC Chapter 1 (relating to official interpretations), Chapter 82 (relating to OCCC administration), Chapter 83, Subchapter B (relating to credit access businesses), Chapter 84 (relating to motor vehicle sales finance), Chapter 85, Subchapter B (relating to crafted precious metal dealers), Chapter 87 (relating to refund anticipation loans), and Chapters 151-153.

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 and conduct webinars on proposed rule amendments.

Status: The Finance Commission completed these seven rule reviews. The rule reviews resulted in proposed amendments to 7 TAC Chapter 83, Subchapter B; Chapter 84; and Chapter 151. Before presenting these rule actions to the Finance Commission, OCCC staff posted advance notices of rule review, posted precomment drafts of rule amendments, and held webinars to obtain input from stakeholders.

3.1.2. Objective: Prepare any rule proposals necessary to implement 2023 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 and conduct webinars on proposed rules.

Status: In October 2023, the Finance Commission adopted rule amendments that implemented SB 422 (2023) by specifying military licensing requirements for residential

mortgage loan originators and pawnshop employees. In December 2023, the Finance Commission adopted rule amendments to implement changes relating to recordkeeping for motor vehicle debt cancellation agreements under HB 2746 (2023). Before presenting these rule actions to the Finance Commission, OCCC staff held webinars to obtain input from stakeholders.

4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES

4.1 Texas Financial Education Endowment Fund (TFEE).

4.1.1. Objective: Conclude the 2022-2023 TFEE grant cycle, including reporting on the progress and impact of grant award recipient performance. Launch the 2024-2025 TFEE grant cycle. Coordinate Grant Advisory Committee review and selection of applications. Report on grant award progress, monitor grant award recipient's programs, and process reimbursement requests. Conduct TFEE outreach, host a TFEE application webinar, and conduct risk assessment on 2024-2025 grant award recipients.

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.

Status: The 2022-2023 grant cycle concluded on December 31, 2023. The 2022-2023 grant Impact Report has been published and includes grantee reporting data, financials, highlights, and program activities. The 2024-2025 grant cycle began on January 1, 2024. The agency hosted a grant recipient welcome webinar and conducted one-on-one introductory meetings. Agency staff completed a risk assessment and have conducted a grantee site visit. Additionally, first period reimbursements have been processed and staff are evaluating process improvements for grant administration.

4.2 Financial Education

4.2.1. Objective: Provide and support financial education by conducting financial education events. 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.

Status: Agency staff provided financial education program to 1018 individuals during fiscal year 2024. OCCC staff partnered with other state agencies, including four webinars with the Department of Banking, community centers, senior centers, and volunteer organizations to promote financial capability throughout the state.

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.

Status: OCCC staff participated in over 50 events to foster communication with stakeholders, including a reoccurring DMV Motor Vehicle Seminar, annual meetings of TPTLA (Texas Property Tax Lending Association), TCCC (Texas Consumer Credit Coalition), TCFA (Texas Consumer Finance Association), TIADA (Texas Independent Dealer Association), a Strategic Planning webinar, media interviews, and several financial education events. The agency published 14 advisory letters, 1 advisory bulletin, and 3 compliance aids related to rate bracket adjustments. Additionally, the OCCC hosted rule webinars relating to Motor Vehicle Recordkeeping Rules, Credit Access Business Rule Review, Regulated Lender Fee Rules, Motor Vehicle Documentary Fee Rule, Registered Creditor Documentary Fee Rule, and Motor Vehicle Rule Review. The OCCC's general counsel serves as a public member of the Customer Service and Protection Advisory Committee (CSPAC) of the Texas Department of Motor Vehicles.

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.

Status: The OCCC met or exceeded 8 of 11 key performance targets for FY24. Measures related to business application processing were not within range due to a period of staff shortages. Strategies to improve employee retention have been developed and implemented.

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.

Status: Fiscal year 2024 ended with a turnover ratio of 18.67%. OCCC HR staff developed and implemented a comprehensive orientation program focused on organizational culture to enhance employee retention. The OCCC evaluated techniques to enhance and foster an engaging and supportive work environment and that enriches efforts to boost employee retention. The HR department will continue efforts to support retention as well as encourage participation in the employee assistance program training webinars.

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 and the career ladder within the financial examiner series.

Measure: Report on financial examiner training opportunities, attainment of minimum training hours, and examiner certification progression.

Status: OCCC Financial Examiners experienced robust development and training opportunities in FY2024. Financial Examiners completed 40 hours of continuing education at the annual Examiner Conference and Training School held in September of 2023. In addition to the annual training, several examiners completed training at the NACCA examiner training school, NMLS conference, online cybersecurity training, and online privacy training. Examination staff had additional training experiences through classroom sessions on mortgage lending, property tax lending, and Chapter 342-E lending.

5.2.3. Objective: Conduct review of human resource policies and update as appropriate. Enhance supervisory resources and training.

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

Status: Fourteen policies have been revised and one new policy was created. HR continues to review procedures and policies and is making continual suggestions for appropriate revisions.

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. Evaluate additional CAPPs non-core modules for implementation in subsequent years.

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. Report on activities related to functionality and evaluation of CAPPs enhancements.

Status: Financial performance is monitored by management on a monthly basis. The OCCC presented quarterly financial performance information to the Audit Committee for review and approval. At the end of FY24 the OCCC had approximately 4 months of operating reserves, which is within the guidelines of the Finance Commission's liquidity policy. During early FY25, operating reserves trend higher due to cyclical revenue collection. The accounting and human resources staff participate in CAPPs user sessions and stay abreast of potential opportunities to implement CAPPs enhancements.

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

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

Status: The OCCC and other Finance Commission agencies continued discussions with TxDOT about acquisition of the four-acre site on the Camp Hubbard campus. A Phase II Environmental Site Assessment (Phase 2 ESA) was received in October 2023.

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.

Status: The OCCC remains cognizant of internal controls whenever processes are evaluated. In response to the internal audit, the agency modified examination scheduling and review procedures to ensure that compensating internal controls were in place to ensure data integrity. Staff continue communicating and coordinating with the Department of Banking and Savings and Mortgage Lending on relevant tasks to improve efficiency, consistency, and effectiveness.

5.4. Information Technology.

5.4.1 Objective: ALECS Enhancements. Complete the cloud host relocation of the OCCC's regulatory application, ALECS. Implement an enhancement to provide an automated testing protocol, with the goal to improve UAT turnaround time and speedier completion of subsequent enhancements.

Measure: Reporting on ALECS enhancements. Successful implementation of the automated testing program.

Status: ALECS was relocated to a new cloud provider in order to meet TX-RAMP requirements, along with upgrades to memory and operating system.

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 FY'24. Update the OCCC internal network stack, which is reliable yet but aging. Pursue DIR Dark Capacity emergency server recovery, recently made available, as a mitigation measure against disaster. Pursue a 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.

Status: Endpoint fleet was over 85% migrated to Windows 11 by end of FY'24. Implementation of the new agency firewall was delayed by staffing turnover, technical complexity and required coordination with Texas Digital Identity Services, and two ill-timed Austin power outages. Dark Capacity disaster recovery spin-up was established with DIR in February 2024. Reorganization of IT policies and procedures is advanced and on-target for completion by end of CY'24, policies >90%, procedures > 50%.

Agency Priorities for Fiscal Year 2024

I. Legislative

I.1 Objective: Monitor the activities of the Texas Legislature during the interim. Provide information to the Texas Legislature as may be requested.

Measure: Respond promptly to legislative requests for information. Report interim legislative activity that may affect the Department or its regulated industries to the Finance Commission.

Status: *SML reported on the interim charges in the June 21 and October 25, 2024, meetings of the Finance Commission. SML has not been asked to provide information to the Legislature during the interim.*

II. Regulatory Activities

II.1 Objective: Establish performance measures to allow for monitoring of the agency's efforts to effectively and efficiently meet Department goals.

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

Status: *Performance measures targets for FY2023 were established in August 2022. Actual performance is reported to the Finance Commission quarterly.*

II.2 Objective: Monitor the Department savings banks' risk profiles to allow for understanding of how changes in the economic environment may impact the overall condition. Ensure supervisory action is appropriate to address heightened risk within the portfolio.

Measure: Complete off-site monitoring of savings banks on a quarterly basis to identify changes in risk profile of state savings banks and report overall portfolio status to Finance Commission. Initiate supervisory response when necessary.

Status: Thrift Supervision conducted quarterly offsite reviews of all state savings banks within the required timeframe for FY2024.

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 to stay apprised of topics of interest. Report on emerging issues to the Finance Commission and the Thrift Industry.

Status: The Thrift Division participated in various training activities to stay apprised of topics of interest. All Thrift Division employees completed at least 80 hours of training during the fiscal year.

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

Measure: Continue to assess, document, and communicate updates to Thrift Supervision and Examination procedures to staff.

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Status: The Thrift Division continued efforts to update and document policies and procedures in the DocTract throughout FY2024.

II.5 Objective: Continue compliance examinations of mortgage companies and residential mortgage loan originators to ensure that 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: Maintain mortgage examination schedule as set by Department policy and as needed initiate appropriate regulatory responses and enforcement actions for violations.

Status: For FY2024, SML has issued 375 examinations of mortgage entities covering 6,984 mortgage loan originators. SML has timely initiated 60% of the examinations in accordance with the mortgage examination schedule, as set by SML policy. The timeliness of the examinations has been impacted by the adoption of the State Examination System (SES). When deemed appropriate, formal and informal enforcement actions have been taken. SML has provided information on the top violations to the industry on the Mortgage Examination page of its website, during Emerging Issues webinars, and at various presentations to local associations.

II.6 Objective: Initiate appropriate regulatory enforcement to ensure compliance with federal and state laws and regulations.

Measure: Report to the Finance Commission on enforcement actions taken.

Status: SML provided quarterly reports to the Finance Commission on enforcement actions taken.

II.7 Objective: Retain prompt resolution times on consumer complaints.

Measure:

- a. Report to the Finance Commission on the aging of complaints.
- b. Conduct management review of any complaints open over 120 days to identify issues preventing the timely closing of such complaints.
- c. Conduct consumer complaint surveys on a regular basis.

Status:

- a. SML provides reports at each meeting of the Finance Commission concerning the aging of complaints and did so throughout FY2024.
- b. SML staff regularly review complaint aging to resolve complaints on a timely basis, with an emphasis on resolving complaints aged over 120 days as expeditiously as possible while not compromising investigation rigor. As of August 31, 2024, SML had two complaints aged over 120 days.
- c. SML conducts consumer complaint surveys on a monthly basis and did so throughout FY2024. SML regularly reviews survey data to identify any trends and potential areas for improvement, including opportunities for staff training and potential adjustments to processes and procedures concerning the analysis and investigation of consumer complaints.

II.8 Objective: Process complete licensing applications and registrations in a timely manner.

Measure:

- a. Monitor the timeliness of the licensing process.
- b. Conduct surveys of license applicants on a regular basis.

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Status:

- a. *For FY2024, SML processed 10,281 applications and made a final decision within 60 days of the date of the application on 88.74% of the processed applications.*
- b. *SML conducted and reviewed on a quarterly basis surveys of license applicants to identify any trends and potential areas for improvement, including opportunities for staff training and potential adjustments to processes and procedures to reduce processing times and improve overall satisfaction with the Mortgage Licensing section.*

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), in order to be aware of events, decisions, other state and federal policies and other areas of actual and potential impact on the Department's regulatory functions or the industries. Take proactive steps to respond as issues arise affecting the industries or supervisory duties.
- b. Continue working with the FDIC and FRB, and other federal agencies as appropriate, on examinations, supervision, and consumer complaint resolution issues. Monitor federal rule writing activity and interpretations of existing statutes.
- c. Report to the Finance Commission on interaction with federal agencies in all of the above-listed activities.

Status: *SML maintained contact with regulatory agencies, including FDIC, FRB, CFPB, and the various trade associations to coordinate supervisory oversight of the state savings banks and the mortgage industry. The Mortgage Regulation Division actively engaged in various webinar meetings with AARMR, CFPB, CSBS, NMLS and other state regulators to stay abreast of issues affecting the mortgage industry. Several members of the Mortgage Regulation Division also served roles with the AARMR Board of Directors, NMLS Policy Committee, Mortgage Call Report Subcommittee, and Performance Standards Committee of the CSBS Education Foundation. General Counsel is a member of the SRR Lawyers Committee. SML reported participation in the above activities to the Finance Commission on a regular basis.*

II.10 Objective: Adopt and implement the use of the CSBS State Examination System (SES) for single, multi-state, and coordinated examinations of non-depository mortgage entities.

Measure:

- a. Provide virtual and in-person training to Financial Examiners necessary to adequately conduct examinations in SES.
- b. Develop examination policies, procedures, processes, and work items for the use of SES.
- c. Notify the residential mortgage loan companies and mortgage bankers of the use of SES for single-state compliance examinations.
- d. Provide resource materials on the Department website for non-depository mortgage entities to onboard and use SES.

Status:

- a. *During the week of October 2, 2023, the Conference of State Bank Supervisors (CSBS) provided an in-depth virtual training course on SES to the entire Mortgage Examination staff. The virtual training included numerous facets of SES, including:*
 - *scheduling or initiating a supervisory activity (examination),*
 - *scoping, planning, and establishing areas for review for the examination,*
 - *sending and responding to information requests,*

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- reviewing information requests,
- entering findings and observations,
- conducting an exit meeting,
- issuing a report of examination,
- creating issues required for a response by the licensee/registrant (a.k.a. matters requiring attention) and
- other issues.

During the week of October 23, 2023, the Mortgage Regulation division held a Mortgage Examiner training school to discuss the new SES Exam Procedures.

- The Mortgage Examination section has developed and adopted policies, procedures, and work instructions for the implementation and adoption of the SES.*
- The residential mortgage loan companies and mortgage bankers were notified of the use of SES for single-state examinations during the Mortgage Industry Day and Emerging Issues webinars.*
- SML's website now includes resource materials on SES. As part of the initial engagement letter, residential mortgage loan companies and mortgage bankers are provided the necessary instructions for onboarding and use of SES.*

III. Policy and Rule Development

III.1 Objective: Conduct rule review of 7 TAC: Chapter 78 (Wrap Mortgage Loans); Chapter 79 (Residential Mortgage Loan Services); Chapter 80 (Residential Mortgage Loan Companies); and Chapter 81 (Mortgage Bankers and Residential Mortgage Loan Originators).

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

Status: *On August 16, 2024, the Finance Commission readopted the rules in 7 TAC Chapters 78 - 81, thus completing the rule review process. The readoption became effective on August 26, 2024. Rule changes identified during rule review were presented to the Finance Commission on August 16, 2024.*

III.2 Objective: Adopt rule changes necessary to implement legislation enacted by the 88th Legislature.

Measure: Present rule changes to the Finance Commission for proposal and adoption.

Status: *On October 27, 2023, the Finance Commission adopted changes to 7 TAC § 81.103, concerning Licensing of Military Service Members, Military Veterans, and Military Spouses, to implement Senate Bill 422, enacted during the 88th Legislature. The rule changes became effective on November 19, 2023.*

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: *The Mortgage Regulation Division has participated in numerous events with the mortgage industry, including:*

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- On November 6, 2023, the Mortgage Regulation Division staff made several presentations during the 11th Annual Mortgage Industry Seminar, including a presentation on the Requirements and Limitations for Secondary Mortgage Loans.
- The Mortgage Regulation Division held monthly emerging issues webinars with interested stakeholders to address issues affecting the licensing and examination of mortgage-related entities or individuals.
- On May 16, 2024, Director of Mortgage Regulation Purce provided an in-person presentation to the South Texas Mortgage Bankers Association in Weslaco, Texas. The presentation discussed: (1) agency priorities for FY2024; (2) the current and historical licensing trends; (3) the current and historical examination trends; (4) common examination findings; (5) advertising requirements and limitations; and (6) compliance with affiliated business arrangements.
- On May 21, 2024, Commissioner Retta and Director of Mortgage Regulation Purce provided an in-person presentation to the Greater Houston Association of Mortgage Professionals. The presentation discussed: (1) agency priorities for FY2024; (2) the mortgage grant fund; (3) the current and historical licensing trends; (4) the current and historical examination trends; (5) common examination findings; and (6) loan originator compensation restrictions and limitations.
- 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.

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 by grantees with program requirements. Prepare for the MGF 2025-2026 grant cycle, including revising program materials, and initiating the grant application process,

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

Status: SML reported on the activities of the MGF during each meeting of the Finance Commission Audit Committee.

V. Agency Operations

V.1 Objective: Recruit well-qualified personnel, while seeking to broaden the Department workforce diversity. 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: In FY2024, the Department filled eleven positions and had nine separations from employment, including one retirement. During the year, 100% of the personnel received job-related training.

V.2 Objective: Meet or exceed 90% of the key performance measures within the Department's control. Strive to reduce deficiencies, if any, in the performance measures outside the Department's control.

Measure: Provide regular updates to the Finance Commission regarding performance measures.

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Status: *The Department reports its performance quarterly to the Finance Commission. As of the end of the FY2024, four of nine annual key performance measures met or exceeded the targeted performance and one is within 5% of the performance targets.*

V.3 Objective: Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency. Coordinate with the Office of Consumer Credit Commissioner and Department of Banking, when possible, to minimize duplication of duties and processes.

Measure: Report on improvements identified and implemented.

Status: *During FY24, staff reviewed and updated multiple processes of the Mortgage Grant Fund as a result of an internal audit of the fund activities. The Department implemented changes to multiple business processes to utilize technology solutions for more efficient document routing and submission, and communication. Business processes continue to be reviewed and improved as necessary.*

V.4 Objective: Monitor the Department's budgeted and actual revenues, expenditures, and reserve balances, as approved by the Finance Commission, in order to maximize the responsiveness and flexibility allowed by the Department'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: *Reports were submitted quarterly to the Finance Commission as required, with detailed explanations of budget variances and cash reserves. Internally, the budget is monitored and analyzed on an ongoing basis.*

V.5 Objective: Ensure information technology is kept current to maintain effectiveness and quality of work product of the Department. Safeguard the integrity of data and information technology networks and systems.

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

Status: *During FY24, SML updated policies to align with the Texas Cybersecurity Framework, remediated findings from an external network penetration test and web application vulnerability scan, implemented a Security Information and Event Management solution, underwent data reclassification to improve continuity, migrated to new cybersecurity awareness training platform, implemented an enterprise password manager product, secured remote network access with MFA, deployed critical and non-critical patch updates, and upgrades to the network and employee computers, provided continuous training to all employees on the use of and updates to the agency's information resources, replaced nearly half of the agency's computer assets, launched an internal website to improve internal communication, scheduled a continuity tabletop exercise for FY2025, and began researching alternative solutions for resiliency and access security.*

V.6 Objective: Continue activities related to the Centralized Accounting Payroll/Personnel System (CAPPS) implementation.

Measure: Report on activities related to the CAPPS implementation

Status: *Staff continues to develop multiple new and update existing procedures to reflect the CAPPS use in the Department's business processes.*

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V.7 Objective: Monitor emergencies, man-made or natural disasters, or pandemics as they relate to the Department or its regulated industries.

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

Status: *During FY24, there have not been major activities to report in this area.*

V.8 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: *The Department along with the other Finance Commission agencies continued discussions with TxDOT about acquisition of the four-acre site on the Camp Hubbard campus. A Phase II Environmental Site Assessment (Phase 2 ESA) was received in October 2023.*

A. FINANCE COMMISSION MATTERS

8. Discussion of and Possible Vote to Take Action on the Adoption of Amendments in 7 TAC, Part 8, Chapter 151, Concerning Home Equity Lending Procedures, Resulting from Rule Review

PURPOSE: The purpose of the amendments to 7 TAC Chapter 151 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

RECOMMENDED ACTION: The Joint Financial Regulatory Agencies request that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 151.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of the amendments to 7 TAC Chapter 151.

Title 7, Texas Administrative Code
Part 8. Joint Financial Regulatory Agencies
Chapter 151. Home Equity Lending Procedures

The Finance Commission of Texas and the Texas Credit Union Commission (commissions) adopt amendments to §151.1 (relating to Interpretation Procedures) in 7 TAC Chapter 151, concerning Home Equity Lending Procedures.

The commissions adopt the amendments to §151.1 without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5615).

The commissions received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 151 govern the procedures for requesting, proposing, and adopting interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the rule changes to 7 TAC Chapter 151 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the *Texas Register* on March 29, 2024 (49 TexReg 2095). The commissions received no official comments in response to that notice.

The rules in 7 TAC Chapter 151 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review. The

agencies did not receive any informal precomments on the rule text draft.

Currently, §151.1(d) describes the requirements for formally requesting a home equity interpretation. Adopted amendments to §151.1(d)(1) specify that any petition for the Finance Commission to issue a home equity interpretation must be sent to the Department of Savings and Mortgage Lending, replacing current language that refers to the Office of Consumer Credit Commissioner. The Department of Savings and Mortgage Lending has the primary responsibility to license and regulate companies providing mortgage loans in Texas. The agencies anticipate that the Department of Savings and Mortgage Lending will take a leading role in coordinating future home equity interpretations.

The rule changes are adopted under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001. The rule changes are also adopted under Texas Government Code, §2001.021(b), which authorizes state agencies to adopt rules prescribing the procedure for submitting petitions for rulemaking.

The constitutional and statutory provisions affected by the adoption are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

§151.1. Interpretation Procedures

(a) Issuing interpretations. The Finance Commission and Credit Union Commission may on their own motion issue interpretations of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. The commissions will propose and adopt interpretations in accordance with the rulemaking requirements of Texas Government Code, Chapter 2001, Subchapter B.

(b) Agency recommendations. The Office of Consumer Credit Commissioner, Department of Banking, or Department of Savings and Mortgage Lending may recommend proposed interpretations to the Finance Commission. The Credit Union Department may recommend proposed interpretations to the Credit Union Commission. The four agencies may seek informal input from stakeholders and the other agencies before recommending a proposed interpretation to the commissions.

(c) Informal request for interpretation. A person may submit an informal request for an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution. An informal request may be submitted to the Office of Consumer Credit Commissioner, Department of Banking, Department of Savings and Mortgage Lending, or Credit Union Department. A request should:

- (1) cite the specific provision of the Texas Constitution to be interpreted;
- (2) explain the factual and legal context for the request; and
- (3) explain the requestor's opinion of how the request should be resolved.

(d) Petition for rulemaking. An interested person may formally request an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution by submitting a petition to initiate rulemaking.

(1) Any petition for the Finance Commission to issue an interpretation must be submitted to the Department of Savings and Mortgage Lending [~~Office of Consumer Credit Commissioner~~] and must include the information required by §9.82 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

(2) Any petition for the Credit Union Commission to issue an interpretation must be submitted to the Credit Union Department and must include the information required by §97.500 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

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 October 25, 2024, and November 8, 2024.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies

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B.

Texas Department of Banking

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Charles G. Cooper
Commissioner

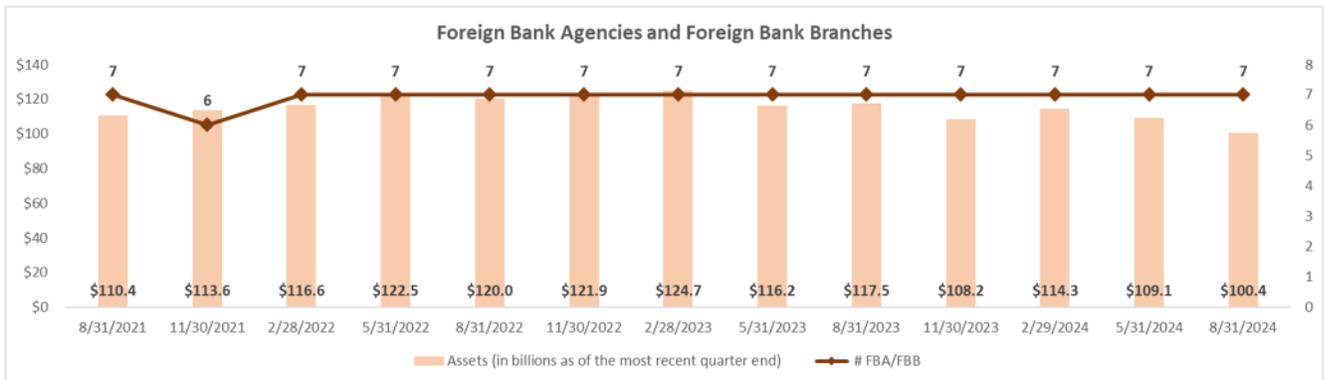
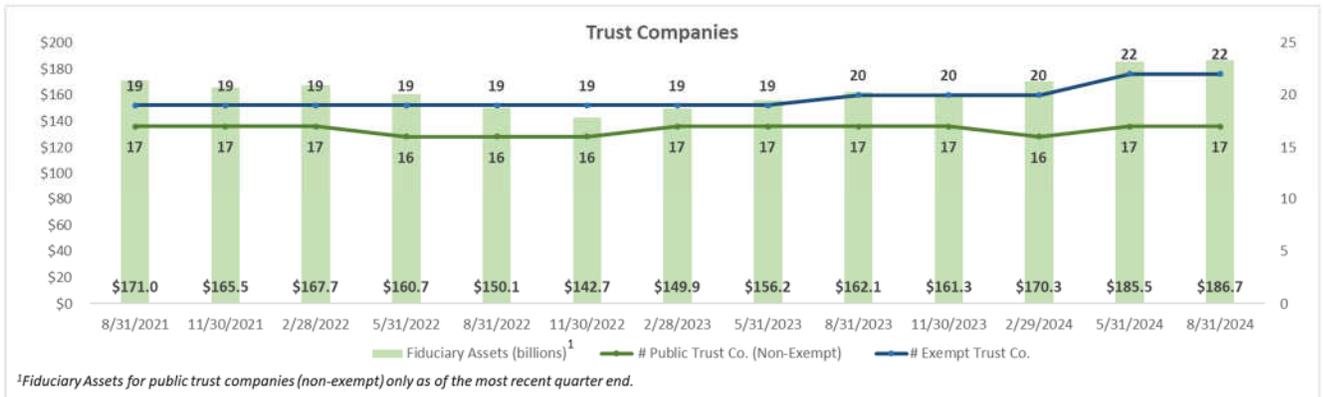
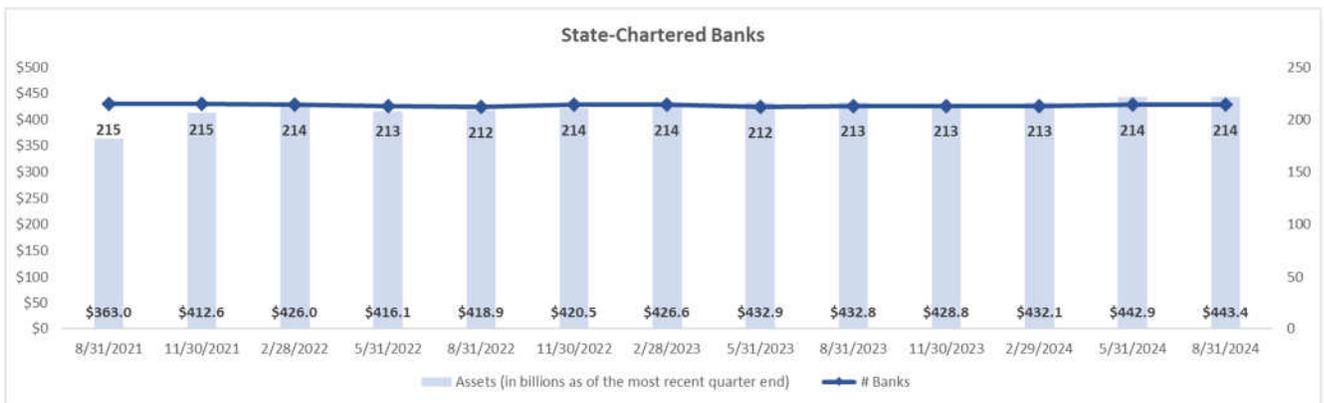
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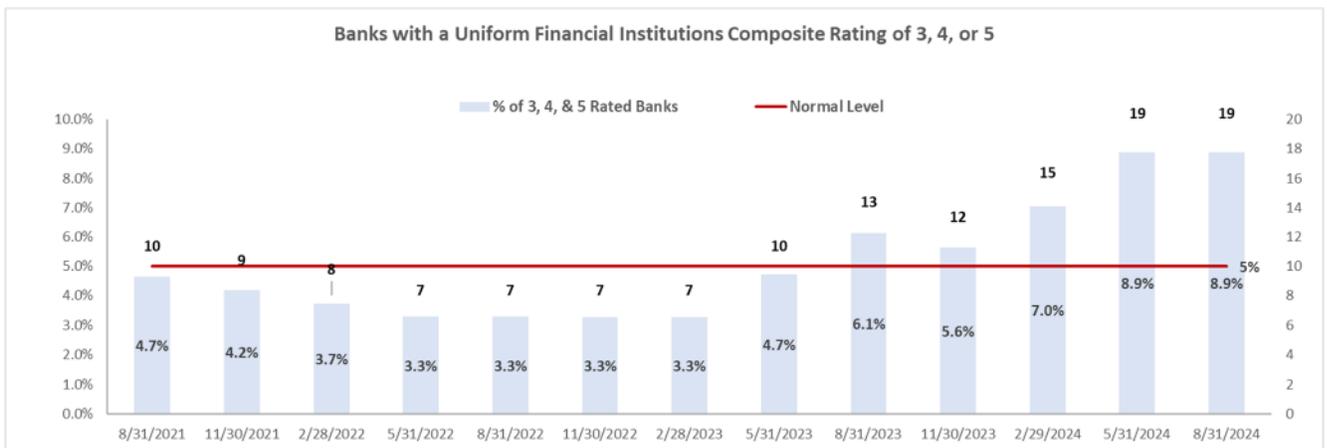
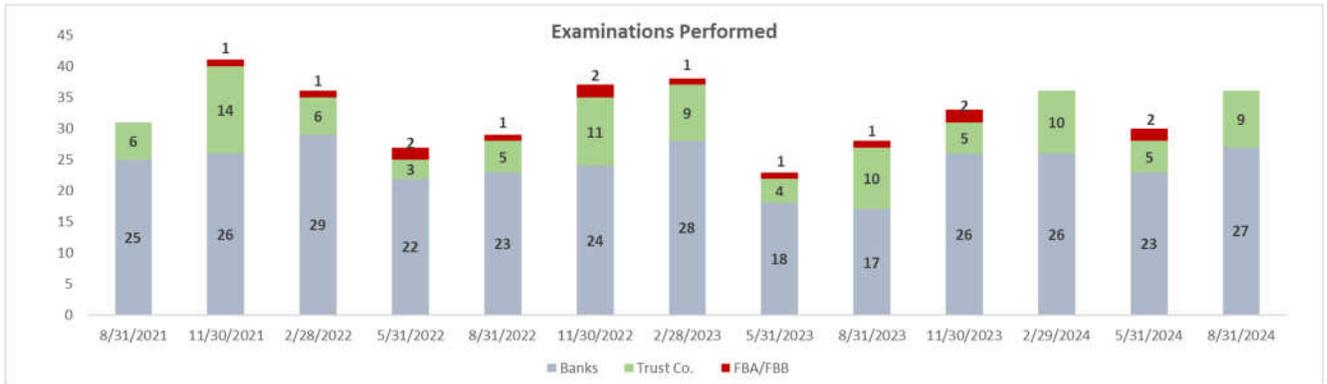
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To: Finance Commission Members
From: Jared Whitson, Director of Bank & Trust Supervision *JW*
Date: October 2, 2024
Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision – Industry Profiles

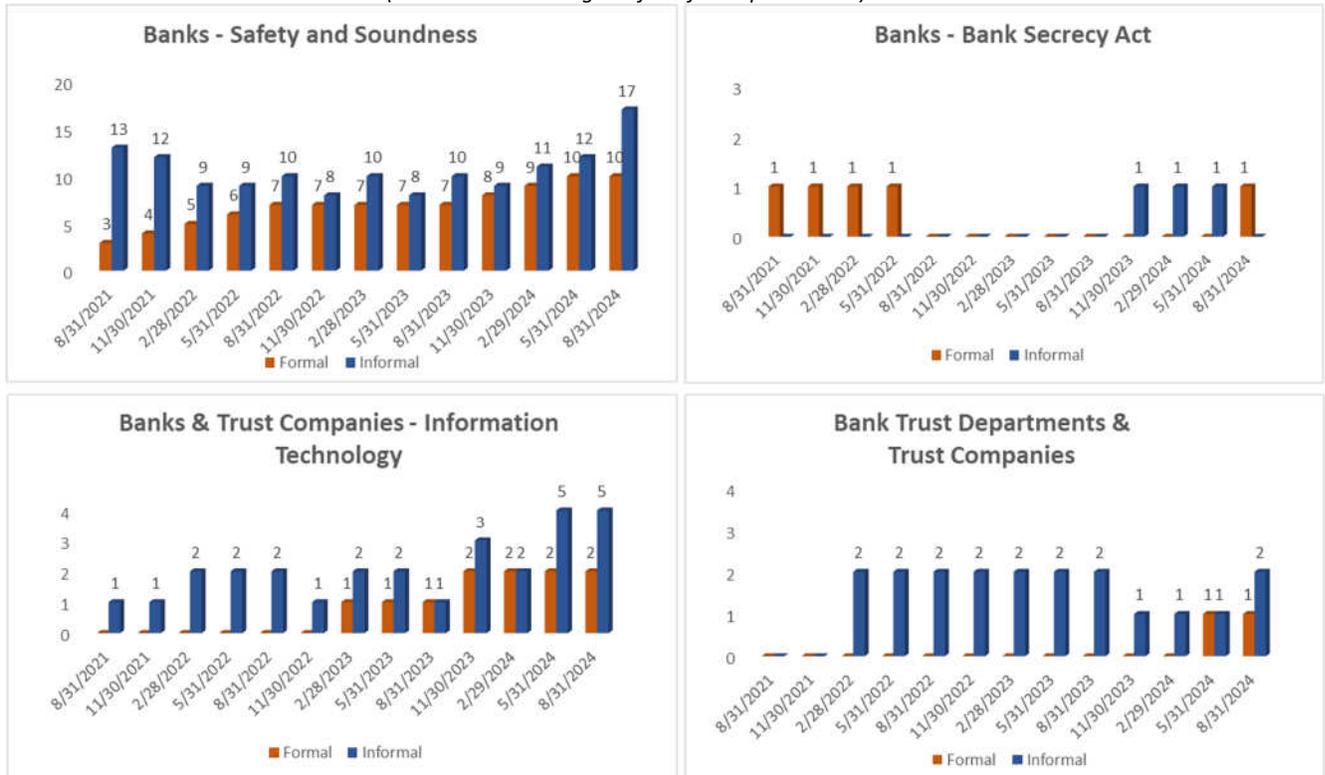
As of fiscal quarter-end (assets as of the preceding calendar quarter)



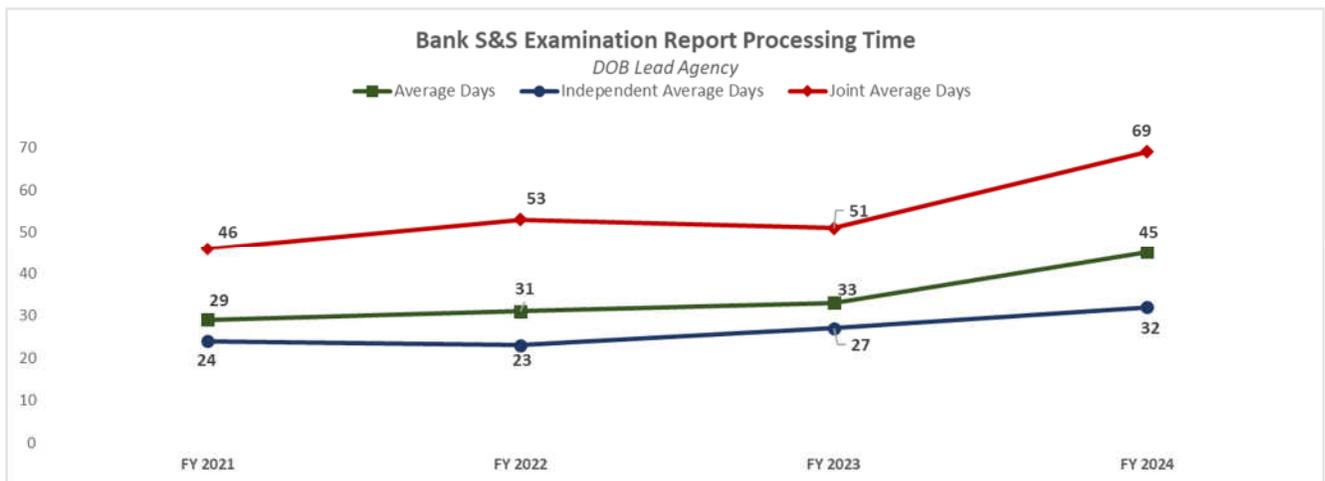


The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. As illustrated above, the number of problem banks increased to 19 in May 2024 and above the normal range of 5% of the total number of institutions. As shown, the number of problem 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 (NIM). However, the Federal Open Market Committee’s reduction in rates in September 2024 should promote loan growth and ease NIM pressures.

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.



The chart above depicts the number of days necessary to complete the processing of bank safety and soundness reports measured from the time the examination staff leaves the bank until a report is mailed to the bank. Reports for joint examinations on average take longer to process, primarily because joint examinations are typically conducted on larger banks and in problem institutions. Larger banks are typically more complex, and problem institution reports are more voluminous, and the vetting and report review process is more time consuming. Finally, the processing time is extended due to two regulators needing time to review and edit the report.

Compliance with Examination Priorities

Percent of examinations conducted within Department guidelines.

Entity Type	FY 2023	FY 2024
Commercial Banks	92%	83%
IT	91%	87%
Trust Departments	86%	97%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	81%	97%
IT	82%	75%

Examination categories with less than 95% of examinations conducted within guidelines for FY 2024 include:

- Bank Examinations – 28 exams past due by an average of 23 days.
- IT Examinations of Banks – 20 exams past due by an average of 33 days.
- IT Examinations of Trust Companies – 3 exams past due by an average of 27 days.

Compliance with commercial bank and IT examination priorities are down compared to last 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 interest rates and its effects on banks' financial condition. The reduction in interest rates in September 2024 should promote loan growth and ease net interest margin pressures over time. In addition, banks with a sizeable portion of their assets in long-term, fixed rate securities should experience improvement in depreciation levels and reduce pressure on capital formation.
- **Special Operations and Conferences:**
 - Review Examiner (RE) Melissa Dvoracek represented the Department at the Texas Tech Banking School in Lubbock, Texas, on August 4, 2024, where she presented to the class the bank examination process, including frequency, scope, and ratings.
 - Chief Trust Examiner (CTE) Sylvia Fry and Trust Examiners Crisanne Alvarez and Deana Ball attended the Federal Financial Institutions Council (FFIEC), Wealth and Management Conference in Arlington, Virginia, on August 6–8, 2024.
 - Director of Cybersecurity and Technology Strategy Phillip Hinkle attended the Financial and Banking Information Infrastructure Committee / Financial Services Sector Coordinating Council (FBII/C/FSSCC), in Washington, D.C., on August 19–21, 2024.
 - Houston Regional Director (RD) Greg Wisian and Financial Examiner (FE) Robert Chandler represented the Department at Sam Houston State University, Executive MBA Speaker Series in Huntsville, Texas, on August 21, 2024. An overview of the Texas Department of Banking was presented with a discussion on issues impacting the banking industry.

- Commissioner Charles G. Cooper attended the Southwestern Graduate School of Banking (SWGSB) Foundation Fall Board Meeting and the 158th Assembly of Bank Directors in Coeur d'Alene, Idaho, on August 21–24, 2024.
- Commissioner Cooper and staff represented the Department at the Conference of State Bank Supervisors (CSBS) Board Meetings and Strategic Planning Meeting in Bellevue, Washington, on August 26–29, 2024.
- Director Hinkle represented (virtually) the Department at the Bankers' Electronic Task Force on August 27, 2024, discussing Emerging Cyber Threats.
- Houston RD Wisian attended (virtually) the FFIEC International Banking Conference on September 10-12, 2024. Topics related to banks operating internationally were discussed.
- Commissioner Cooper represented the Department at the Tarrant County Bankers Association Luncheon in Fort Worth, Texas, on September 11, 2024, discussing regulatory topics.
- RE Travis Graham represented the Department as a regulatory panelist at the Texas Bankers Association, Real Estate Lending School in Austin, Texas, on September 11, 2024.
- Commissioner Cooper represented the Department as a regulatory panelist at the Southwest Association of Bank Counsel, 2024 Annual Legal Conference in Austin, Texas, on September 11, 2024, discussing regulatory topics.
- Director of Bank and Trust Supervision Jared Whitson, Director of Information Technology Security Examinations Ruth Norris, Director Hinkle, RE Dvoracek, Dallas Regional Director Tom Susany, and FE Amber Summers represented the Department at the Federal Reserve Bank's (FRB), 11th District Banking Conference hosted by the Department and the FRB in Dallas, Texas, on September 17, 2024. Director Whitson, RD Susany, and RE Dvoracek participated as panelists discussing liquidity risk. Director Norris and Director Hinkle also participated as panelists discussing Cybersecurity and Artificial Intelligence.
- Director Hinkle represented the Department (virtually) at the Bankers' Electronic Task Force on September 24, 2024, discussing Emerging Cyber Threats.
- Commissioner Cooper, Chairman of the FFIEC State Liaison Committee, attended the FFIEC Second Quarter meeting in Washington, D.C., on September 26, 2024.
- Commissioner Cooper, Deputy Commissioner Wendy Rodriguez, and Director Whitson represented the Department at the CSBS Districts II and IV Combined Fall Meeting at the FRB of St. Louis in St. Louis, Missouri, on October 1, 2024.



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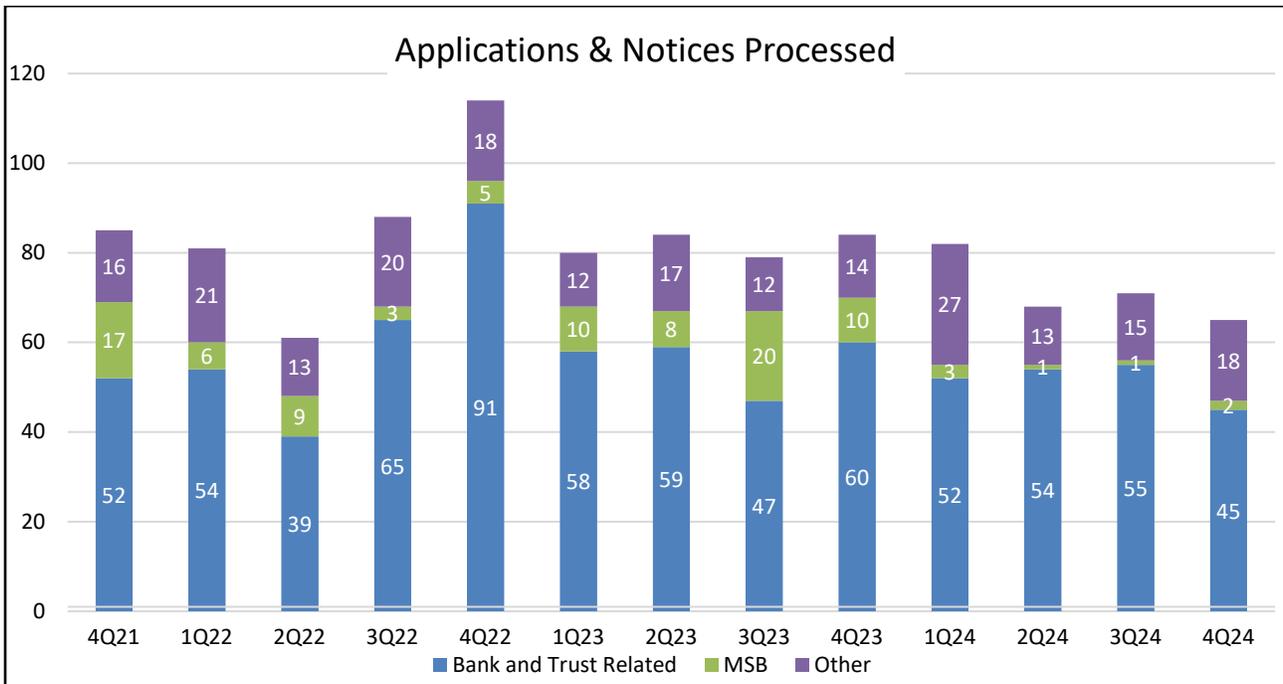
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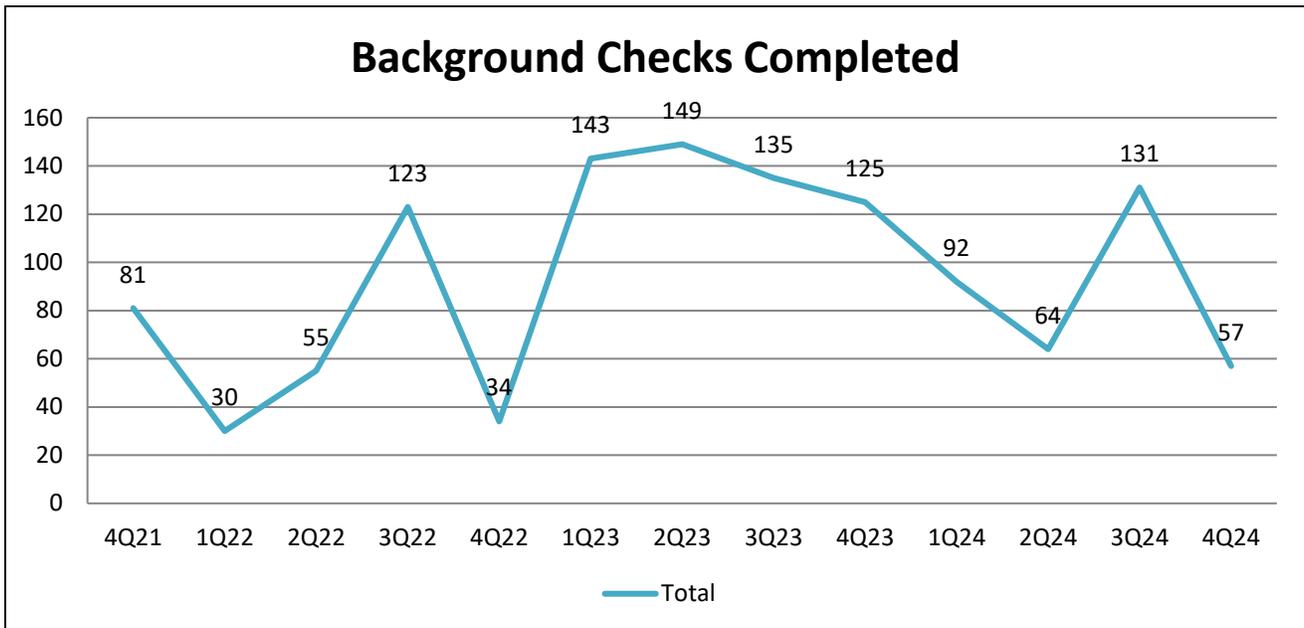
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Charles G. Cooper
Commissioner

To: Finance Commission Members
 From: Dan Frasier, Director of Corporate Activities and Financial Innovation *DBF*
 Date: October 2, 2024
 Subject: Summary of Corporate Division Activities



Information on a Fiscal Quarter Basis.



Information on a Fiscal Quarter Basis.

Applications and Notices Under Review							
Entities	June 30, 2024	Received	*Returned	Processed	August 31, 2024	# Change	% Change
Bank	19	34	-	32	21	2	11%
MSB	33	11	4	2	38	5	15%
Other	5	11	-	15	1	-4	-80%
Trust	3	0	-	1	2	-1	-33%
Total	60	56	4	50	62	2	3%

*Incomplete MSB applications which were returned.

The number of open filings under review increased by 3% as compared to the level reported at the last Finance Commission meeting. The increase results from bank and MSB filings which have come in quicker over the two-month period than we could resolve outstanding filings.

Division Highlights

- **Conferences, Conventions, and Committee Meetings:**
 - Beginning on September 16, 2024, Director of Corporate Activities and Financial Innovation Dan Frasier and Corporate Analyst Jay Riley participated in the Money Transmitter Regulators Association Annual Conference in Philadelphia, Pennsylvania.
- **Significant Applications:** Since the last report, the following significant bank and trust applications have been received:
 - None
- **Charter, Conversion, and Merger Activity:** Since the last report, the following transactions have consummated:
 - *Banks*
 - None
 - *Trust Companies*
 - None



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Charles G. Cooper
Commissioner

To: Finance Commission Members
 From: Jesus "Jesse" Saucillo, Director of Non-Depository Supervision
 Date: October 1, 2024
 Subject: Summary of Non-Depository Supervision (NDS) Activities

		FY 2024									
Entity	FY 2023		1 st		2 nd		3 rd		4 th		
Industry Profile (# / Assets (billions))											
Money Services Businesses (MSB)	194	\$342.5	195	\$342.7	191	\$342.5	188	\$349.3	185	\$332.3	
Prepaid Funeral Contract (PFC)	337	\$4.9	337	\$4.9	333	\$4.9	330	\$4.9	329	\$4.9	
Perpetual Care Cemeteries (PCC)	244	\$460.7*	245	\$469.1*	245	\$468.7*	245	\$474.5*	245	\$480.1*	
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	2	n/a	2	n/a	
Examinations Performed											
MSB	98		23		22		25		30		
MSB Limited Scope	2		0		0		0		0		
MSB Accepted other State	4		0		1		3		1		
PFC	220		50		53		36		57		
PFC Limited Scope	2		0		0		0		1		
PCC	138		41		34		49		34		
PCC Limited Scope	1		1		0		0		1		
Noncompliance with Examination Priorities (Past Due)											
MSB	6		10		8		14		13		
PFC	18		15		7		10		11		
PCC	12		22		9		19		14		
Ratings (# / %) Assigned to Regulated Entities Examined In FY 2024											
Entity	1 Rated		2 Rated		3 Rated		4 or 5 Rated				
MSB	8	4.44%	126	70.00%	39	21.67%	7	3.89%			
PFC	142	43.43%	173	52.91%	7	2.14%	5	1.53%			
PCC	98	40.50%	123	50.83%	16	6.61%	5	2.07%			

NOTES:

Limited scope examinations do not receive a rating.

*PCC \$ amounts reflected in the millions.

Industry Profile

A comparison of the fiscal year (FY) 2024 to 2023 ending totals in the Industry Profile section of this memorandum reflects that the net number of MSB license holders decreased slightly. While four new MSB licenses were issued (including two MSBs with product offerings involving cryptocurrency), 13 MSB licenses were closed for various reasons.

- Nine of the MSB license closures were due to changes in the business models such as acquisitions or consolidations.
- Four of the MSB license closures were due to the entities' inability to maintain compliance with state and federal regulations.

The division actively monitors licensed entities by conducting on-site examinations and off-site reviews of key financial metrics obtained via MSB call reports, consumer complaints, and current events. Identified areas of concerns are further analyzed and discussed with MSB license holders to determine the best type of corrective action plans that are necessary to protect the interests of Texas consumers. Monitoring activities are typically coordinated with other state regulators and work groups to ensure the proper oversight of higher risk license holders.

Based on the 2023 Year-End Annual Report submissions that are due in July of each year, the 10 largest MSBs, as determined by asset size, account for over 80% of the total assets of Texas licenses. The noted decrease in the total asset size is primarily the result of the reduction in total assets of the two largest issuers of fiat-backed stablecoins, as determined by asset size. The reduction was due to the overall decline in stablecoins in circulation from calendar years 2022 to 2023 of 58%. Notably, second quarter MSB call report for calendar year 2024 indicates that stablecoin in circulation in total for these two companies have increased by 25% from calendar year end 2023 to June 30, 2024.

The slight decline in the number of total PFC permit holders continued in FY 2024.

- Nine PFC permits were closed, of which six were due to the permit holders providing the goods and services to consumers outlined in the PFCs, then electing to close their PFC permits.
- One PFC permit was closed due to the conversion of trust-funded PFCs to insurance-funded PFCs.
- Two were due to consolidations that resulted in contracts being transferred to another PFC permit holder.

The other industry statistics remain comparable with no material variations.

Examination Activities

As reported in prior Finance Commission memorandums in FY 2024, NDS once again did not meet one of its performance measures – *Quarterly Output Measure – Number of Licensees Examined* – in the fourth quarter of FY 2024. The primary reason for the division not meeting this measure is due to ongoing examiner vacancies. Although the division has made progress in FY 2024 by filling four examiner vacancies, it typically takes at least 12 months for new hires to complete their initial training. After the initial training phase, examiners begin to fully contribute to the completion of examinations which assists in achieving the various output measures. It should be noted that despite the staffing limitations, NDS was only 13 examinations short in FY 2024 of being within the acceptable variance of meeting this output measure.

Below is additional information on the examination activities reflected on the previous page.

- Of the 13 past due MSB examinations, four were conducted in September 2024, four will be completed in October 2024, and the remaining five were delayed to be conducted in coordination with other MSB state regulators as part of a nationwide network multi-state examination process.
- Of the 11 past due PFC examinations, nine were conducted in September 2024, and the remaining two will be completed in October 2024.
- Of the 14 past due PCC examinations, 13 were conducted in September 2024, and the remaining one will be completed in October 2024.

Of the MSB examinations rated 3, 4, or 5, most were the result of deficiencies related to financial condition concerns, poor management oversight, and Bank Secrecy Act / Anti-Money Laundering compliance deficiencies. NDS license holders assigned these ratings require additional supervisory monitoring and coordination with other state regulators. Many of the 4 and 5 rated licensees have also resulted in referrals to the Department's Legal Division for the initiation of regulatory administrative proceedings.

Division Activities

Events:

On August 26, 2024, Director Saucillo and Department staff attended the CSBS Board Meetings & Strategic Planning Meeting in Bellevue, Washington. The meeting included numerous discussions on current events impacting the non-depository industry. The meeting provided an opportunity to help direct the long-term strategic direction of CSBS as well as set priorities for the coming year.

On September 16, 2024, Director Saucillo and Department staff attended the 2024 Money Transmitter Regulators Association (MTRA) Annual Conference and School in Philadelphia, Pennsylvania. The conference was attended by almost 400 attendees which included representatives of MSB state regulators as well as industry representatives. Various presentations and discussions impacting MSBs were presented during the conference. Director Saucillo is a member of the MTRA Board of Directors, and the department is a primary contributor to the development of policies impacting MSBs, and major participant in the coordination of MSB examinations.

Training:

The division continues to oversee the training for three MSB and one PFC/PCC examiners hired in FY 2024. The division also held interviews for the MSB financial examiner vacancies and anticipates making offers in October 2024.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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Memorandum

To: Finance Commission Members
From: Pam Pennington, Human Resources Manager
Date: October 1, 2024
Subject: Summary of the Human Resources Division Activities

Active Postings				
<i>Number of Positions</i>	<i>Position</i>	<i>Division</i>	<i>Status</i>	<i>Activities</i>
1	Financial Examiner VII – Review Examiner (Reposted)	Bank and Trust	Open Until Filled	Recruiting
3	Financial Examiner IV -VII: Information Technology Specialist (Houston) (Reposted)	Bank and Trust – IT	Open Until Filled	Recruiting
1	Financial Examiner V – Credit Review Specialist (Reposted)	Bank and Trust	Open Until Filled	Recruiting
1	Financial Examiner VI – VII: Commercial Bank Examiner (Houston) (Reposted)	Bank and Trust	Open Until Filled	Recruiting
1	Financial Examiner IV – V Commercial Bank Examiner (Houston) (Reposted)	Bank and Trust	Open Until Filled	Recruiting
1	Director VI: Chief Information Officer	MIS	Open Until Filled	Recruiting

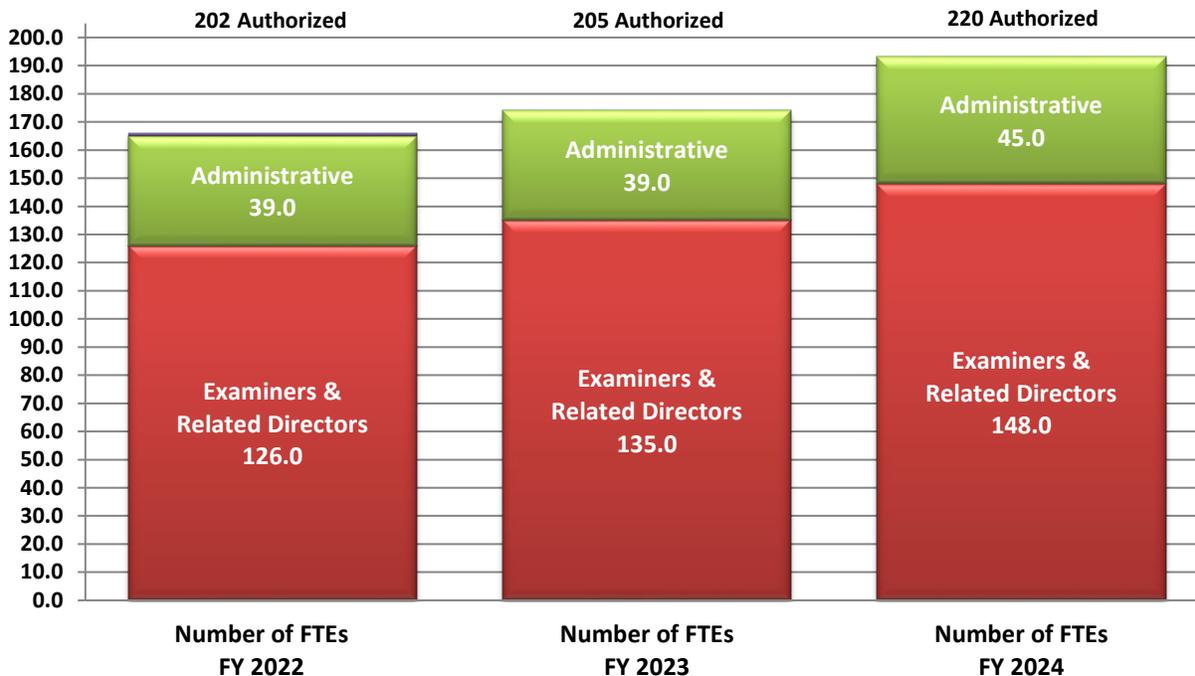
Status of Postings that Closed before October 1, 2024				
<i>Number of Positions</i>	<i>Position</i>	<i>Division</i>	<i>Status</i>	<i>Activities</i>
1	Director VI: Chief Information Officer	MIS	<i>Closed July 26, 2024</i>	Reposting
2	Financial Examiner V: Bank Secrecy Act/Anti-Money Laundering Specialist (Dallas, Houston, San Antonio)	Bank and Trust	<i>Closed August 14, 2024</i>	Partially Filled
2	Money Services Business (MSB) Financial Examiner I -II (Austin, Houston, Dallas)	NDS	<i>Closed August 12, 2024</i>	Interviewing
2	Money Services Business (MSB) Financial Examiner III – IV (Austin, Houston, Dallas)	NDS	<i>Closed August 12, 2024</i>	Interviewing
1	Law Clerk	Legal	<i>Closed August 16, 2024</i>	Filled
1	Attorney I	Legal	<i>Closed August 16, 2024</i>	Filled
1	Attorney II – III	Legal	<i>Closed August 16, 2024</i>	Reposting
1	Payroll/Travel Accountant V	Admin Services	<i>Closed August 28, 2024</i>	Reposting
1	Financial Examiner VII – Review Examiner	Bank and Trust	<i>Closed September 25, 2024</i>	Reposting

Status of Postings that Closed before October 1, 2024				
<i>Number of Positions</i>	<i>Position</i>	<i>Division</i>	<i>Status</i>	<i>Activities</i>
3	Financial Examiner IV -VII: Information Technology Specialist (Houston)	Bank and Trust – IT	Closed September 25, 2024	Reposting
1	Financial Examiner V – Credit Review Specialist	Bank and Trust	Closed September 25, 2024	Reposting
1	Financial Examiner VI – VII: Commercial Bank Examiner (Houston)	Bank and Trust	Closed September 25, 2024	Reposting
1	Financial Examiner IV – V Commercial Bank Examiner (Houston)	Bank and Trust	Closed September 25, 2024	Reposting
1	Financial Examiner IV – VI: Financial Analyst / Training Coordinator	DSS	Closed September 25, 2024	Reposting

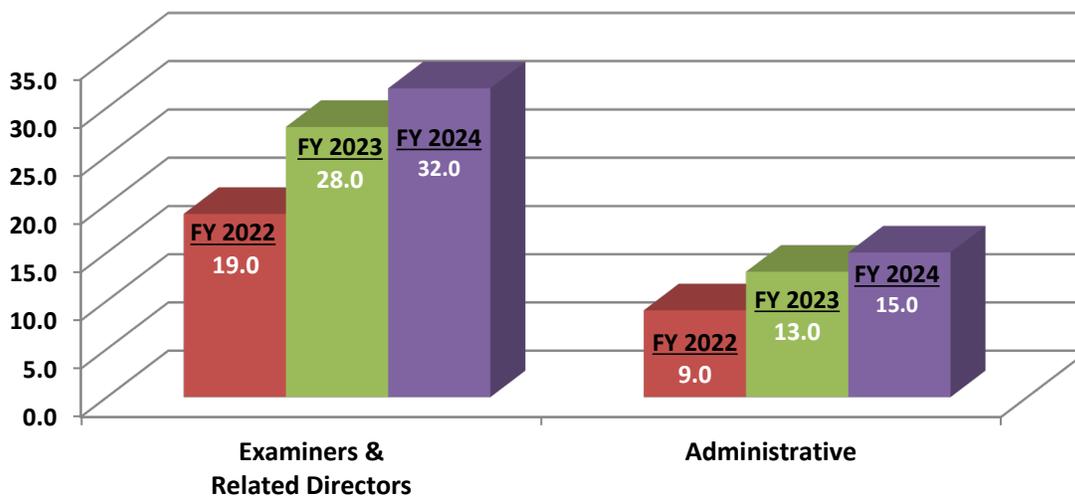
Division Activities:

- *Agency Turnover*
 - The Department’s overall turnover rate for fiscal year 2024 was 15.37%, including retirements.
 - Financial Examiners made up for 13.28% of the turnover for the fiscal year.
- *New Employee Orientation:*
 - Held August 12, 2024: One Programmer I for the MIS Division.
 - Held October 1, 2024: One Law Clerk for the Legal Division
- *Career Fairs*
 - The Lubbock and Houston regions plan to attend three career fairs in the Fall of 2024.
- *Recruitment Onboarding Feature:*
 - Digital Onboarding platform that is a part of CAPPS Recruitment is now available and in production. The HR staff will be utilizing this platform to complete new hire paperwork prior to first day of employment to shorten the administrative tasks associated with orientation.
- *Updated Position Descriptions:*
 - All employee position descriptions have been updated and submitted to divisional management for review and approval.

Texas Department of Banking Employee Data for Fiscal Years 2022, 2023 and 2024 as of 08/31/2024

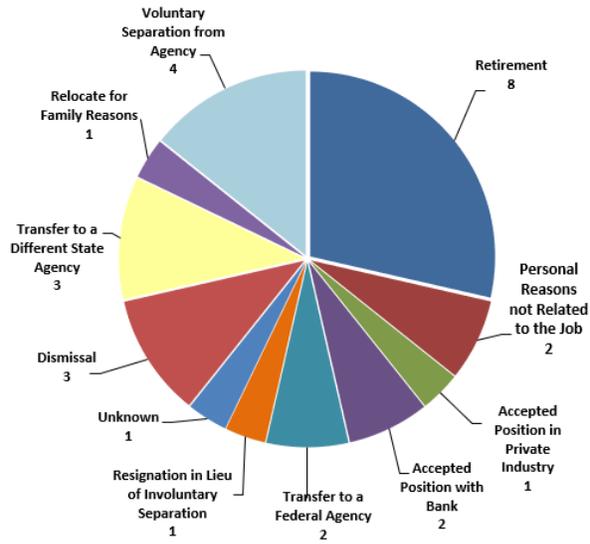


New Hire Data for Fiscal Years 2022, 2023, and 2024

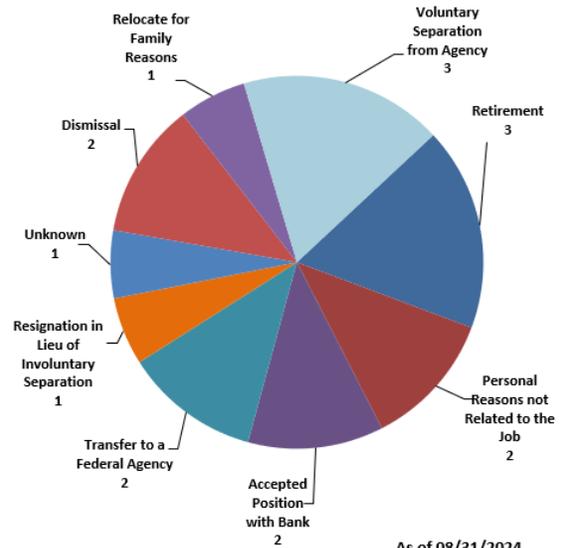


FY 2024 Employee Turnover Reasons

All Employees
28 Resignations



Financial Examiners Only
17 Resignations



As of 08/31/2024

ACTUAL PERFORMANCE FOR OUTCOME MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2024

8/31/2024

Actual Performance for Outcome Measures
Fiscal Year 2024
For Period Ending August 2024

Type/Strategy/Measure	2024 Target	2024 YTD	Percent of Annual Target	
Outcome Measures - Key				
1-1 QUALITY BANK REGULATION				
1. % BANKS EXAMINED	95.00%	89.24%	93.94%	*
The number of banks receiving examinations when due is below the target due to an increase in problem institutions, conversion examinations, less than sufficient staffing, and experienced examiners.				
1-2 QUALITY NON-BANK REGULATION				
1. % MSB LICENSEES EXAMINED	90.00%	92.86%	103.18%	
2. % PFC LICENSEES EXAMINED	95.00%	96.65%	101.74%	
3. % PCC LICENSEES EXAMINED	95.00%	94.21%	99.17%	
1-3 APPLICATION PROCESSING				
1. % B&T, MSB APPS COMPLETED	95.00%	95.85%	100.89%	
1-4-1 APPLICATION PROCESSING				
1. % WRITTEN COMPLAINTS CLOSED	100.00%	100.00%	100.00%	
1-5 OPERATIONAL EFFICIENCY				
1. % REGULAR EMPLOYEES SEPARATED	11.00%	15.37%	139.73%	*
Fiscal year 2024 turnover is higher than the target due to increased retirements and workforce factors related to external labor force competition that increased resignations.				
3. % ACTUAL EXPENDITURES TO BUDGETED	95.00%	86.80%	91.37%	*
The measure is below the target due to vacancies and related benefits, lower travel expenditures than budgeted, and other miscellaneous costs that were lower than anticipated.				

*Varies by 5% or more from target.

ACTUAL PERFORMANCE FOR EXPLANATORY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2024

8/31/2024

Actual Performance for Explanatory Measures
Fiscal Year 2024
For Period Ending August 2024

Type/Strategy/Measure	2024 Target	2024 YTD	Percent of Annual Target
Explanatory Measure - Key			
1-1-1 BANK EXAMINATION			
1. % BANKS CLASSIFIED SAFE & SOUND	95.00%	91.12%	95.92%

*Varies by 5% or more from target.

ACTUAL PERFORMANCE FOR OUTPUT/EFFICIENCY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2024

8/31/2024

**Department of Banking
Actual Performance for Output Measures
Fiscal Year 2024**

Type/Strategy/Measure	2024 Target	2024 Actual	2024 YTD	Percent of Annual Target	Comparable Historical Data for the same time period			
					FY2023	FY2022	FY2021	FY2020
Output Measures-Key								
1-1-1 Bank Examination								
1. # Bank Examinations Performed								
Quarter 1	103	26	26	25.24%				
Quarter 2	103	26	52	50.49%				
Quarter 3	103	23	75	72.82%				
Quarter 4	103	27	102	99.03%	88	99	91	81
2. # Foreign/Trust/IT Examinations Performed								
Quarter 1	229	45	45	19.65%				
Quarter 2	229	61	106	46.29%				
Quarter 3	229	57	163	71.18%				
Quarter 4	229	52	215	93.89%	228	234	207	194
FY 2024, Quarter 1 - The number of bank examinations is below the target due to performing less IT examinations than anticipated.								
FY 2024, Quarter 4 - The number of bank examinations is below the target due to performing less IT examinations than anticipated this quarter as a result of an increase in problem institutions, conversion examinations, less than sufficient staffing, and experienced examiners.								
1-2-1 Non-Bank Examination								
1. # NDS Licensees Examined								
Quarter 1	500	115	115	23.00%				
Quarter 2	500	110	225	45.00%				
Quarter 3	500	113	338	67.60%				
Quarter 4	500	124	462	92.40%	465	486	527	550
FY 2024, Quarter 3 - The number of NDS licensees examined is below the target due to financial examiner staff resignations and vacancies that existed throughout the first and second quarters of FY 2024.								
FY 2024, Quarter 4 - The number of NDS licensees examined is below the target due to financial examiner separations and vacancies that existed throughout FY 2024.								
1-3-1 Application Processing								
1. # License Applications Completed								
Quarter 1	315	88	88	27.94%				
Quarter 2	315	72	160	50.79%				
Quarter 3	315	75	235	74.60%				
Quarter 4	315	70	305	96.83%	360	364	353	327

*Varies by 5% or more from target.

ACTUAL PERFORMANCE FOR NON-KEY MEASURES

TEXAS DEPARTMENT OF BANKING

FISCAL YEAR 2024

8/31/2024

**Actual Performance for Non-Key Measures
Fiscal Year 2024
For Period Ending August 2024**

Type/Strategy/Measure	2024 Target	2024 YTD	Percent of Annual Target
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Non-Key Measures

1-1-1 BANK EXAMINATION

2. % FOREIGN BANK AGENCIES EXAMINED	100.00%	100.00%	100.00%
3. % TRUST COMPANIES EXAMINED	90.00%	96.67%	107.41%
The number of trust companies receiving examinations when due is higher than the target due to increased proficiency of the new trust specialists.			
4. % PROBLEM INSTITUTIONS WITH APPROPRIATE SUPERVISORY ACTIONS IN PLACE	100.00%	100.00%	100.00%
5. CERTIFICATE OF ACCREDITATION BY CSBS MAINTAINED IN GOOD STANDING	YES	YES	YES
8. AVERAGE COST PER BANK EXAMINATION	\$89,640.00	\$97,846.55	109.16%
The average cost per bank examination is higher than the target due to salary and travel expenses being higher than anticipated this fiscal year.			
9. ASSETS EXAMINED PER EXAMINER DAY (IN MILLIONS)	\$10.50	\$10.49	99.90%
11. # STATE-CHARTERED BANKS IN TEXAS	210	214	101.90%
12. TOTAL ASSETS IN TEXAS STATE-CHARTERED BANKS (IN BILLIONS)	\$457.90	\$443.40	96.83%

1-2-1 NON-BANK EXAMINATION

4. % PCC AND PFC APPLICATIONS COMPLETED WITHIN STATUTORY PERIOD	95.00%	100.00%	105.26%
The Division exceeded the FY 2024 target due to retaining knowledgeable staff, including obtaining assistance from PFC/PCC examiners, to coordinate the timely processing of applications.			
6. AVERAGE DIRECT COST PER PFC AND PCC LICENSEE EXAMINATION	\$3,000.00	\$3,264.38	108.81%
The average direct cost per PFC and PCC examination is above the target due to the cross-training of two examiners in Q1 and Q2 of FY 2024, and the training of a new hire who started in April 2024. The training not only increased travel costs, but also resulted in a lower number of examinations conducted.			
7. AVERAGE DIRECT COST PER MSB LICENSEE EXAMINATION	\$16,000.00	\$14,196.57	88.73%
The average direct cost per MSB examination is below the target due to examiner vacancies throughout FY 2024. Specifically, financial examiner separations occurred during following quarters: two in Q1, one in Q2, and one in Q4 of FY 2024. Despite hiring three new financial examiners, one in Q2, and two in Q3, the net expenditures were lower.			
8. DOLLAR AMOUNT OF PREPAID FUNERAL CONTRACTS IN FORCE (IN BILLIONS)	\$5.0	\$4.9	98.00%
9. NUMBER OF NDS LICENSEES	775	759	97.94%

**Actual Performance for Non-Key Measures
Fiscal Year 2024
For Period Ending August 2024**

Type/Strategy/Measure	2024 Target	2024 YTD	Percent of Annual Target
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Non-Key Measures

10. PERCENTAGE OF NDS LICENSEES CLASSIFIED SAFE AND SOUND	95.00%	97.73%	102.87%
---	--------	--------	---------

1-3-1 APPLICATION PROCESSING

2. # WRITTEN COMPLAINTS CLOSED	250	267	106.80% *
The intake of complaints is derived from the needs of the public which varies. This fiscal year, we received a higher number of complaints overall.			

1-4-1 REGULATORY OVERSIGHT

3. # FC MEETINGS CONVENED	6	6	100.00%
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1-5-1 OPERATIONAL EFFICIENCY

2. % REGULAR EMPLOYEES SEPARATED (EXCLUDING RETIREMENTS)	9.00%	10.98%	122.00% *
Fiscal year 2024 turnover is higher than the target due to workforce factors related to external labor force competition that increased resignations.			

*Varies by 5% or more from target.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

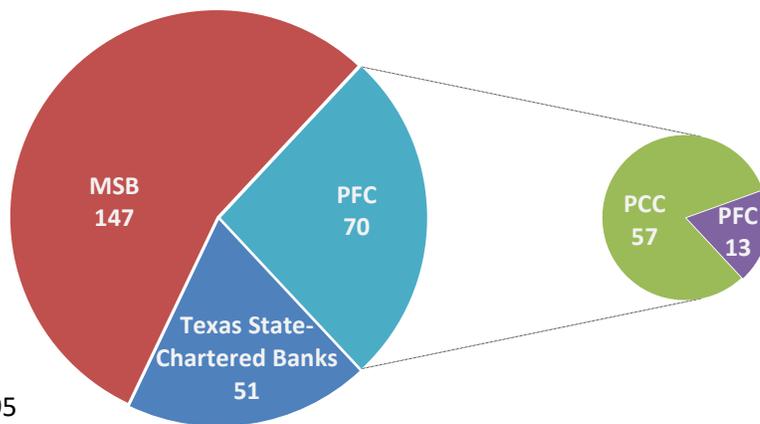
2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 /877-276-5554

www.dob.texas.gov

To: Finance Commission Members
From: Phil Lena, Financial Analyst
Date: October 3, 2024
Subject: Summary of the Strategic Support Division Activities

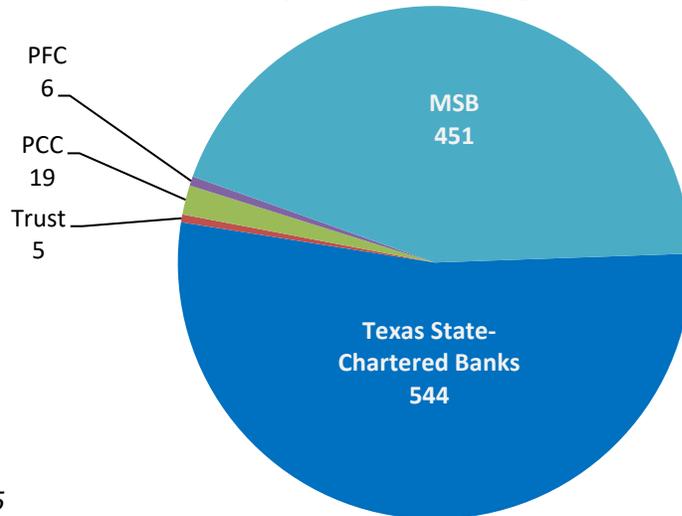
Jurisdictional Written Complaints September 2023-August 2024



Recoveries = \$294,502.95

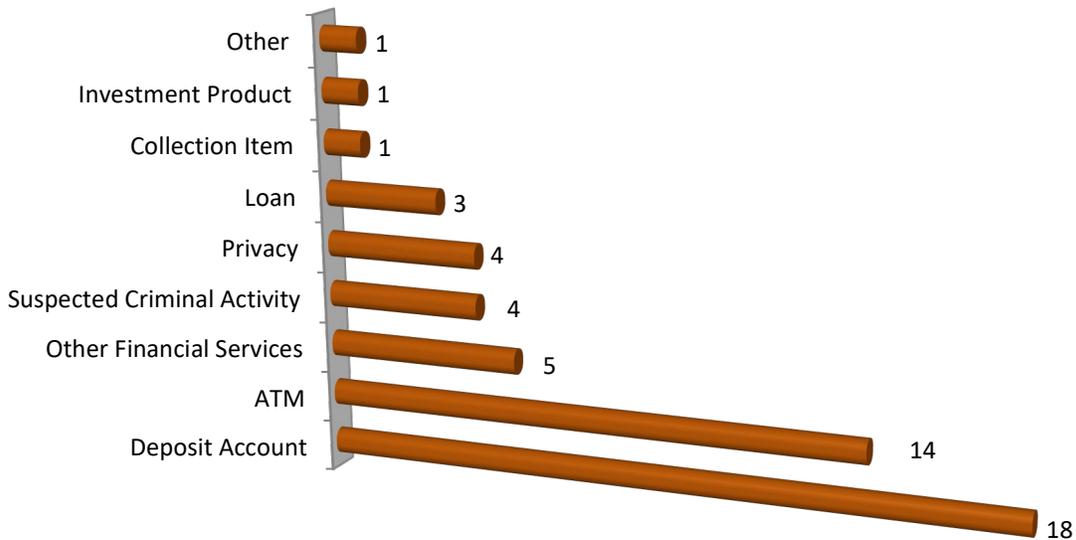
Total = 268

Inquiries on Jurisdictional Entities September 2023-August 2024



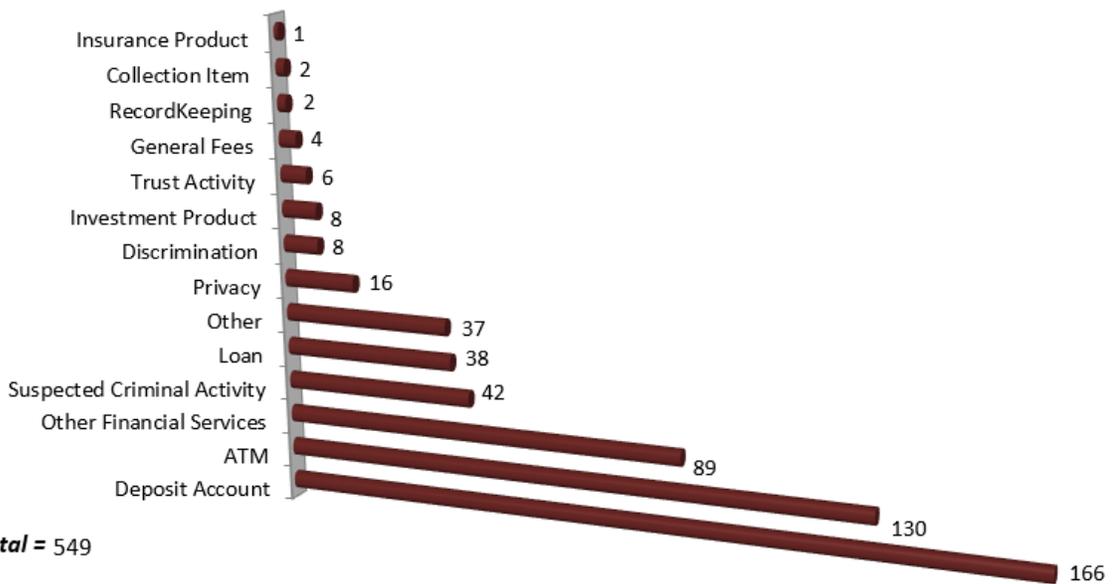
Total = 1,025

**State-Chartered Banks and Trust Companies
 Written Complaints by Type
 September 2023-August 2024**



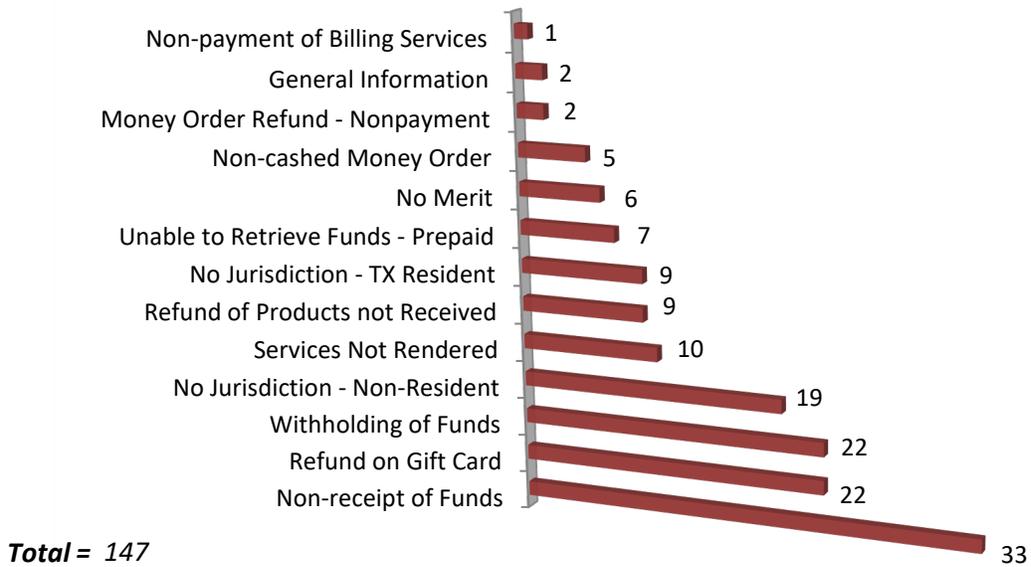
Total = 51

**State-Chartered Banks and Trust Companies
 Inquiries by Type
 September 2023-August 2024**

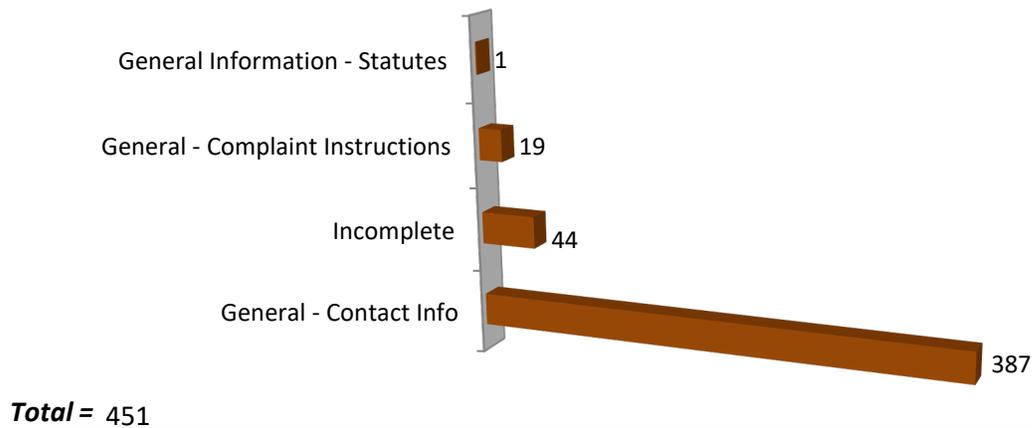


Total = 549

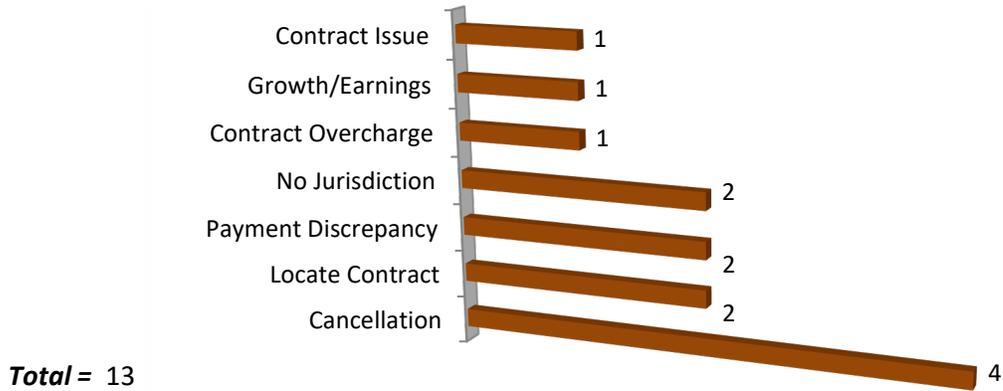
**Money Services Businesses
 Written Complaints by Type
 September 2023-August 2024**



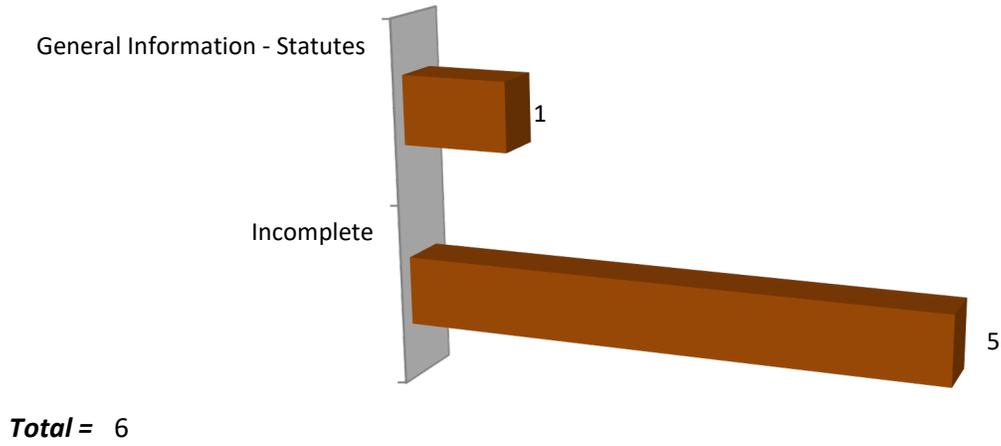
**Money Services Businesses
 Inquiries by Type
 September 2023-August 2024**



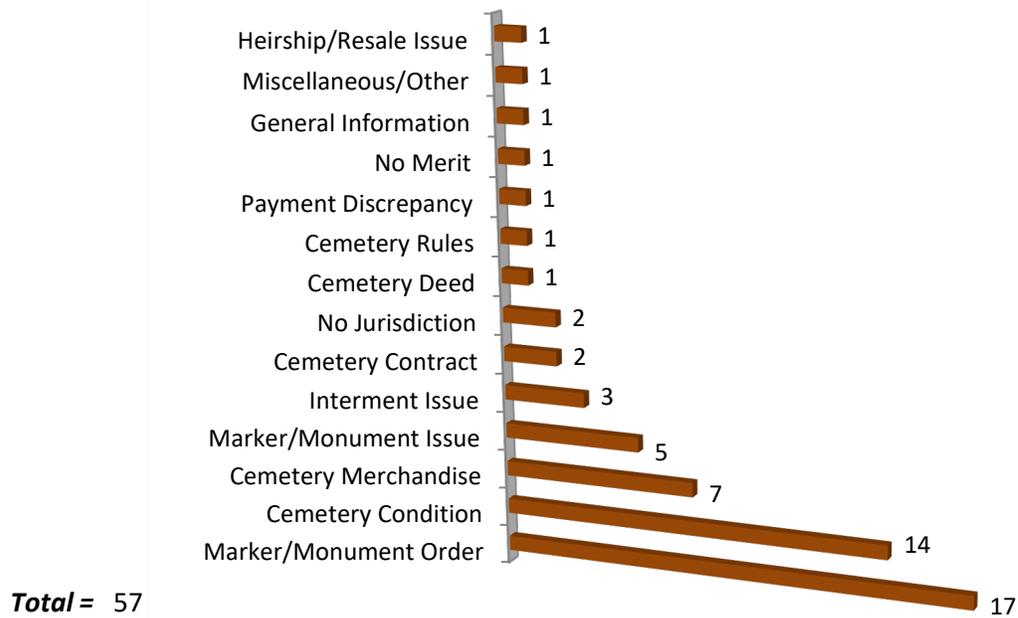
Prepaid Funeral Contract Sellers Written Complaints by Type September 2023-August 2024



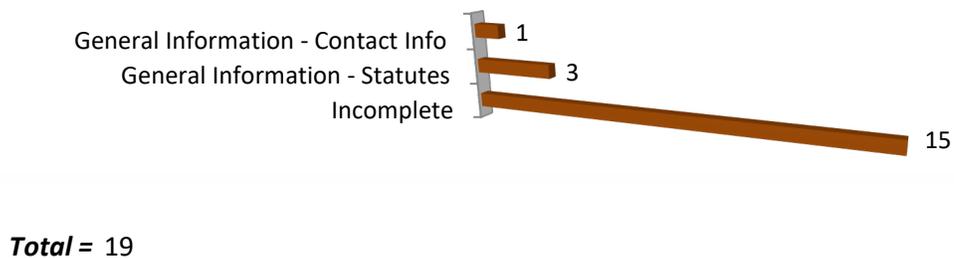
Prepaid Funeral Contract Sellers Inquiries by Type September 2023-August 2024



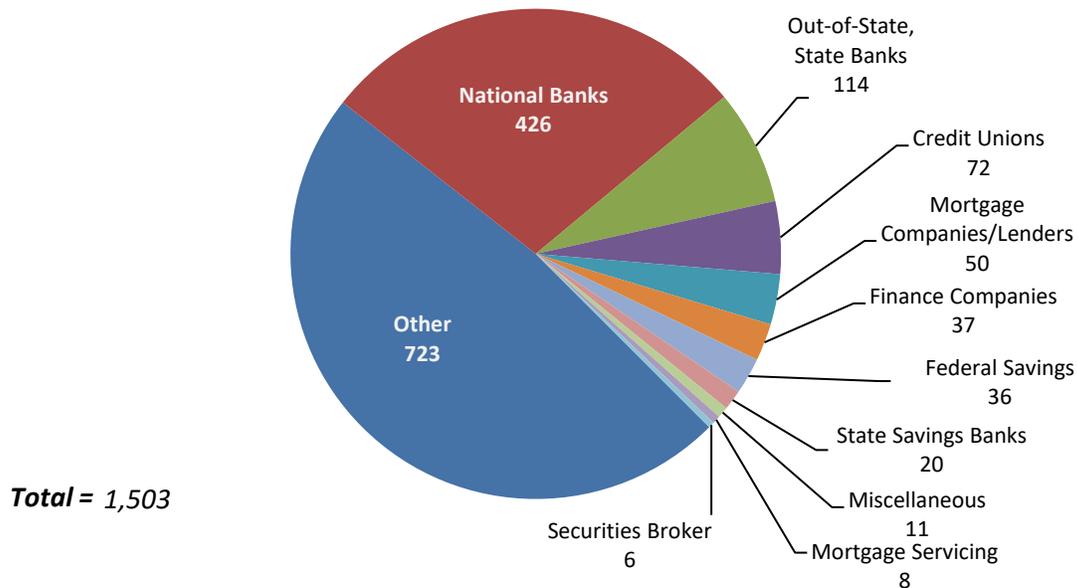
**Perpetual Care Cemeteries
Written Complaints by Type
September 2023-August 2024**



**Perpetual Care Cemeteries
Inquiries by Type
September 2023-August 2024**



Complaints and Inquiries Against Non-Jurisdictional Entities September 2023-August 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.
State-Chartered Banks				
Avg. Number of Days to Close a Written Complaint	17	16	16	15
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	14	14	11	14
Trust				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	N/A	N/A
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	N/A	N/A
Number of Written Complaints Resolved	N/A	N/A	N/A	N/A
PFC/PCC			-	-
Avg. Number of Days to Close a Written Complaint	39	35	30	28
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	24	7	20	20
MSB			-	-
Avg. Number of Days to Close a Written Complaint	21	19	18	18
Percentage of Written Complaints Resolved Within 90 days	100%	100%	100%	100%
Number of Written Complaints Resolved	34	32	45	33

Closed Account Notification System (CANS) Activity
January 1, 2020 – August 31, 2024

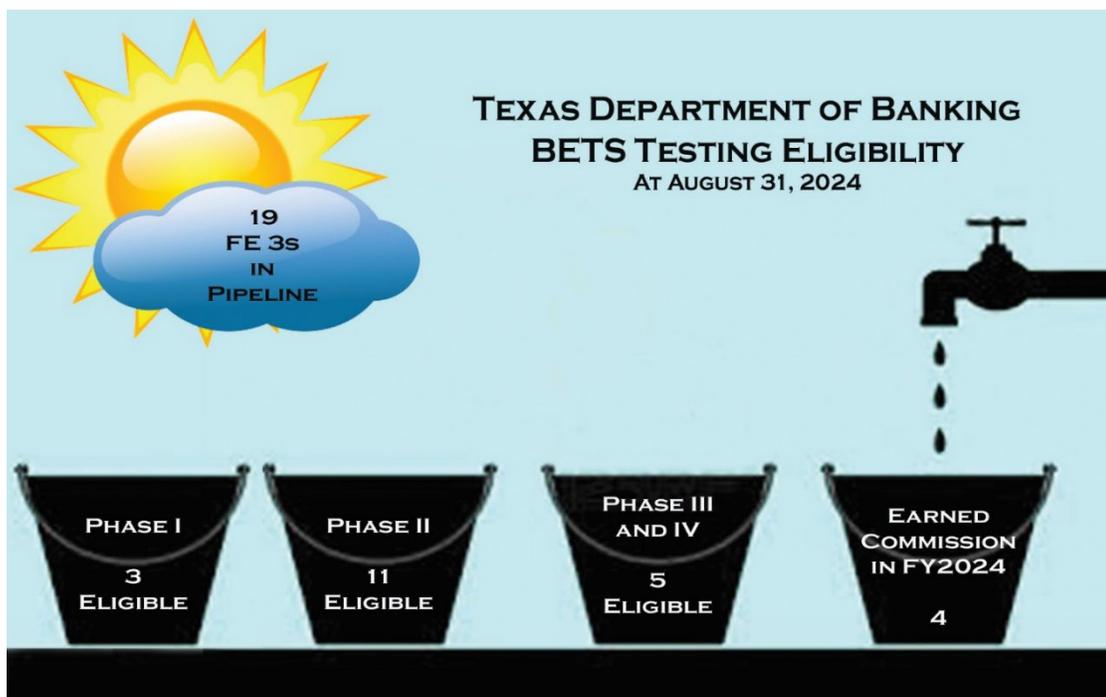
Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	183	452
Texas State-Chartered Savings Banks	23	68
Federal Savings Banks	10	0
State Credit Unions	135	822
Federal Credit Unions	229	657
National Banks	171	106
Out-of-State State-Chartered Banks	12	73
Out-of-State National Banks	6	0
Total	769	2,178

Bank Examination Testing System (BETS) Activity
Number of Candidates Passing Each Phase

	FY 2022	FY 2023	FY 2024	FY 2025 As of 9/30/2024
I. General Knowledge	5	4	8	1
II. Loan Analysis	3	3	5	0
III. Panel	3	4	4	1
IV. Test Bank	3	6	3	1
Total FE3	13	14	14	15

Promotions

<i>Commissioned Examiners</i>	3	5	4	0
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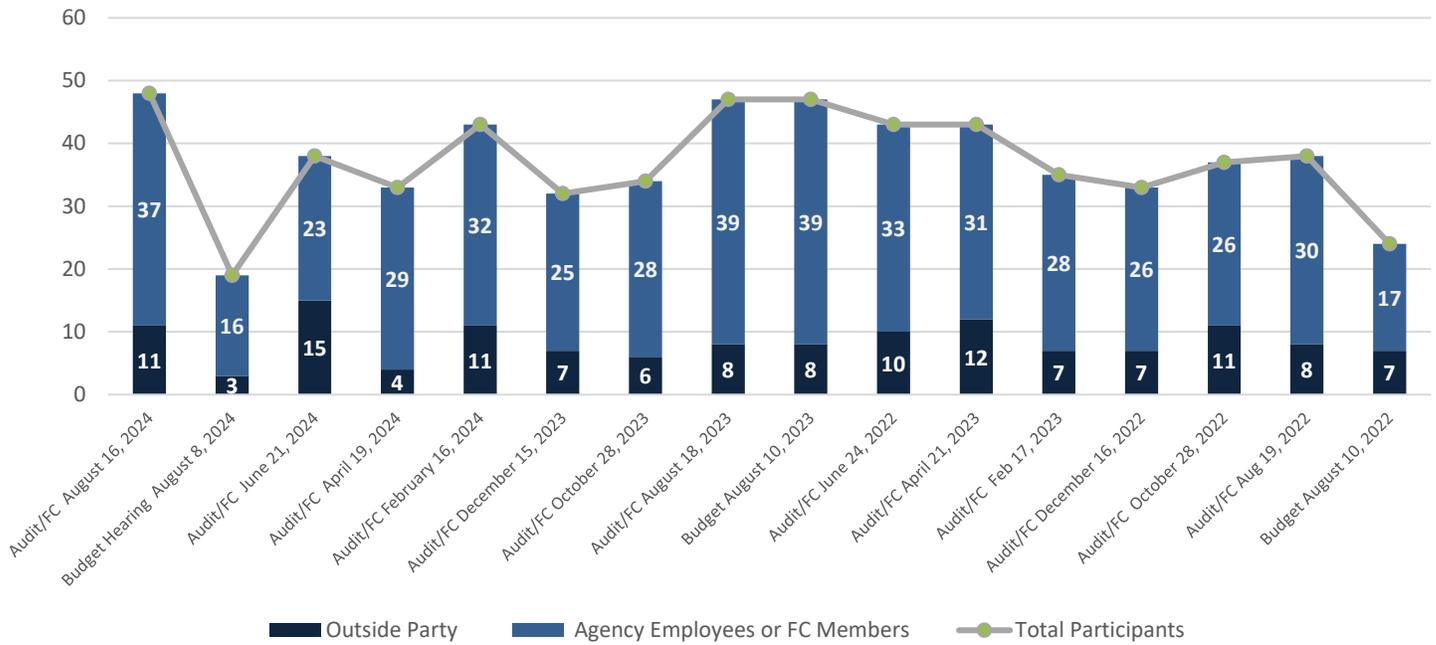


Other Divisional Items:

- **Accreditation:**
 - The CSBS Review Team is conducting virtual interviews on October 8 and the on-site review on October 15-17, 2024. The assessment encompasses agency operations and supervisory activities for both bank and trust and money services business supervision.
- **Publications:**
 - The following were issued with June 30, 2024 financial data:
 - The October 2024 edition of the [Texas Bank Report](#) – The edition focuses on information technology, the CSBS Accreditation process, financial education and more.
 - [Agency Profile](#) – An overview of the Department and its regulated and licensed entities.
 - [Texas Banking Activity](#) – Contains all state and national banking activity in Texas.
 - [Top 100 Banks](#) – List of Texas banks by asset size.
- **Training:**
 - The second financial examiner training class is in its fourth month. Sessions have been held in Round Rock and Allen, Texas. The program ends in early December.
- **Policy Revisions/Updates:**
 - Administrative Memorandums (AM)
 - AM 2027 – Investment Policy for Funds Under the Oversight of the Finance Commission of Texas (July)
 - AM 2043 – Visitations and Interim Risk Examination and Assessment Programs (August)
 - AM 2047 – Strategic Planning (August)
 - AM 2009 – Examination Report Submission and Processing (September)
 - AM 2011 – Subpoenas (September)
 - AM 2012 – Policy on Utilization of Historically Underutilized Businesses (HUB) (September)
 - AM 2023 – Website (Internet) and DOBIE (Intranet) Maintenance Policy (September)
 - AM 2048 – External Website Accessibility Standards (September)
 - 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)
- SM 1013 – Sharing Examination Reports with a Bank (August)
- SM 1022 – Examination Rating System for Money Services Businesses (August)
- SM 1023 – Examination Frequency Policy for Money Services Businesses (August)
- 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, August, September)
 - Updated Commercial Request List (September)
 - Published finalized examination modernization procedures.
 - Planning (September)
 - Overdrafts (September)
 - Released examination modernization procedures for field testing.
 - Interbank Liabilities (September)
 - Other Assets and Liabilities (September)
 - Cash, Collections, and Deposit Operations (September)
- *Website Statistics for Fiscal Year 2024:*
 - The Department of Banking website had 465,682 unique pageviews of the homepage. The top three pages were the Entity Search (17,975 pageviews), Consumer Information (35,273 pageviews) and Contact Us (18,595 pageviews). The Financial Education webpage had 2,677 pageviews during the same period. Users are accessing the site via Desktop (361,178), mobile (100,838), tablet devices (100,838) and smart tv (12).
 - The Finance Commission website had 26,236 Unique page views. The top three visited pages were the Home Page (22,181 pageviews), Finance Commission Meetings (4,705 pageviews), and Regulatory References (4,235 pageviews). Users are accessing the site via desktop (96,968), mobile (6,231), and tablet devices (75) and smart tv (2).
 - The Texas Prepaid Funeral Contracts website had 184,298 pageviews of the homepage. The top three pages after the home page were General Information (21,711 pageviews), Prepaid Planning Brochure (18,148 pageviews) and Contract Forms (12,967 pageviews). Users are accessing the site via desktop (118,188), mobile (22,287), tablet devices (939) and smart tv (3).

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

To: Finance Commission Members
From: Robert Nichols, General Counsel
Date: October 3, 2024
Subject: Legal Division Update

Legislative Matters

On September 19, 2024, General Counsel Robert Nichols and Deputy General Counsel Marcus Adams appeared before the Texas House of Representatives Committee on Pensions, Investments & Financial Services to provide testimony regarding HB 1666, which is now codified as Texas Finance Code, Chapter 160.

Orders Issued August 1, 2024 – September 30, 2024

The Commissioner issued one enforcement order during this period:

Non-Depository Supervision

- Consent Order dated September 10, 2024; CoinZoom, Inc., Salt Lake City, Utah

Public Information Requests

From August 1, 2024, through September 30, 2024, staff received and responded to 16 requests for public information addressed to the Department of Banking and received 11 inquiries through the “Ask a Question” feature. During the same period, we received no public information requests addressed to the Finance Commission.

Gifts

Commissioner Cooper, as a member of the Board of Trustees of the Southwestern Graduate School of Banking (SWGSB) attended the board meeting and the 158th Assembly of Bank Directors, August 21-24, 2024, in Coeur d’Alene, Idaho. The Foundation paid for the Commissioner’s travel, lodging, and per diem in the amount of \$1,795.32.

Commissioner Cooper participated as a panelist at the Southwest Association of Bank Counsel (SWABC) 2024 Annual Legal Conference, September 11-13, 2024, in Austin, Texas. The registration fee of \$625 was waived.

On September 26, 2024, Commissioner Cooper attended the Federal Financial Institutions Examination Council (FFIEC) meeting in Washington, D.C. The FFIEC paid his airfare, lodging, and per diem in the total amount of \$732.75. The Commissioner attended the meeting in his role as the current State Liaison Committee (SLC) Chair.

FY 2024 Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
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

TRUST COMPANY				
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

MONEY SERVICES BUSINESS				
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

PERPETUAL CARE CEMETERY				
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

PREPAID FUNERAL CONTRACT				
Consent Order	0	0	1	0
Cease & Desist	0	2	1	0
Final Order	0	0	0	0
Total	0	2	2	0

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C.

**Office of Consumer Credit
Commissioner**

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Consumer Protection and Consumer Assistance Report

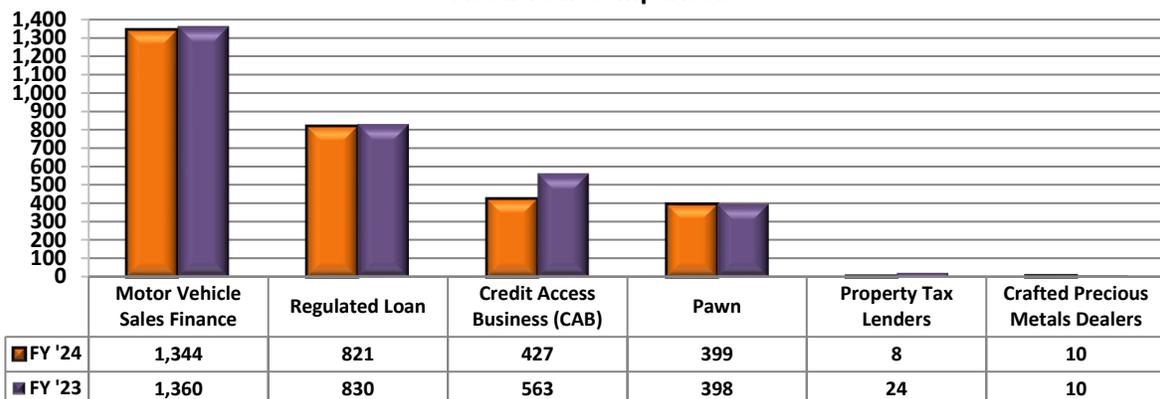
The OCCC completed 3,009 examinations in FY 2024, 100.3% of the targeted number of examinations. Within examination types, production goals were met for 342-E, Mortgage, and Motor Vehicle examinations, but not for 342-F, Pawn Shop, and Property Tax Lender examinations. This is the result primarily from turnover of four examiners tasked with 342-F and Pawnshop examinations. All Regulated Industries reported compliance ratings above 85%. The agency is focused on conducting more Property Tax examinations in FY 2025. Substantial advanced training and managerial planning efforts have been invested to broaden examiner participation in Property Tax Examinations in FY 2025.

The OCCC is proud of its participation in the multi-state mortgage program. Additionally, the agency was especially proud to participate in and complete a joint examination with the Texas Department of Savings and Mortgage Lending. There is no carryover of incomplete multi-state mortgage examinations at the end of the fiscal year. The OCCC has committed to participate and lead two multi-state auto finance examinations in FY 2025. These examinations will be conducted using the State Exam System (SES).

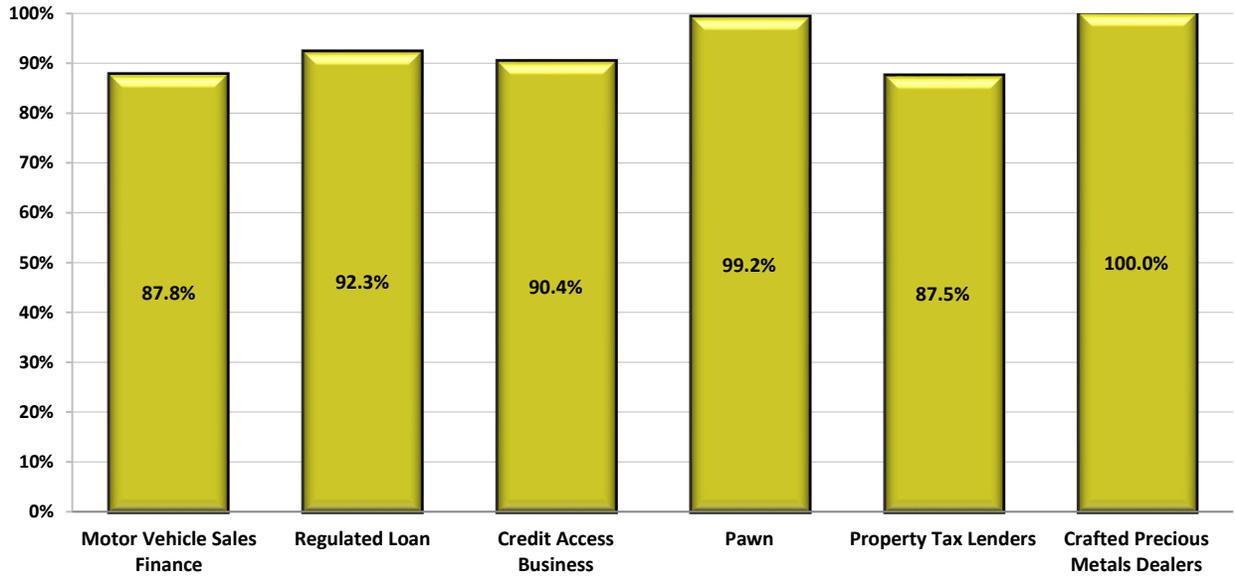
The agency continued its adoption of SES during FY 2024. All mortgage examinations were conducted and completed in SES during FY 2024. As FY 2025 begins, the OCCC is completing its first auto finance and regulated loan examinations in SES. The motor vehicle examination should finalize by the end of October.

The examination department continues to prioritize examiner training and development. The June 2024 examiner class has been certified in Chapter 348 examinations and are conducting these examinations while continuing to gain agency experience. The next training for this group will be Chapter 342 regulated lending examinations.

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

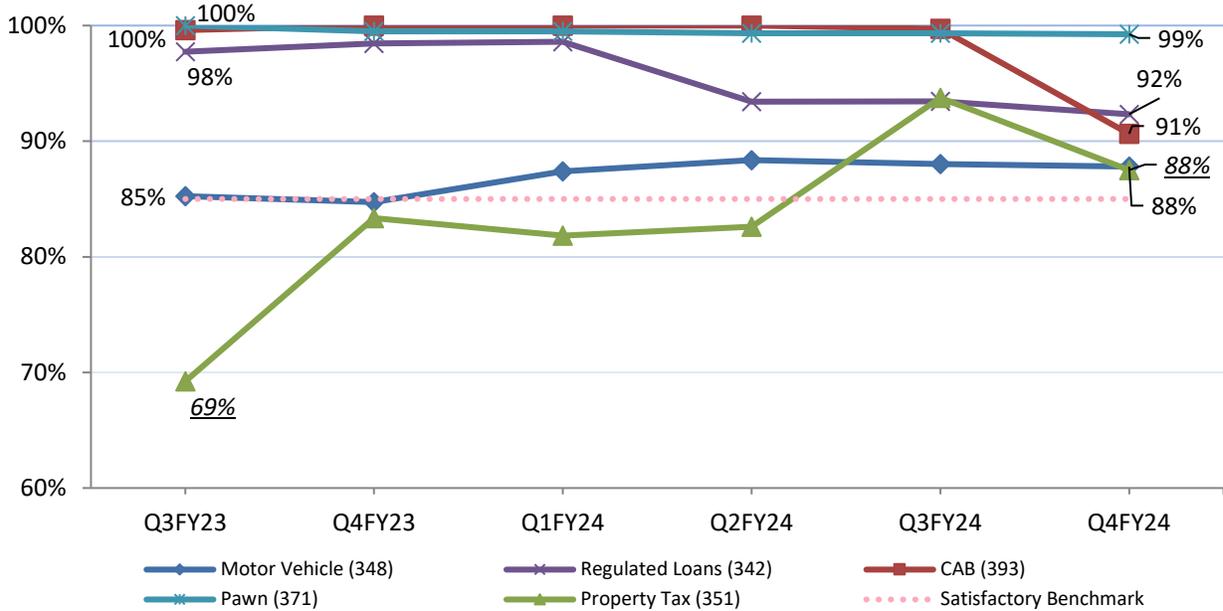


**Acceptable Level of Compliance FY '24
(Sept 2023 - Aug 2024)**



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

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



Investigations

For FY 2024, the OCCC completed 75 investigations out of the annual goal of 75. Motor Vehicle Sales Finance issues comprise 52% of the overall number of completed investigations.

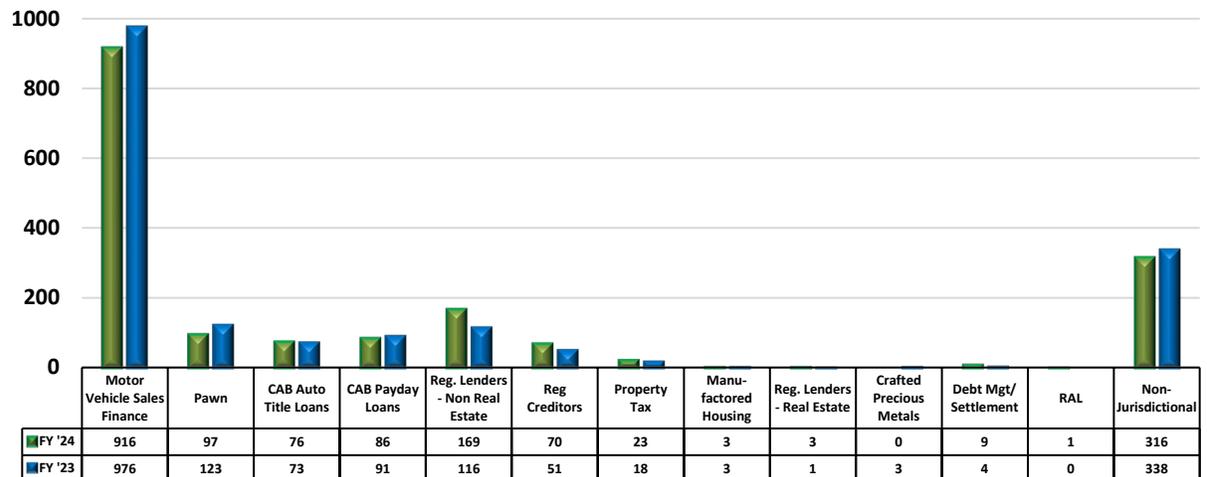
Investigations Completed
FY '24: Sept 2023 - Aug 2024 Total: 75
FY '23: Sept 2022 - Aug 2023 Total: 75



Consumer Assistance

During Fiscal Year 2024, 1769 complaints were closed, of which 316 were non-jurisdictional. The top area of jurisdictional complaints was Motor Vehicle Sales Finance, followed by Regulated Lenders – Non-Real Estate, Credit Access Businesses and Pawnshops. Motor Vehicle Sales Finance complaints accounted for 51.8% of all complaints, down from 54.3% of all complaints during FY '23. The second largest category was Regulated Lenders – Non-Real Estate at 9.6%, CAB complaints were third at 9.2% collectively, separately this was 4.9% for payday loans and 4.3% for title loans. The fourth largest complaint category was Pawnshops at 5.5%.

Complaints Closed
FY '24: Sept 2023 - Aug 2024 Total 1769
FY '23: Sept 2022 - Aug 2023 Total 1797



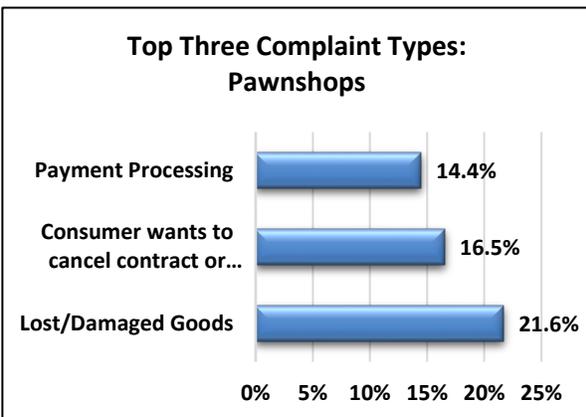
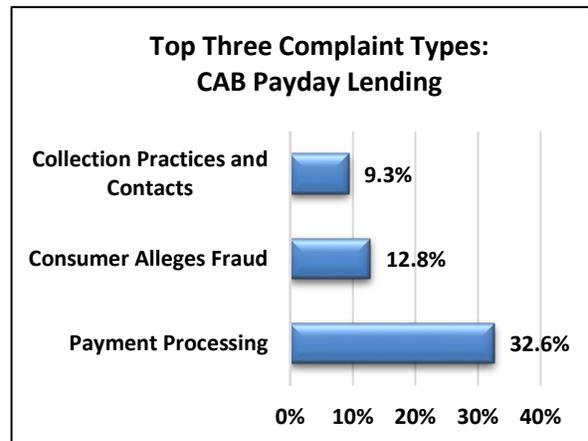
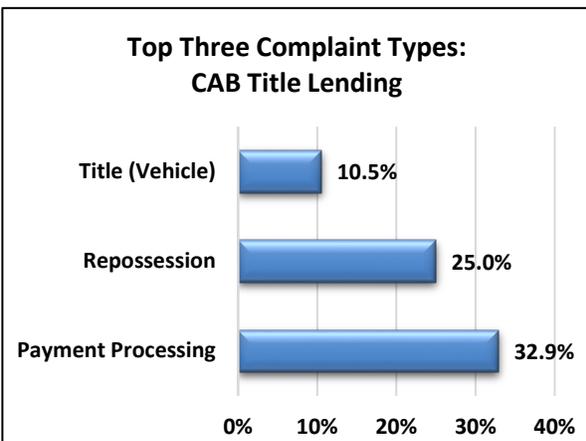
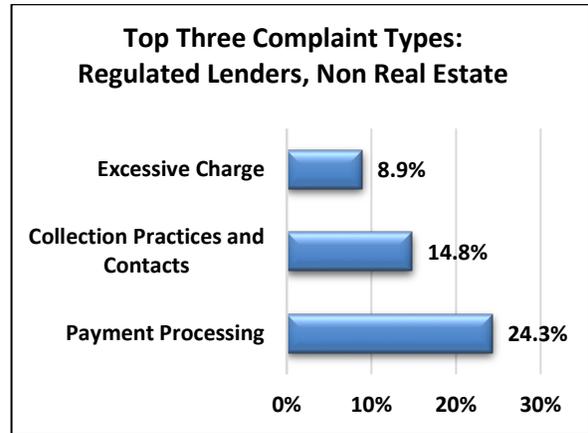
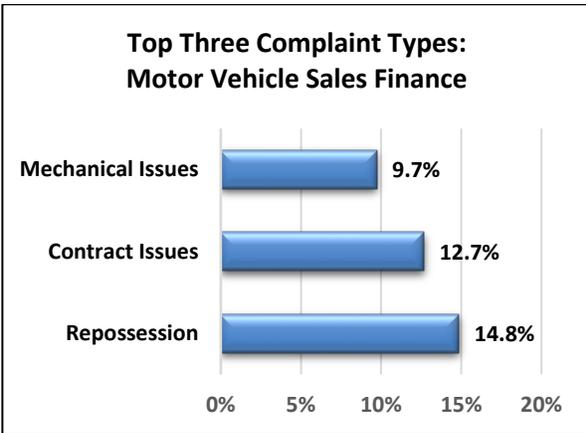
Fiscal Year 2024: Number of Complaints Closed by Source (Table 1), Subject (Table 2), and Disposition (Table 3)

Source of Complaint	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Consumer	421	374	404	367
Business	3	2	6	3
Law Enforcement	0	0	1	0
State or Federal Agency	78	31	45	26
OCCC	4	2	0	1
Whistleblower	0	0	0	0
Other	0	1	0	0
Total	506	410	456	397

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	284	203	241	188
CAB Payday Loans	18	17	26	25
CAB Auto Title Loans	25	23	17	11
Reg. Lenders - Non-Real Estate	35	41	41	52
Pawn	18	27	30	22
Registered Creditors	22	14	21	13
Crafted Precious Metal Dealers	0	0	0	0
Regulated Lenders - Real Estate	0	1	0	2
Manufactured Housing	1	2	0	0
Property Tax Lenders	5	3	5	10
Debt Management/Settlement	2	1	5	1
Refund Anticipation Loan	0	0	0	1
Non-Jurisdictional	96	78	69	72
Commercial Motor Vehicle Sales Finance	0	0	1	0
Total	506	410	456	397

Disposition	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	8	3	8	1
Closed to Legal	0	0	0	0
Closed -Action Taken	60	57	58	46
Closed -No Violation	208	154	173	129
Closed - Administratively	134	118	146	149
Closed - Non-Jurisdictional	96	78	71	72
Total	506	410	456	397

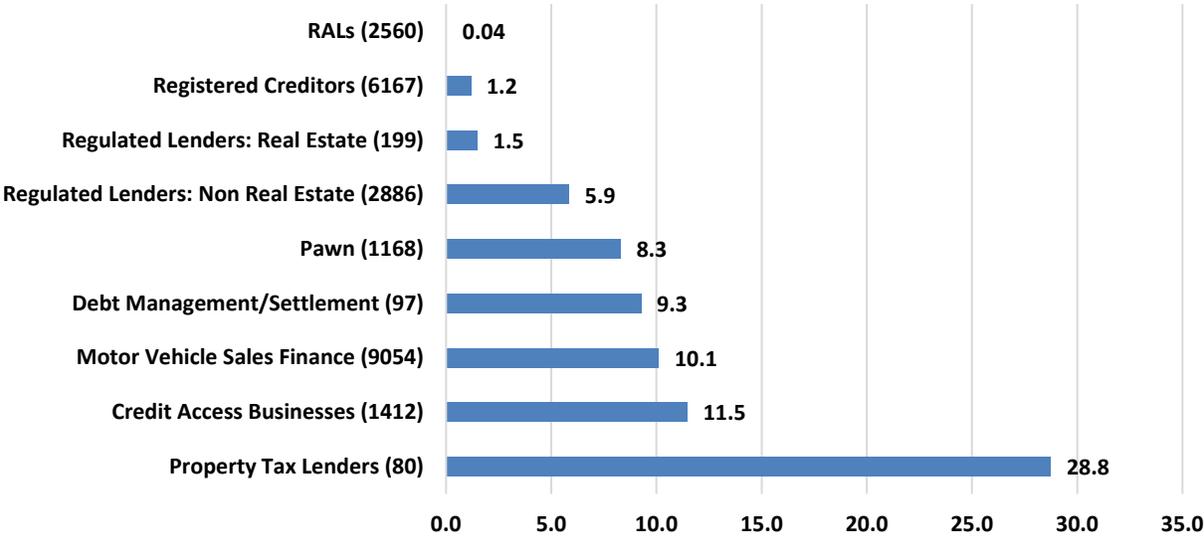
The following charts represent the top three complaint areas per license type. Allegations regarding violations related to payment processing appear in the top three complaint types for 4 of the 5 license types.



Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Percentage of Written Complaints Closed within 90 days	96.1%	97.4%	96.5%	97.7%
Average Number of Days to Close a Complaint	39.2	35.4	36.8	36.1
Number of Complaints Closed	506	410	456	397

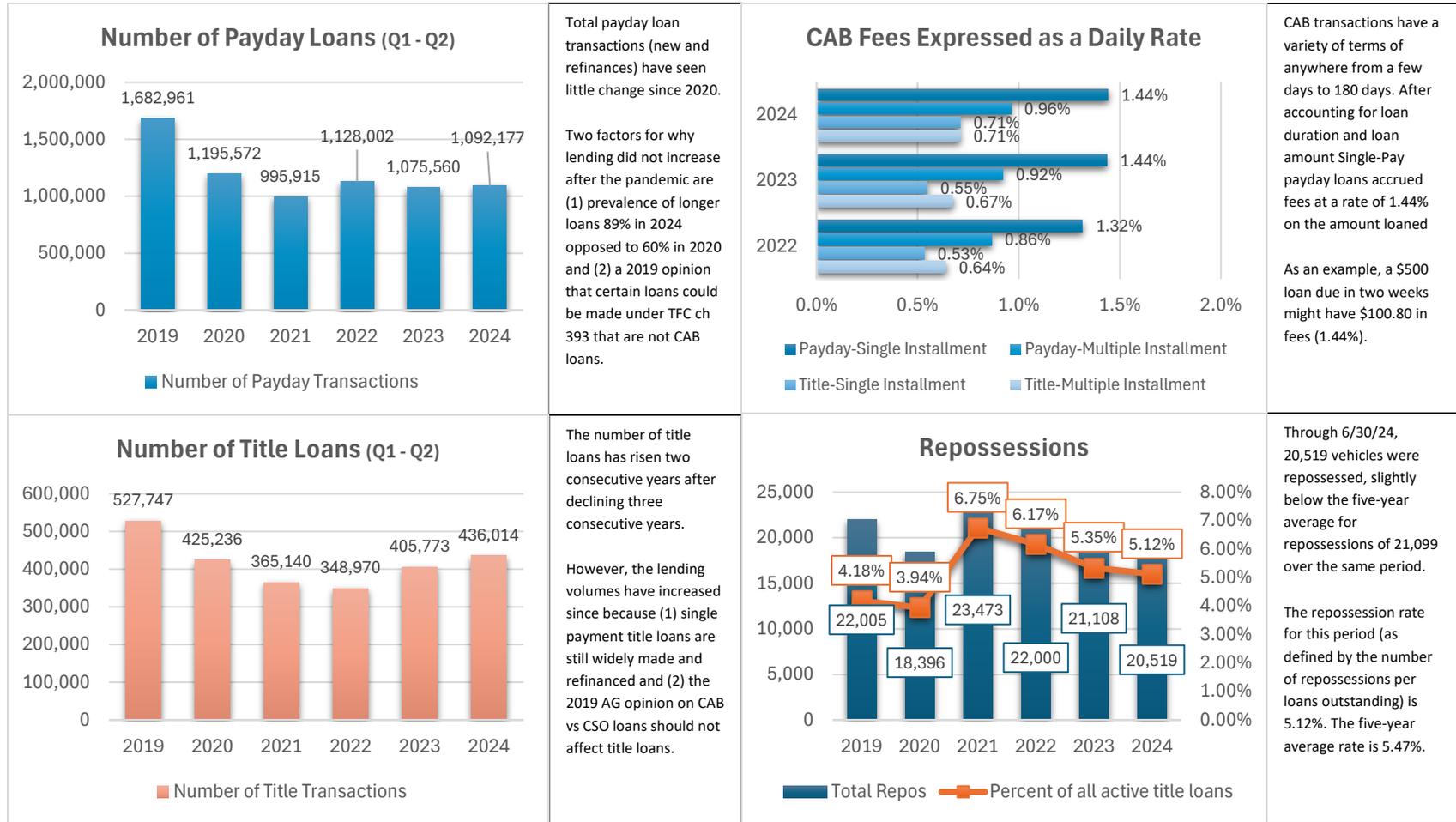
Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. For this reporting period, the highest ratio of complaints to active license/registrants is Property Tax Lenders, followed by Credit Access Businesses, Motor Vehicle Sales Finance,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

**Ratio of Complaints to Total Active Licenses and Registrants
FY '24: Sept 2023 - Aug 2024**



CAB Reporting Update

Credit Access Businesses (CABs) quarterly transactional reports are currently compiled through Q2 2024. Presented are selected statistics through the second quarter of recent years. In 2024, the reported totals remain similar to other pandemic and post-pandemic years. The following dashboard shows volume, fee, and repossession frequency. More information on other key metrics is provided in the chart on the next page.



CAB Reporting Update

Data Highlights (All Loan Types) Q1-Q2 Comparison	2024	2023	2022	2021	2020	2019
Number of new payday loans	782,891	809,989	820,368	708,826	704,447	985,394
Number of new auto title loans	117,662	107,534	105,843	90,573	89,048	140,604
Percentage of payday loans due in multiple installments	90%	90%	83%	70%	61%	56%
Percentage of auto title loans due in multiple installments	36%	44%	48%	45%	54%	58%
Number of vehicles repossessed under all auto title loans	20,519	21,108	22,000	23,473	18,396	22,005
Total number of locations reporting activity	1,467	1,232	1,347	1,454	1,538	1,756

Payday Loans Q1-Q2	Single Installment			Multiple Installment		
	2024	2023	2022	2024	2023	2022
Number of consumers obtaining loans	54,040	55,695	97,280	600,210	642,877	593,638
Number of new loans	80,207	82,379	140,657	702,684	727,610	679,711
Number of total refinances ¹	87,112	91,489	154,000	222,174	172,582	153,634
Average loan amount	\$515	\$511	\$506	\$664	\$635	\$593
Average fee per \$100 borrowed	\$27	\$27	\$27	\$114	\$119	\$125
Average original term (in days)	19	19	20	119	129	145
Average Fee Converted to a Daily Rate ²	1.44%	1.44%	1.32%	0.96%	0.92%	0.86%

Title Loans Q1-Q2	Single Installment			Multiple Installment		
	2024	2023	2022	2024	2023	2022
Number of consumers obtaining loans	51,364	46,114	44,451	39,976	43,768	47,089
Number of new loans	74,884	60,735	55,540	42,778	46,799	50,303
Number of total refinances ¹	274,294	252,699	199,368	44,058	45,540	43,759
Average loan amount	\$1,429	\$1,559	\$1,784	\$1,560	\$1,672	\$1,651
Average fee per \$100 borrowed	\$21	\$17	\$16	\$108	\$105	\$103
Average original term (in days)	30	30	31	152	156	162
Average Fee Converted to a Daily Rate ²	0.71%	0.55%	0.53%	0.71%	0.67%	0.64%

¹Number of loans and refinances are the sum of quarterly report #10F.

²Customers are reported on the annual report item #5. They are unique to each product type and to each location. Depending on customer borrowing habits they may be counted more than once.

³Based on averages, per dollar borrowed a consumer would pay this percentage per day. The APR could be approximated by multiplying this rate by 365; however, it could be significantly higher if the multiple installment loans reduce principal with each payment and the total fees remain the same.

⁴Equation: \sum Quarterly 10F / Annual Report #5. Effects on the estimation include (1) Single store reporting can count customers more than once if obtaining loans at different stores (2) Total transactions in 10F could be made to some customers who aren't counted in this year's customer count. e.g. They are refinancing loans made in the prior year.

Licensing Department Report

Mirand Diamond, Director of Licensing, Finance & HR

October 2024

Renewals Report

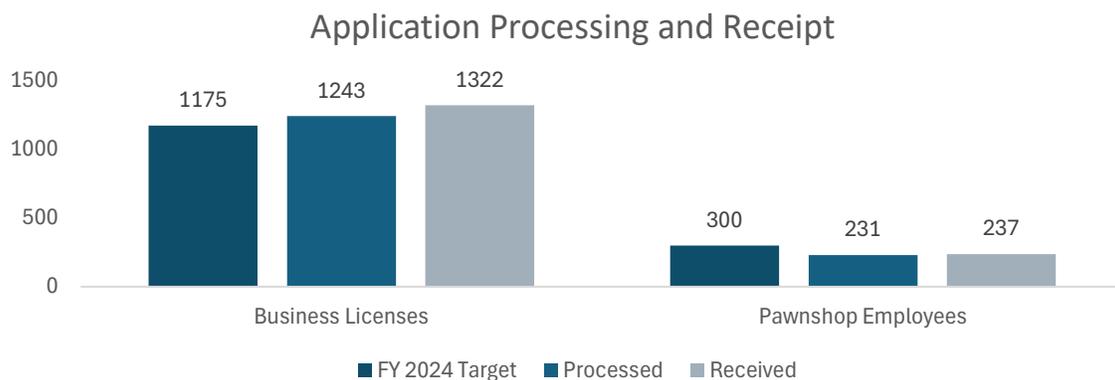
The department is currently in the process of renewing over 9,000 licenses for both motor vehicle sales finance licenses and commercial motor vehicle sales finance licenses. As of the first week of October, approximately 40% of motor vehicle sales finance licenses have been renewed. It is estimated that 90% of both groups will complete their renewals by the end of the renewal period.

Additionally, registration renewal for registered creditors is now open, with an estimated 80% renewal rate based on historical trends.

In preparation for the renewal period starting in November, the department will begin analyzing the discount rate for regulated lenders in October.

Application Processing

The following chart includes application processing and receipt information for FY 2024.

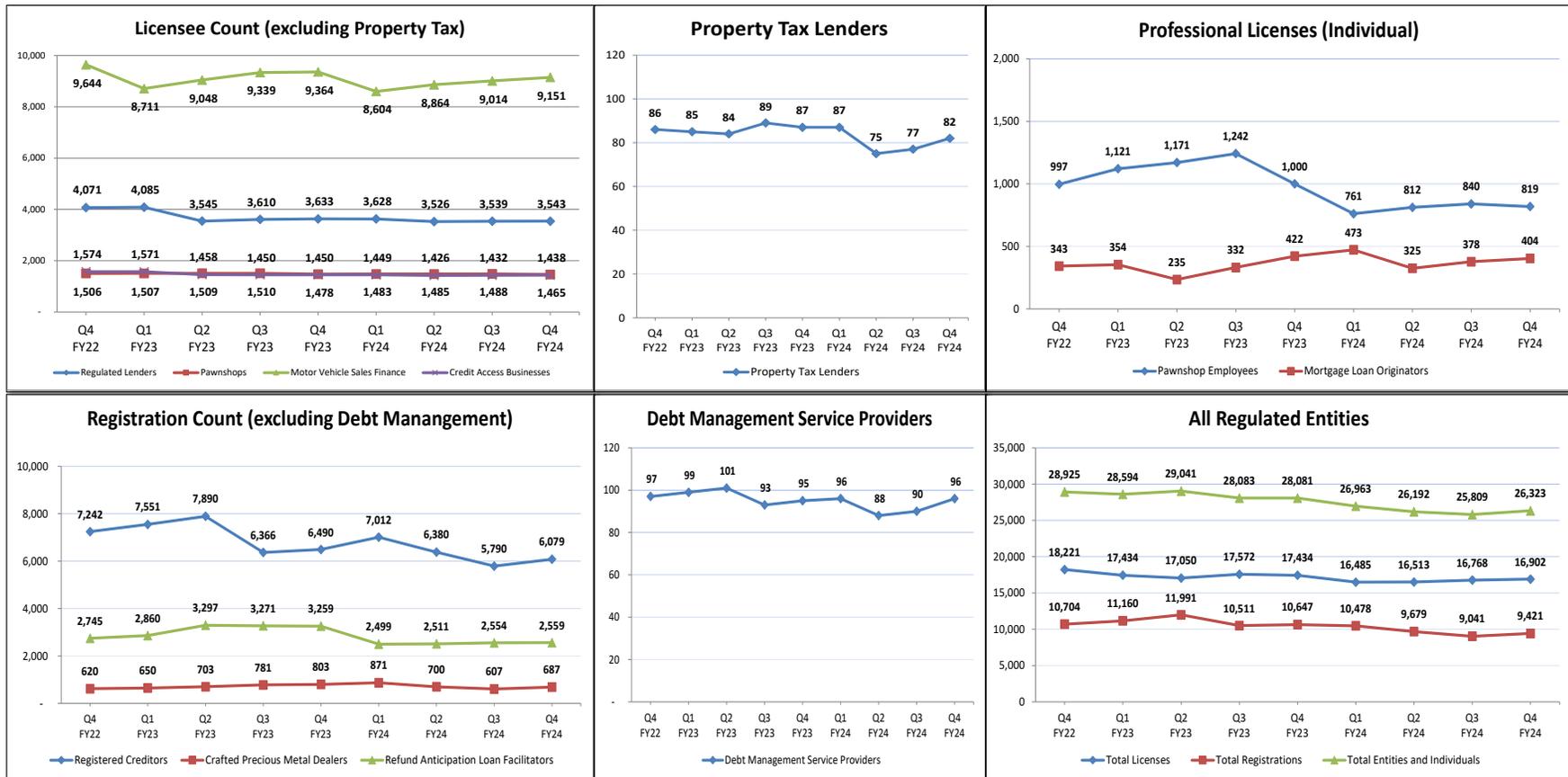


Other Updates

Digitization of Historical Paper Files

The department successfully completed part of the digitization project in collaboration with a third-party vendor. The final project to digitize remaining files is planned for later in FY 25.

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





Administration

Financial Education and TFEF

The agency provided direct educational services to 1018 individuals during FY '24. During this reporting period, the OCCC collaborated with Employees Retirement System (ERS) for a webinar entitled Avoiding Financial Exploitation, Texas Department of County Retirement Services (TCDRS) for a webinar regarding Consumer Credit, conducted a Financial Exploitation seminar at Glazier Senior Center, and are in the planning stages of a collaboration with the Department of Banking for a webinar to be held in November.

The 2022-2023 TFEF cycle Impact Report has been published and is available elsewhere in these materials. Overall, during the 2022-2023 cycle, TFEF reimbursed organizations nearly \$400,000 in grant funds. Additionally, the first semi-annual report of the 2024-2025 cycle was published. A total of \$113,897.06 in reimbursements has been processed for the first grant reporting period of the 2024-2025 cycle.

Communication

Agency leadership hosted a quarterly town hall on September 6th to provide employees with department updates, fiscal year recaps, and priorities for FY '25. Additionally, during the week of September 16-20, the Consumer Protection department held its annual Examiner Conference and Training School.

In September of 2024, the following policies were updated:

Human Resources

- Personnel Recruitment and Selection
- Criminal Background Investigation
- Compensation and Classification
- Employee Performance
- Disciplinary Matters
- EEO and Sexual Harassment
- ADA
- Pregnancy Accommodation
- Nursing Mothers Accommodation
- Religious Accommodation

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

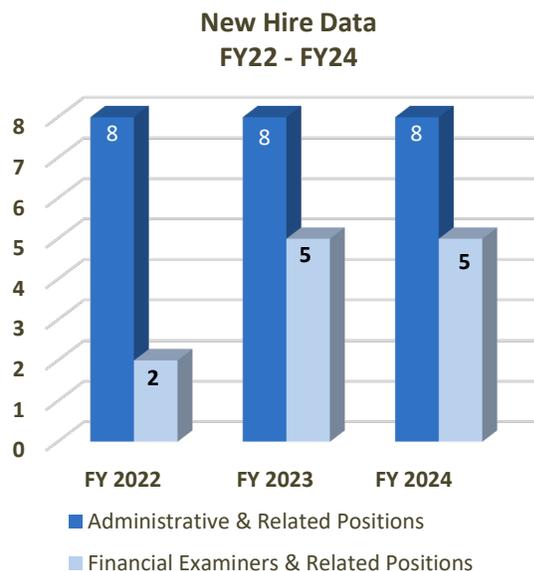
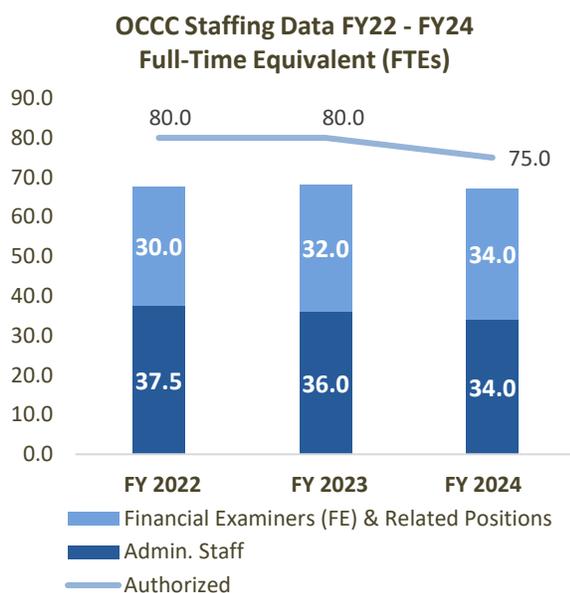
- On August 8, 2024, Financial Examiner Fancher and Financial Examiner Traweek provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On August 14-15, 2024, General Counsel Nance attended the annual meeting of the American Conference of Uniform Consumer Credit Code States (ACUCCCS). The OCCC was admitted as a member of ACUCCCS.
- On September 10-13, 2024, General Counsel Nance presented at the National Association of Consumer Credit Administrators (NACCA) Consumer Services and Examiners' School.
- On September 9, 2024, Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On September 20, 2024, General Counsel Nance attended the Texas Department of Motor Vehicles (TxDMV) Customer Service and Protection Advisory Committee meeting.
- On September 26, 2024, Commissioner Pettijohn, Director Lewis, and General Counsel Nance presented at the annual meeting of the Texas Property Tax Lienholders Association (TPTLA).
- On October 3, 2024, Financial Examiner Fancher and Financial Examiner Traweek provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).

Human Resources

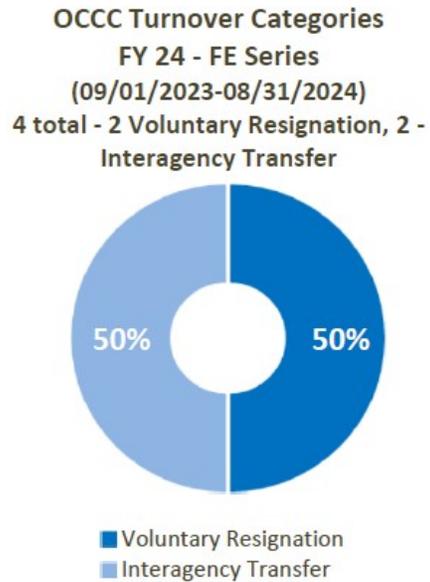
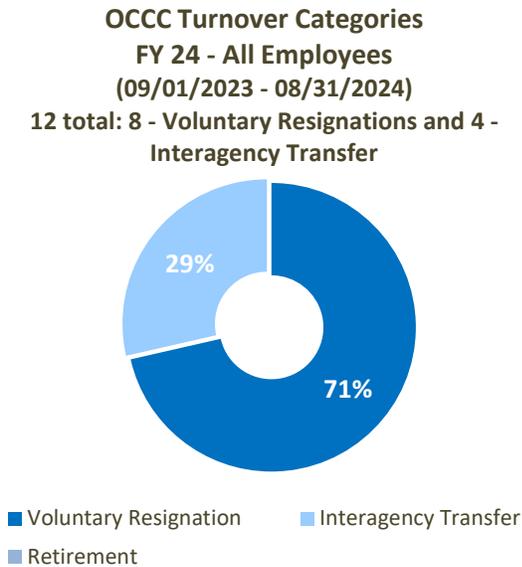
As of August 31, 2024, the OCCC was staffed with a total of 68 FTEs. During FY2024, 13 vacancies were filled, which included exam support staff, financial examiners, and other positions.

As of August 31, 2024, the OCCC does not have any posted vacant positions.

The following charts represent staffing data for fiscal years 2022-2024.



The turnover ratio as of 08/31/2024, was 18.67%. The charts below represent FY24 data.



Information Technology (October 2024)

Technology modernization and IT operations

Historical licensing files, representing approximately 150 cu. ft., were successfully digitized and uploaded into App Enhancer. The annual asset inventory was completed, and appropriate forms submitted to the Comptroller of Public Accounts. The OCCC also documents and attests its PCI compliance annually which was completed in this reporting period.

Cybersecurity

IT policies and procedures restructuring continues. Policies are 99% completed and procedures are over 50% completed. The targeted completion date is the end of the calendar year. October is Cybersecurity Awareness Month. OCCC's education specialist, collaborating with IT, is distributing a daily cybersecurity tip and awareness email to all staff.



Accounting Report- October 2024

Mirand Diamond, Director of Licensing, Finance & HR

Financial Reporting

In compliance with Government Code, Section 2101.011, and in accordance with the requirements established by the Comptroller of Public Accounts, the Annual Financial Report for fiscal year 2024, was completed, except for two items in Notes to the Financial Statements which require reports from Texas Treasury Safekeeping Trust Company which are not yet available.

The fourth quarter of FY 24 ended on August 31 and the quarterly financial statement may be found in the Audit Committee section of this packet.

The budget for FY 2025 was loaded in CAPPs and normal financial activity for FY2025 continues.

Other Items

Pursuant to Government Code Section 661.902(d), the report on emergency leave granted to employees during the prior fiscal year was submitted as prescribed.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of August 31, 2024

	FY 2022	FY 2023	FISCAL YEAR 2024				
			1st QTR	2nd QTR	3rd QTR	4th QTR	FYTD
CONSUMER PROTECTION							
Monies Returned (000)	24,756	13,720	846	1,636	1,100	3,101	6,683
Regulated Lenders Examinations	818	830	148	261	214	198	821
Property Tax Lender Examinations	27	24	1	2	1	4	8
Pawnshop Examinations	638	398	128	117	116	38	399
Motor Vehicle Examinations	1,398	1,360	277	339	366	362	1,344
Credit Access Businesses Examinations	268	563	41	1	152	233	427
Crafted Precious Metal Dealers	10	10	0	6	4	0	10
CONSUMER ASSISTANCE							
Telephone Complaints Received	491	496	115	123	125	129	492
Written Complaints Received	1,252	1,310	325	196	422	304	1,247
Total Complaints Closed	1,751	1,797	506	410	456	397	1,769
% of Written Complaints Closed within 90 Calendar Days	92.3%	92.5%	96.1%	97.4%	96.0%	97.7%	96.7%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	114	124	4	35	21	57	117
Finalized	138	133	52	14	27	54	147
LICENSING AND REGISTRATION							
Licenses							
Regulated Lender Licenses	4,071	3,633	3,628	3,526	3,539	3,543	3,543
Pawnshop Licenses	1,506	1,478	1,483	1,485	1,488	1,465	1,465
Pawnshop Employee Licenses	997	1,000	761	812	840	819	819
Commercial MV Sales Fin. Licenses	59	65	63	66	70	75	75
Motor Vehicle Sales Finance Licenses	9,585	9,364	8,541	8,798	8,944	9,076	9,076
Property Tax Lender Licenses	86	87	87	75	77	82	82
Mortgage Loan Originators	343	422	473	325	378	404	404
Credit Access Business Licenses	1,574	1,450	1,449	1,426	1,432	1,438	1,438
Registrations							
Registered Creditors	7,242	6,490	7,012	6,380	5,790	6,079	6,079
Crafted Precious Metal Dealers	620	803	871	700	607	687	687
Debt Management Service Providers	97	95	96	88	90	96	96
Refund Anticipation Loan Facilitators	2,745	3,259	2,499	2,511	2,554	2,559	2,559
Applications							
Business -- New	1,434	1,118	314	253	263	216	1,046
Business -- Change of Ownership	58	85	10	22	14	151	197
Pawnshop Employees -- New	366	286	63	67	45	56	231
HUMAN RESOURCES DATA							
Field Examiners Staffing	30	32	31	30	34	34	34
Total Staffing	67.5	68	66	68	68	68	68

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	
Output Measures-Key					
CONSUMER PROTECTION					
1-1-1	Complaint Resolution				
	1. # Complaints Closed				
Quarter 1	1,750	506	506	28.9%	
Quarter 2	1,750	410	916	52.3%	
Quarter 3	1,750	456	1,372	78.4%	
Quarter 4	1,750	397	1,769	101.1%	
2-1-1	Examination and Enforcement				
	1. # Examinations Completed				
Quarter 1	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>				
Quarter 2	3,000	726	1,321	44.0%	*
	<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>				
Quarter 3	3,000	853	2,174	72.5%	
Quarter 4	3,000	835	3,009	100.3%	
EFFECTIVE LICENSING & REGISTRATION					
2-2-1	Licensing and Registration				
	1. # Business License Applications Processed				
Quarter 1	1,175	324	324	27.6%	
Quarter 2	1,175	275	599	51.0%	
Quarter 3	1,175	277	876	74.6%	
Quarter 4	1,175	367	1,243	105.8%	*
	<i>The licensing department processed 1,243 applications, surpassing its FY24 target of 1,175. This positive variance is due to receiving more applications than anticipated.</i>				
FINANCIAL EDUCATION					
3-3-1	Financial Education				
	1. # People Receiving Direct Educational Services				
Quarter 1	650	284	284	43.7%	*
	<i>During the first quarter, the OCCC received more requests for financial education classes than forecasted.</i>				
Quarter 2	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>				
Quarter 3	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>				
Quarter 4	650	95	1,018	156.6%	*
	<i>The OCCC exceeded its goal because the agency received a higher number of requests for financial education classes than anticipated.</i>				

*Varies by 5% or more from target.

Actual Performance for Key Outcome & Efficiency Measures

Type/Strategy/Measure	2024 Target	2024 YTD	Percent of Annual Target	
Outcome Measures-Key				
CONSUMER PROTECTION				
A.1 CONSUMER COMPLAINTS				
1. % WRITTEN COMPLAINTS CLOSED WITHIN 90 DAYS During FY '24, the agency focused on training and development which resulted in the department exceeding the yearly goal.	85%	96.7%	113.8%	*
A.2 ENSURE COMPLIANCE				
1. % EXAMINATIONS REPORTING ACCEPTABLE LEVEL OF COMPLIANCE Strong compliance ratings overall resulted in all industry types exceeding 85% level of compliance and 4 industries reporting compliance ratings above 90%. Pawnshops reported a 99% compliance rating and Crafted Precious Metals Dealers reported a 100% compliance rating.	85%	91.0%	107.1%	*
2. MONIES RETURNED TO CONSUMERS Several older exams, on non-compliant companies, validated large restitution projects which were closed in FY'24.	\$6,000,000	\$6,682,926	111.4%	*
EFFECTIVE LICENSING & REGISTRATION				
B.1 1. % BUSINESS LICENSE APPLICATIONS PROCESSED WITHIN 60 DAYS Vacancies in the department caused longer processing timeframes.	80%	68.0%	85.0%	*
EFFICIENT AND EFFECTIVE AGENCY OPERATION				
C.1 1. % REGULAR EMPLOYEES SEPARATED FROM AGENCY Employees who left the agency primarily went to the private sector. The OCCC deployed numerous initiatives to combat turnover, including revamping the onboarding process to emphasize a collaborative environment. Additionally, HR developed follow up procedures with new hires to strengthen the employment experience and relationship. The HR department will continue these and other efforts in FY 25, with the goal of reducing turnover.	15%	18.67%	124.5%	*
Efficiency Measures-Key				
CONSUMER PROTECTION				
A.1 1. AVERAGE NUMBER OF DAYS TO CLOSE AN ENFORCEMENT ACTION	100	79	79.0%	
EFFECTIVE LICENSING & REGISTRATION				
B.1 2. AVERAGE PROCESSING TIME (DAYS) FOR BUSINESS LICENSE APPS Certain vacancies resulted in longer processing time for business license applications, as other priorities and essential tasks, such as customer service response, required time from remaining personnel.	45	59	131%	*

* Varies by 5% or more from quarterly or year-end targets.

OCCC Actual Performance for Non-Key Measures
Fiscal Year 2024
For Period Ending August 31, 2024

Type/Strategy/Measure		2024 Target	2024 YTD	Percent of Annual Target
Non-Key Measures				
A. CONSUMER PROTECTION				
A.1.1	AVERAGE NUMBER OF DAYS FOR ALL COMPLAINTS TO REACH FINAL DISPOSITION	60	39.7	66.2%
A.1.2	AVERAGE NUMBER OF DAYS TO CLOSE A COMPLAINT	45	36.1	80.2%
A.1.3	AVERAGE COST PER COMPLAINT	\$145	\$167.04	115.2%
A.2.1	AVERAGE COST PER EXAMINATION	\$1,500	\$1,439.85	96.0%
A.2.2	% OF LICENSED LOCATIONS AND REGISTERED OFFICES EXAMINED ANNUALLY	18%	20.1%	111.7%
A.2.3	NUMBER OF INVESTIGATIONS COMPLETED	75	75	100.0%
A.3.2	% OF ENFORCEMENT ACTIONS CLOSED WITHIN TARGETED TIMEFRAME	75%	92%	122.7%
A.3.3	NUMBER OF ENFORCEMENT ACTIONS TAKEN AND CLOSED	150	140	93.3%
	The legal department received fewer referrals for enforcement matters than anticipated. This measure only counts enforcement cases that resulted in a final order. Some matters were closed without a final order.			
A.3.4	NUMBER OF CONTESTED CASES DOCKETED AT SOAH	4	1	25.0%
	The legal department received fewer hearing requests than anticipated and was able to resolve the majority of cases with compliance and without the need to docket a contested case at SOAH.			
A.3.5	NUMBER OF COMPLIANCE AIDS AND TOOLS PUBLISHED	45	18	40.0%
	The OCCC received fewer requests for compliance aids and tools than anticipated. The OCCC has adjusted this target to 30 for FY25.			
A.3.6	NUMBER OF INDUSTRY STAKEHOLDER AND OUTREACH EVENTS HOSTED OR ATTENDED BY OCCC STAFF	30	54	180.0%
B. EFFECTIVE LICENSING AND REGISTRATION				
B.1.1	AVERAGE PROCESSING TIME (DAYS) FOR PAWNSHOP EMPLOYEE APPS	30	44	68.2%
	Vacancies in the department resulted in longer processing timeframes.			
B.1.2	AVERAGE PROCESSING TIME (DAYS) FOR RMLO APPS	30	142	21.1%
	The average processing times for RMLO applications increased due to efforts to clear a backlog of older applications.			
B.1.3	NUMBER OF PAWNSHOP EMPLOYEE LICENSE APPLICATIONS PROCESSED	300	231	77.0%
	Vacancies in the department resulted in longer processing timeframes and fewer pawnshop employee applications were received than anticipated.			
B.1.4	NUMBER OF RMLO APPLICATIONS PROCESSED	125	221	176.8%
C. FINANCIAL EDUCATION				
C.2	% OF TSEE AWARD RECIPIENTS WHO REACHED THEIR CONSUMER PARTICIPATION GOAL WITHIN THE GRANT PERIOD	100%	69.6%	69.6%
	TSEE grant cycles are every 2 calendar years and performance targets are reported per fiscal year. This presents a challenge in reporting grant-related data. FY '24 encompassed 2 grant cycles with 23 grant recipients. Sixteen of 23 organizations met their participation goals over both grant cycles. Eleven of 12 grant recipients met their goals across the entire 2022-2023 grant cycle. Grant recipients in the 2024-2025 are on track to meet overall cycle goals.			
D. EFFICIENT AND EFFECTIVE AGENCY OPERATION				
D.1	PERCENTAGE OF ACTUAL EXPENDITURES TO BUDGETED EXPENDITURES	94%	92.0%	97.9%
D.2.1	PERCENTAGE OF PUBLIC INFORMATION REQUESTS ADDRESSED WITHIN 5 BUSINESS DAYS	80%	89.0%	111.3%
D.2.2	NUMBER OF PUBLIC INFORMATION REQUESTS CLOSED	185	134	72.4%
	The OCCC received fewer public information requests than anticipated.			
D.2.3	NUMBER OF PUBLIC INFORMATION REQUESTS WITHDRAWN	8	8	100.0%
D.2.4	AVERAGE NUMBER OF DAYS TO ADDRESS A PUBLIC INFORMATION REQUEST	3	2.5	83.3%
D.2.5	NUMBER OF PUBLIC INFORMATION REQUESTS RECEIVED	193	144	74.6%
	The OCCC received fewer public information requests than anticipated.			

* Varies by 5% or more from target.



Legal Department Report

Matthew Nance, General Counsel

October 2024

Enforcement Report

Contested Cases

As of September 30, 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 credit access businesses and pawnshops 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 September 2024, the OCCC issued four enforcement orders against credit access businesses for failing to file 2024 second quarter reports by the deadline of July 31, 2024. In October 2024, the OCCC issued 16 enforcement orders against pawnshops for failing to file 2023 annual reports by the deadline of July 31, 2024.

Orders on motor vehicle dealer service fees

Under Chapter 348 of the Texas Finance Code, if a motor vehicle dealer includes a fee for dealer services in a retail installment contract, the fee must be included in the cash price. Dealers are not authorized to include dealer service fees in the itemized charges of a retail installment contract. In September 2024, the OCCC entered agreed orders with three affiliated motor vehicle dealers that violated Chapter 348 by including dealer service fees in the itemized charges of retail installment contracts. The businesses agreed to pay administrative penalties and to cease this practice.

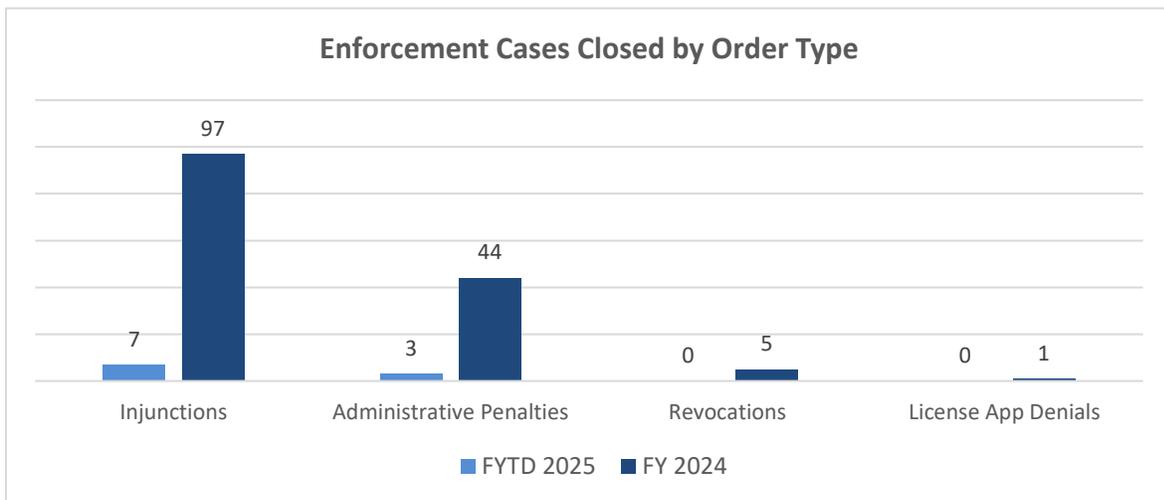
Order disapproving plain language contract submission

Under Chapter 341 of the Texas Finance Code, regulated lenders licensed with the OCCC are required to use loan contracts that are written in plain language. Licensees must use either a model contract adopted by rule of the Texas Finance Commission or a contract that has been submitted the OCCC for plain language review. In July 2024, the OCCC issued one order disapproving a plain language contract submission, because the contract lacked disclosures required by the Truth in Lending Act, and because the contract included charges that were unauthorized under Chapter 342, Subchapter F of the Finance Code.

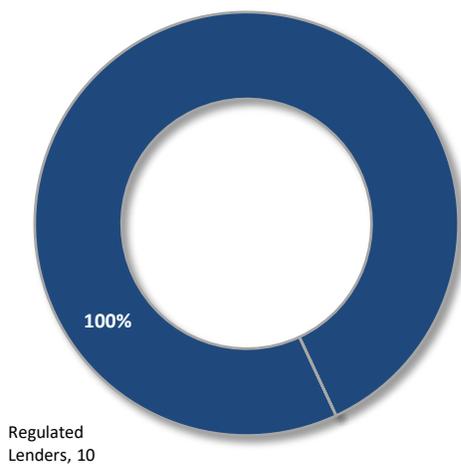
Enforcement Case Tracking

The following table includes enforcement case tracking information for FY 2025 to date (September 1, 2024, through September 30, 2024) and FY 2024.

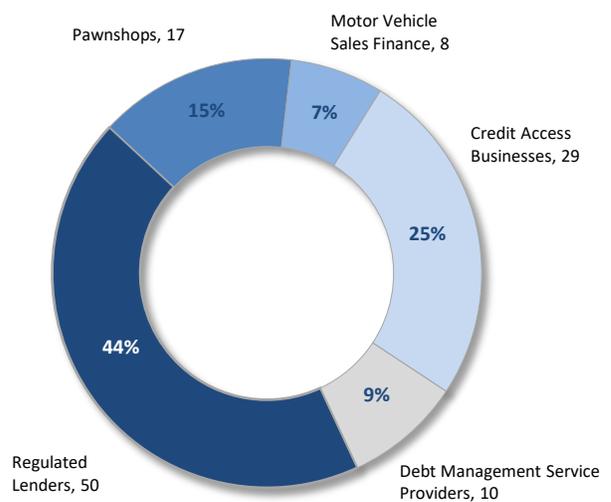
Enforcement Case Tracking Information	FYTD 2025	FY 2024
Enforcement Cases Opened	28	117
Enforcement Cases Closed	10	147
Enforcement Cases Closed by Final Order	10	140
Average Number of Days to Close an Enforcement Action	93	79
Contested Cases Docketed at SOAH	0	1



**Cases Closed by Industry
FYTD 2025**



**Cases Closed by Industry
FY 2024**



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. On September 17, 2024, the court of appeals issued a decision in the OCCC's favor, affirming the district court's decision to dismiss the plaintiff's case. The plaintiff did not request a rehearing at the court of appeals by the deadline of October 2, 2024. The plaintiff's deadline to appeal the case to the Texas Supreme Court is November 1, 2024.

Rulemaking

At the October meeting, the OCCC is presenting 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 proposed amendments to the chapter, resulting from rule review.

At the December meeting, the OCCC intends to present the following rule action:

- Adoption of amendments to 7 TAC Chapter 7 (relating to the Texas Financial Education Endowment Fund), 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*. On August 5, the CFPB filed a response arguing that rehearing is not appropriate. The case is currently pending before the Fifth Circuit.

Advisory Guidance

From August 1, 2024, to September 30, 2024, the OCCC did not issue any advisory bulletins.

From August 1, 2024, to September 30, 2024, the OCCC did not receive any requests for official interpretations of the Texas Finance Code. As of September 30, 2024, there were no pending requests for official interpretations of the Texas Finance Code.

Public Information Requests

Public Information Tracking Information	FYTD 2025	FY 2024
Public Information Requests Received	19	144
Public Information Requests Closed	15	134
Public Information Requests Withdrawn	1	8
Public Information Requests Referred to Office of Attorney General	0	0
Average Number of Days to Address a Public Information Request	2.7	2.5

On September 26, 2024, the OCCC received a third-party notice from the Texas Department of Information Resources. The notice explains that a person sent a public information request to DIR for “All automated decision system inventories submitted to DIR by Texas state agencies, as required by Section 2054.623 of the Government Code.” DIR requested a ruling from the Office of the Attorney General on whether some responsive information is confidential and may be withheld from the requestor (request R003874-082724). On October 8, the OCCC filed a brief with the Office of the Attorney General arguing that certain OCCC information should be withheld from the requestor, because the information relates to network security.

Gifts Received by the OCCC

From August 1, 2024, to September 30, 2024, the OCCC received no gifts.

C. 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 84, Concerning Motor Vehicle Installment Sales, Resulting from Rule Review

PURPOSE: The purpose of the amendments 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 adoption of the amendments to 7 TAC Chapter 84.

RECOMMENDED MOTION: I move that the Finance Commission approve the adoption of 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) adopts 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 adopts new §84.710 (relating to Annual Report) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments to §84.608, §84.611, §84.613, §84.616, §84.617, §84.705, §84.802, §84.806, §84.808, and §84.809 and adopts new §84.710 without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6535).

The commission adopts the amendments to §84.602, §84.707, §84.708, and §84.709 with changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6535).

The commission received two official comments on the proposed amendments. The comments were from the Texas Automobile Dealers Association (TADA) and the Texas Independent Automobile Dealers Association (TIADA). Both comments recommended changes to certain rule sections in the proposed amendments. The commission's responses to the comments are discussed later in this preamble.

The rules in 7 TAC Chapter 84 govern motor vehicle retail installment transactions. In general, the purpose of the 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.

Amendments to §84.602 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 adoption 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 will 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, an amendment to §84.602(2)(A)(v) removes 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.

In its official comment, TADA requests that the commission add the phrase "regarding the OCCC" after the statement that the compliance officer "must be an individual responsible for overseeing compliance." TADA notes that "some licensees have more than one person who is responsible for various aspects of compliance at the dealership, such as employment compliance, tax compliance, titling, and regulatory compliance." In response to this comment, a change has been made to the proposal to include the phrase "regarding the OCCC" in the amendment to §84.602(1)(A)(ii).

Amendments to §84.608 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. Amendments at §84.608(d) 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). Amendments at §84.608(e) 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 will 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.

Amendments to §84.611 and 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. The amendments move this requirement to new §84.710, redesignate the annual renewal statement as an "annual report," and 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.

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 amendments to §84.613 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. Amendments to §84.613(c)(2) implement this statutory change from HB 1342.

Amendments to §84.616 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 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).

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

Amendments to §84.705 make technical changes relating to the escheat of unclaimed funds. Amended text in §84.705(d) reflects that unclaimed funds are submitted to the Unclaimed Property Division of the Texas Comptroller of Public Accounts. Another amendment adds 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.

Amendments to §84.707 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. Amendments throughout §84.707 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. Amendments at §84.707(d)(1) 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 its official comment, TADA states: "Those members contacted stated that sorting and filtering retail installment contracts by

the date of the contract, the date of sale, the retail buyer's name, the status of the transaction, open or closed, are available; however, sorting or filtering by assignee and assignment was not a certainty by all members contacted." TADA suggests adding the phrase "if available" to the rule provision describing sorting or filtering by the name of the assignee. The commission disagrees with this comment. The comment does not explain how or why it would be problematic to sort or filter a transaction report by assignment information. 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.

In its official comment, TIADA states: "The rule should not require dealers with paper records reports to be able to sort or filter their records." TIADA states that it "is unaware of a commonly accepted method of sorting or filtering a paper records report." For this reason, TIADA recommends making a clarifying change, such as adding the phrase "Electronic records" before the phrase "Sorting or filtering." In response to this comment, a change has been made to the proposal to include the clarifying phrase "if a licensee maintains some or all transaction records electronically" in §84.707(d)(1)(E), §84.708(d)(3), and §84.709(d)(3).

Additional amendments to §84.707 relate to data security recordkeeping. An 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 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. An 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 data security recordkeeping amendments will help ensure that the OCCC can monitor this crucial issue.

In its official comment, TADA states: "The new proposed examination rule to include the FTC's Safeguards Rule encompasses a WISP (written information security program) and as the rule is a federal requirement, its conformity and enforcement remains with the FTC. Verifying the WISP in an OCCC examination or providing suggestions may be helpful for a licensee; however, the enforcement of the WISP is with the FTC and a comment from the OCCC that the proposal is not for enforcement but to

assist a licensee would be appreciated as to this new examination rule proposal."

The commission disagrees with this comment. Requiring motor vehicle dealers to maintain information security program records is consistent with Texas Finance Code, §348.514, which requires licensees to allow the OCCC to examine records pertaining to business regulated under Chapter 348 (i.e., motor vehicle retail installment transactions). An information security program directly pertains to the regulated business, because the program governs how a licensee will secure the information and records described by Chapter 348. Financial institutions (including motor vehicle dealers) are required to maintain a written information security program under the Safeguards Rule, 16 C.F.R. §314.3, and have been required to do so since the Safeguards Rule first went into effect in 2003. The requirement to maintain policies, procedures, and certain key documents, as described in the rule amendments, is a foundation for the OCCC to monitor and address the crucial issue of data security. For these reasons, the commission maintains the text of the data security recordkeeping amendments as proposed.

Amendments to §84.708 update recordkeeping requirements for retail sellers that collect payments on motor vehicle retail installment contracts. The amendments to §84.708 are similar to the amendments to §84.707 described in the previous six paragraphs. In particular, the 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, an amendment at §84.708(d)(3) specifies requirements for sorting or filtering the currently required alphabetical records search, similar to the requirements for the retail installment sales transaction report. Also, an amendment at §84.708(e)(2)(L)(ii)(V) removes a reference to the Texas Department of Public Safety's CR-2 crash report form and replaces 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.

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

Amendments to §84.802 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 adoption, subsection (a) will 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) specifies 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. Amendments to subsection (b) 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 will be moved into subsection (d). Amendments to subsection (c) specify that the subsection refers to the requirements for filing copies of the retail installment sales contract. Amendments to subsection (d) 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 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).

Amendments to §84.806 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 adoption revises 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 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).

Amendments to §84.808 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. Amendments to the figures accompanying §84.808(8)(A) and (B) replace current references to the government inspection fee with lines for the inspection program replacement fee and the emissions inspection fee. Amendments to §84.808(8)(E) and (F) 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 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 its official comment, TADA requests clarification on how motor vehicle dealers may modify the model clauses in order to disclose fees correctly (e.g., whether a dealer may use the word "State" instead of "Government," whether a dealer may redact or cross out unused lines). These requests are generally outside the scope of the current rule action, which concerns the model clauses in §84.808. Use of the model clauses is optional. The model clauses do not restrict a licensee to using the exact same language. The OCCC may address these issues through informal advisory guidance. In general, the

OCCC would recommend leaving unused clauses blank rather than crossing them out, because having dealership staff cross out provisions could lead to confusion or inconsistency.

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 adoption. As discussed earlier in this preamble, 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 adoption.

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

discussed earlier in this preamble. The amendments to §84.809 will have a delayed effective date of January 1, 2025.

The rule changes are adopted 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 adopted 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 adoption 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 regarding the OCCC, 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.)

(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.)

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

(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, if a licensee maintains some or all transaction records electronically, the 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, if a licensee maintains some or all transaction records electronically, 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, if a licensee maintains some or all transaction records electronically, 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."

(9) - (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 adoption and found it to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on October 25,
2024.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner

Figure: 7 TAC §84.808(8)(A)

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	\$ _____
	- 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.	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.]	\$ _____
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.	Amount Financed (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)

ITEMIZATION OF AMOUNT FINANCED		
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. 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.]	\$ _____
	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.	Amount Financed (5+6)	\$ _____ (7)
	Finance Charge (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
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Trade-in: Year _____ Make _____ Model _____ VIN _____ License No. _____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	FINANCE CHARGE The dollar amount the credit will cost me. \$	Amount Financed The amount of credit provided to me or on my behalf. \$	Total of Payments The amount I will have paid after I have made all payments as scheduled. \$	Total Sale Price The total cost of my purchase on credit, including down payment of \$ _____ \$
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My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

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 \$ _____
 - 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. **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.]** \$ _____
- 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. **Amount Financed** (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 A₁: 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 A₂: 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 A₁: 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 A₂: 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 A₁: 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 A₂: 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. E-mail: 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.



1108 Lavaca, Suite 800
Austin, Texas 78701
Phone: 512-476-2686
www.tada.org

September 12, 2024

Mr. Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, TX 78705

Sent via email: rule.comments@occc.texas.gov

Re: Proposed Rules 7 TAC Chapter 84.
Motor Vehicle Installment Sales

Dear Mr. Nance:

On behalf of the Texas Automobile Dealers Association (TADA), thank you and the Office of Consumer Credit Commissioner (OCCC) for your time and effort with respect to the agency's rulemaking and also for the opportunity to comment on proposed rules and amendments with respect to Title 7, Chapter 84. Motor Vehicle Installment Sales.

Please accept these comments from TADA regarding the proposed rules as published in the *Texas Register*, 49 *TexReg* 6535 - 6545 and 49 *TexReg* 6763 - 6772, August 30, 2024.

SUBCHAPTER F. LICENSING
7 TAC §84.602 (1)(A)(ii)

When filing a new motor vehicle sales finance license application, the current requirement is to identify a "responsible person." The proposal replaces "responsible person" with a requirement to list a "compliance officer" on the application.

The rule states that the compliance officer must be an individual responsible for overseeing compliance and must be authorized to receive and respond to communications from the OCCC versus the current "responsible person" who is required to have substantial management responsibility for each proposed office, 49 *TexReg* 6535.

As some licensees have more than one person who is responsible for various aspects of compliance at the dealership, such as employment compliance, tax compliance, titling and registration compliance, TADA requests the agency to consider adding the following underlined language:

(ii) Compliance officer. The application must list a compliance officer. The compliance officer must be an individual responsible for overseeing compliance regarding the OCCC, and must be authorized to receive and respond to communications from the OCCC.

As various dealership employees have responsibility for different compliance measures at the dealership, requesting the applicant to specify the person who is charged with the duty to oversee compliance with OCCC regulations will be the most advantageous for the agency as well as the licensee.

SUBCHAPTER G. EXAMINATIONS

7 TAC §84.707(d)(1)(E)

7 TAC §84.707(d)(8)

7 TAC §84.708(d)(3)(D)

7 TAC §84.708(e)(1)(E)(iv)

A proposed amendment requires the dealer to be able to sort or filter, upon request, a retail installment transaction report by:

- (1.) the date of the contract or date of sale;
- (2.) the retail buyer's name;
- (3.) the status of the transaction, open or closed; and
- (4.) whether the transaction has been assigned to another person and the name of the assignee.

Although an assignment report showing assigned contracts with the name and address of each assignee is required (49 *TexReg* 6536), not all members, when contacted as to whether the programming is available to sort or filter retail installment contracts by "whether the transaction has been assigned to another person and the name of the assignee," could comfortably state that such is currently available through the dealership's programs.

Those members contacted stated that sorting and filtering retail installment contracts by the date of the contract, the date of sale, the retail buyer's name, the status of the transaction, open or closed, are available; however, sorting or filtering by assignee and assignment was not a certainty by all members contacted.

Adding “if available” to 7 TAC §84.707(d)(1)(E)(iv), 7 TAC §84.708(d)(3)(D), and 7 TAC §84.708(e)(1)(E)(iv) so that the provisions state: “whether the transaction has been assigned to another person and the name of any assignee, if available” will prevent a licensee from being out of compliance with the rules if the programming is not currently available at the dealership and will continue to allow for the report if the dealership is able to sort or filter by assignment and name of assignee.

This Subchapter on Examinations also proposes a new examination area, which adds a dealership’s written information security program (WISP) as required by the Federal Trade Commission’s (FTC) Safeguards Rule. As the WISP is a federal mandate, TADA is concerned that an OCCC examination at the dealership that proposes to encompass the federal program should remain with the FTC. The Safeguards Rule entails monitoring and testing as well as reviewing of firewalls, among other federal mandates. However, if the OCCC is proposing to make suggestions and verify the existence of a WISP during an examination, such may be beneficial (7 TAC §84.707(d)(8)).

SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §84.808

As pointed out in the OCCC’s Preamble in the *Texas Register*, the mandatory motor vehicle safety inspection for noncommercial vehicles is no longer required, effective January 1, 2025, HB 3207, 88th Leg., R.S. (49 *TexReg* 6537).

A \$7.50 “replacement fee” will be annually imposed at the time of application for renewal registration of a motor vehicle, trailer, semitrailer, pole trailer, or mobile home. A new motor vehicle that has not been previously registered will pay a replacement fee of \$16.75 to cover the two year registration.

The proposed model clause disclosure for the replacement fee on a retail installment contract is “Government vehicle inspection program replacement fee.”

TADA previously requested that the disclosure be shortened as space is limited on the forms and suggested “Gov’t inspection replacement fee”; however, the agency declines to include the suggestion in the proposal. As pointed out by the agency, the use of a model clause is optional and does not restrict a licensee to using the exact same language on the buyer’s order and “Gov’t inspection replacement fee” could be sufficient “if it is disclosed in an accurate manner.” (49 *TexReg* 6537) Providing an illustration or clarification with

respect to the agency's requirements to disclose in an accurate manner is appreciated for compliance purposes.

The motor vehicle emissions inspection fee required in non-attainment counties is proposed to be disclosed on a line labeled "Vehicle emissions inspection fee."

The agency allows a creditor to use the suggested model clause on a retail installment contract as well as to disclose the inspection program replacement fee on one of the extra lines in the "Other charges" section of the itemization of amount financed (49 *TexReg* 6538) with an effective date of January 1, 2025 (49 *TexReg* 6537).

If a creditor discloses the vehicle inspection program replacement fee in the "Other charges" section of the retail installment contract, TADA requests allowing the disclosure to read: "to State" in lieu of "to Government" for vehicle inspection replacement fee or a similar disclosure.

TADA also requests the OCCC to consider allowing a creditor to deplete their current paper buyer's orders and retail installment contracts after the effective date of January 1, 2025, by redacting or crossing out "Government vehicle inspection fee" and entering "Government vehicle inspection program replacement fee" or similar disclosure language or using the "Other charges" section of the retail installment contract as discussed above.

If a dealer is allowed to deplete their current paper buyer's orders and retail installment contracts after the effective date of January 1, 2025, and if the dealership is in a non-attainment county and performs the vehicle emissions test, clarification as to the OCCC's preferred verbiage and placement on the documents to disclose the vehicle emissions inspection fee is requested as those documents will not have a line labeled "Vehicle emissions inspection fee" as is proposed in 7 TAC §84.808(8)(F).

CONCLUSION

On behalf of the franchised Texas dealers, TADA appreciates the agency's time and effort with respect to the proposed new and amended rulemaking.

With respect to the proposal regarding licensing, TADA requests that the proposed rule provide that the dealership's named compliance officer on the license application is the person who is responsible for overseeing OCCC compliance. As more than one employee

at a dealership may have varying compliance oversight responsibilities, such as employee compliance, tax compliance, insurance compliance, etc., the compliance officer for the license application proposed rule should be the person who is responsible for OCCC issues.

As to the sorting and filtering retail installment contracts, in order for a licensee to be in compliance with the rules, if a particular program for sorting and filtering by assignee is available, then the dealer is compliant. If the program does not so provide, TADA requests that the rule simply include “if available” in the proposal.

The new proposed examination rule to include the FTC’s Safeguards Rule encompasses a WISP (written information security program) and as the rule is a federal requirement, its conformity and enforcement remains with the FTC. Verifying the WISP in an OCCC examination or providing suggestions may be helpful for a licensee; however, the enforcement of the WISP is with the FTC and a comment from the OCCC that the proposal is not for enforcement but to assist a licensee would be appreciated as to this new examination rule proposal.

If a dealership uses paper forms, if the agency will allow their use until depleted with requested OCCC approved disclosures, such will be appreciated and as recently occurred with a recent data breach, some dealers were forced to return to using paper forms. Unfortunately, the requested approved disclosures may need to be added to paper documents if another data breach occurs in the future and dealers are consigned to using paper forms.

Thank you again for the time and effort regarding the Title 7, Chapter 84, proposed rules and amendments.

If you have any question or would like to discuss, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Karen Phillips".

Karen Phillips
General Counsel/EVP



September 29, 2024

Mr. Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, TX 78705

Re: Proposed Rules 7 TAC Chapter 84

Dear Mr. Nance:

The Texas Independent Automobile Dealers Association (TIADA) respectfully submits the following comments in response to the Office of Consumer Credit Commissioner (OCCC) proposed changes to the Texas Administrative Code. TIADA represents over 1,000 independent automobile dealers throughout the state of Texas which range in size from large publicly traded companies to small and micro-businesses.

TIADA after reviewing the purposed rules has the following suggestions:

The rule should not require dealers with paper records reports to be able to sort or filter their records. The proposed rule provides that the “retail installment sales transaction report can be maintained either as an electronic system or as a paper record”, but requires that “upon request, a licensee must be able to sort or filter the retail installment transaction report”. Since TIADA is unaware of a commonly accepted method of sorting or filtering a paper records report, it believes that the OCCC should clarify the rule by modifying the language to the following:

Electronic Records ~~S~~orting or filtering. Upon request, a licensee must be able to sort or filter the retail installment transaction report by each of the following:

Respectfully,

Earl Cooke
Director of Compliance and Business Development
earl.cooke@txiada.org

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Chapter 7, Concerning the Texas Financial Education Endowment Fund, Resulting from Rule Review

PURPOSE: Pursuant to Texas Government Code, §2001.039, the OCCC has completed the review of 7 TAC Chapter 7 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 7 following rule review, because the reasons for the rules continue to exist.

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

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 7. Texas Financial Education Endowment Fund

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 1, Chapter 7, concerning Texas Financial Education Endowment Fund, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 7 was published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5783). 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 7 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

C. 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 1, Chapter 7, Concerning Texas Financial Education Endowment Fund, Resulting from Rule Review

PURPOSE: The purpose of the proposed rule changes to 7 TAC Chapter 7 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 7 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 7.

Title 7, Texas Administrative Code
Part 1. Finance Commission of Texas
Chapter 7. Texas Financial Education Endowment Fund

The Finance Commission of Texas (commission) proposes amendments to §7.101 (relating to Applicability and Purpose), §7.103 (relating to TFEE Grant Program), §7.104 (relating to TFEE Gifts and Donations), and §7.105 (relating to TFEE Fund Management) in 7 TAC Chapter 7, concerning Texas Financial Education Endowment Fund.

The rules in 7 TAC Chapter 7 govern the Texas Financial Education Endowment (TFEE). The Texas Legislature established TFEE in 2011, in order to support statewide financial education and consumer credit building activities and programs. The commission and the OCCC have established a grant program to promote the purposes of TFEE.

In general, the purpose of the proposed rule changes to 7 TAC Chapter 7 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 7 was published in the *Texas Register* on August 2, 2024 (49 TexReg 5783). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review. The OCCC received no informal precomments on the rule text draft.

The Texas Legislature passed SB 1371 in the 2023 regular legislative session. SB 1371 modernized, clarified, and corrected provisions of the Texas Finance Code

administered by the OCCC. In particular, SB 1371 relocated and amended the statutory provision that establishes TFEE. SB 1371 relocated this section from previous Texas Finance Code, §393.628 to current Texas Finance Code, §14.113. SB 1371 also amended Texas Finance Code, §14.113(b) to specify that funds in TFEE will be invested under the prudent business person standard described by the Texas Constitution, replacing previous language that referred to investing funds in the same manner as funds of the Employees Retirement System of Texas (ERS).

A proposed amendment to §7.101(a) would replace a reference to Texas Finance Code, §393.628 with an updated reference to Texas Finance Code, §14.113. This amendment would correct the statutory reference and implement SB 1371's relocation of the section, as described earlier in this preamble.

Proposed amendments to §7.103(g) would specify requirements for the longitudinal report that grantees file after the end of a two-year grant cycle. The proposed amendments would specify that the longitudinal report is comprehensive, that the report must describe activity performed under the grant agreement, and that the report is due on June 30 following the end of the grant cycle. The proposed amendments are intended to clarify requirements for grantees and to provide a more specific deadline for the report.

Proposed amendments throughout §7.104(a) would replace references to Texas Finance Code, §393.628 with updated

references to Texas Finance Code, §14.113. These amendments would correct statutory references and implement SB 1371's relocation of the section, as described earlier in this preamble.

A proposed amendment to §7.105 would replace a reference to Texas Finance Code, §393.628(b) with an updated reference to Texas Finance Code, §14.113(b). Another proposed amendment to §7.105 would replace the current reference to the ERS investment standard with a reference to the prudent person standard described by the Texas Constitution. These amendments would implement the changes contained in SB 1371, as described earlier in this preamble.

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 amendments 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 persons required to comply with the rules, and will be consistent with legislation recently passed by the Texas Legislature.

The OCCC does not anticipate that the proposed rule changes will result in any economic costs to persons who are required to comply with the proposed rule changes.

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 not create a new regulation. The proposal would expand current §7.103 by specifying requirements for the six-month longitudinal report following the end of a grant programming cycle. The proposal would not limit or 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. 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, §14.113, which authorizes the commission to adopt rules to administer the Texas Financial Education Endowment. 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 proposal are contained in Texas Finance Code, Chapter 14.

§7.101. Applicability and Purpose

(a) Applicability. This chapter governs the administration of the Texas Financial Education Endowment (TFEE) fund as provided by Texas Finance Code, §14.113. [~~§393.628.~~]

(b) - (c) (No change.)

§7.103. TFEE Grant Program

(a) - (f) (No change.)

(g) Reporting and monitoring.

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

(A) submit grant reports in a timely manner;

(B) maintain satisfactory compliance with the grant agreement and proposed grant activities;

(C) report performance measures; and

(D) track and report participant demographic information.

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

(3) Six-month longitudinal report. A grantee must submit a comprehensive six-month longitudinal report after program completion to demonstrate program objectives and describe activity performed under the grant agreement. The longitudinal report is due on June 30 following the end of the grant programming cycle.

(4) Monitoring. The grant coordinator or GAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk review. The grant coordinator or GAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process.

(B) Site visits and inspection reviews. The grant coordinator or GAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(h) (No change.)

§7.104. TFEE Gifts and Donations

(a) Authorized gifts and donations.

(1) TFEE purpose. Under Texas Finance Code, §14.113(d), [~~§393.628(d)~~], the finance commission may solicit gifts, grants, and donations that fulfill the purpose of TFEE to support statewide financial education and consumer credit building activities and programs in this state, including the specific purposes provided by Texas Finance Code, §14.113(c). [~~§393.628(e)~~].

(2) Consumer credit educational purpose. Under Texas Finance Code, §14.105(a), the commissioner may accept gifts, grants, and donations on behalf of the state for a purpose related to a consumer credit educational opportunity, unless prohibited by Texas Finance Code, §14.105(b) or other law. A consumer credit educational opportunity is also considered to be a consumer credit building activity under TFEE.

(3) From state agencies. Under Texas Finance Code, §14.113(e), [~~§393.628(e)~~], the finance commission may partner with other state agencies to administer the TFEE fund, including the acceptance of gifts and donations from other state agencies, for the purposes outlined in paragraphs (1) and (2) of this subsection.

(4) From other parties. Gifts and donations from parties other than state agencies must meet the same criteria required for grantees eligible under §7.103(b) of this title (relating to TFEE Grant Program).

(b) (No change.)

§7.105. TFEE Fund Management

In accordance with Texas Finance Code, §14.113(b), [~~§393.628(b)~~], TFEE funds will be remitted to the comptroller for deposit in the Texas Treasury Safekeeping Trust Company. TFEE funds may be invested and reinvested under the prudent person standard described by Texas Constitution, Article VII, Section 11b [~~in the same manner as funds of the Employees Retirement System of Texas under Texas Government Code, Chapter 815, Subchapter D~~].

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 October 25, 2024.

Matthew J. Nance
General Counsel
Office of Consumer Credit Commissioner

D.

**Department of Savings and
Mortgage Lending**

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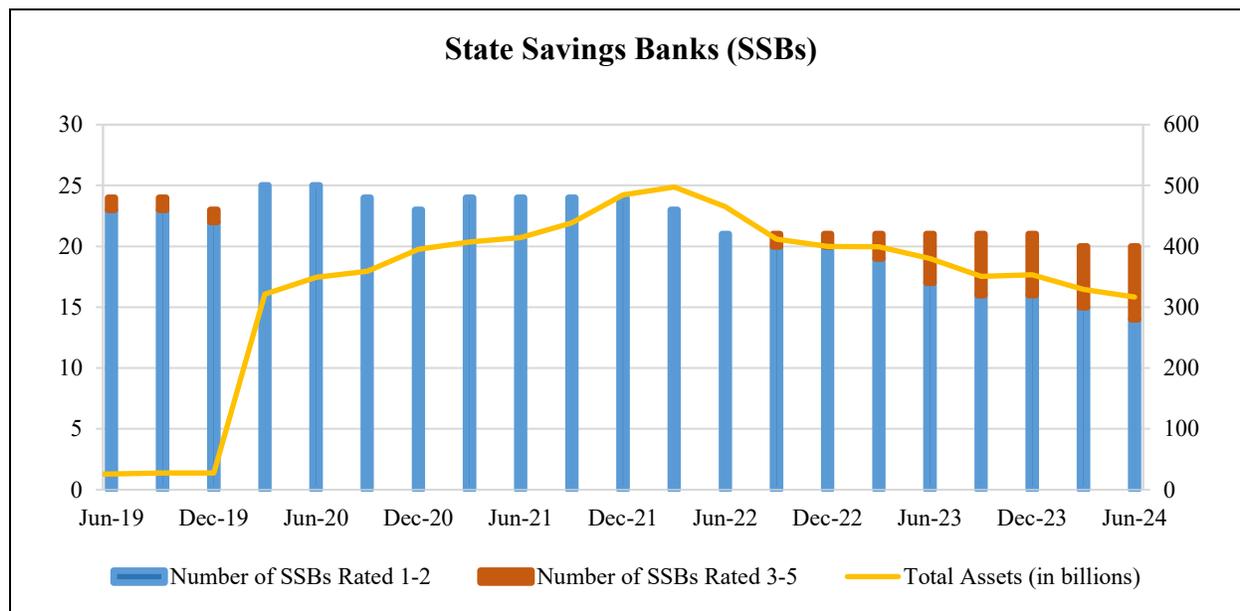
D. Department of Savings and Mortgage Lending

a) Thrift Regulation Division Activities

Industry Status

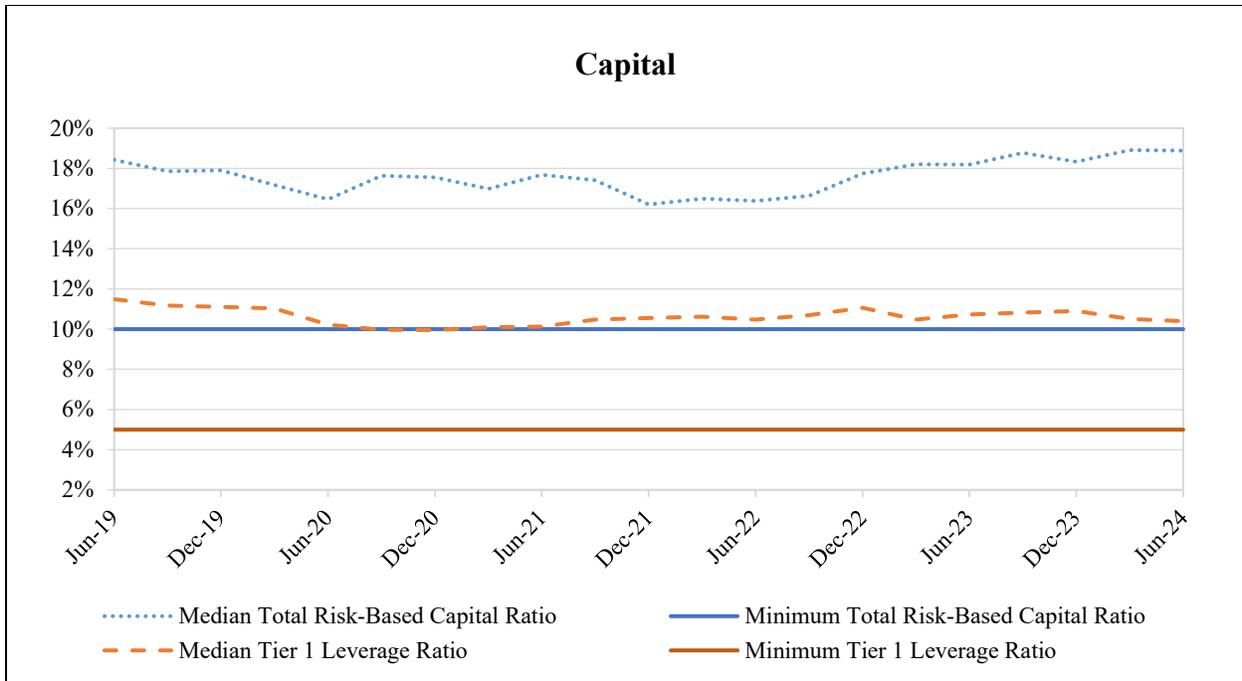
The Department continues to monitor various local, state, and national data sources to understand the risks facing the industry and individual savings banks.

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 \$316.6 billion as of June 30, 2024. The industry consists of 70% of banks being well-rated as of August 31, 2024, with four informal and one formal supervisory actions in place.

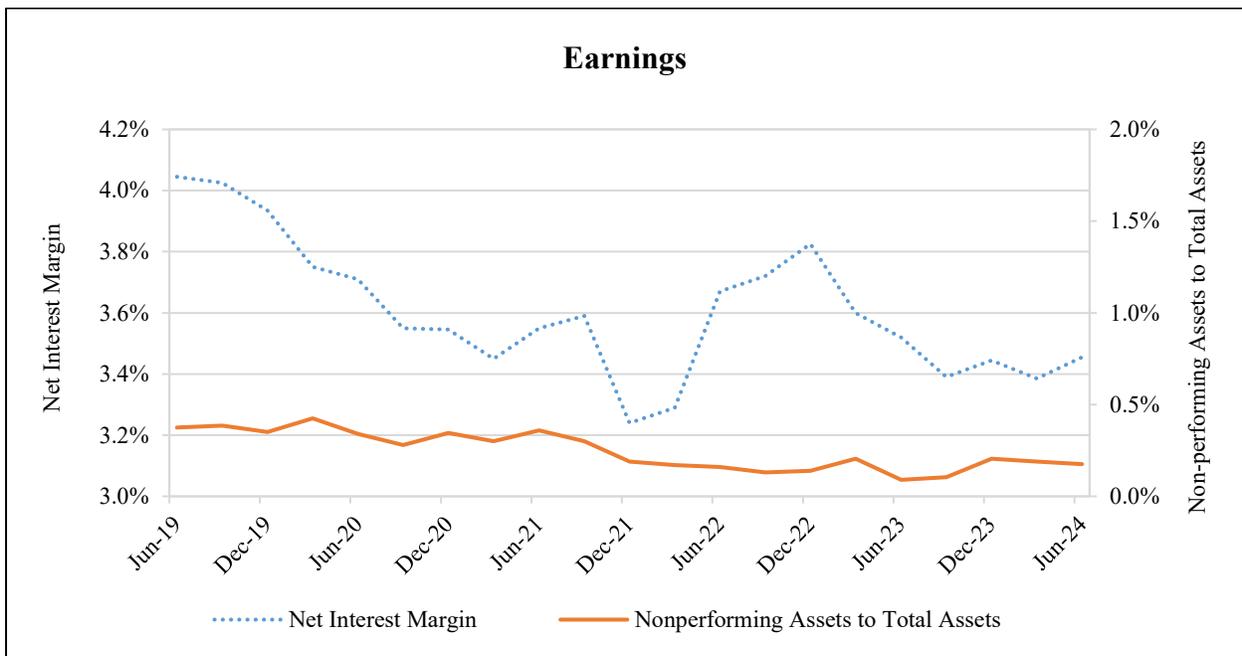


All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and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

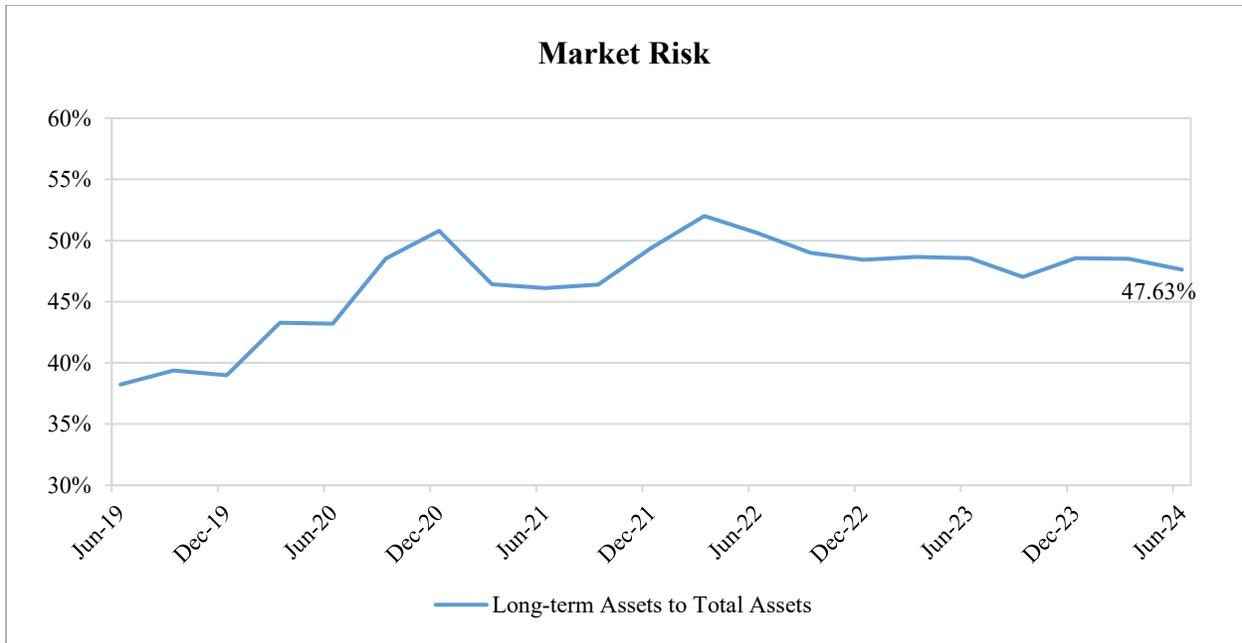
Bank capital performs several very important functions, including absorbs losses, promotes public confidence helps restrict excessive asset growth and provides protection to the depositors. Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of June 30, 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 18.88% and 10.40%, respectively.



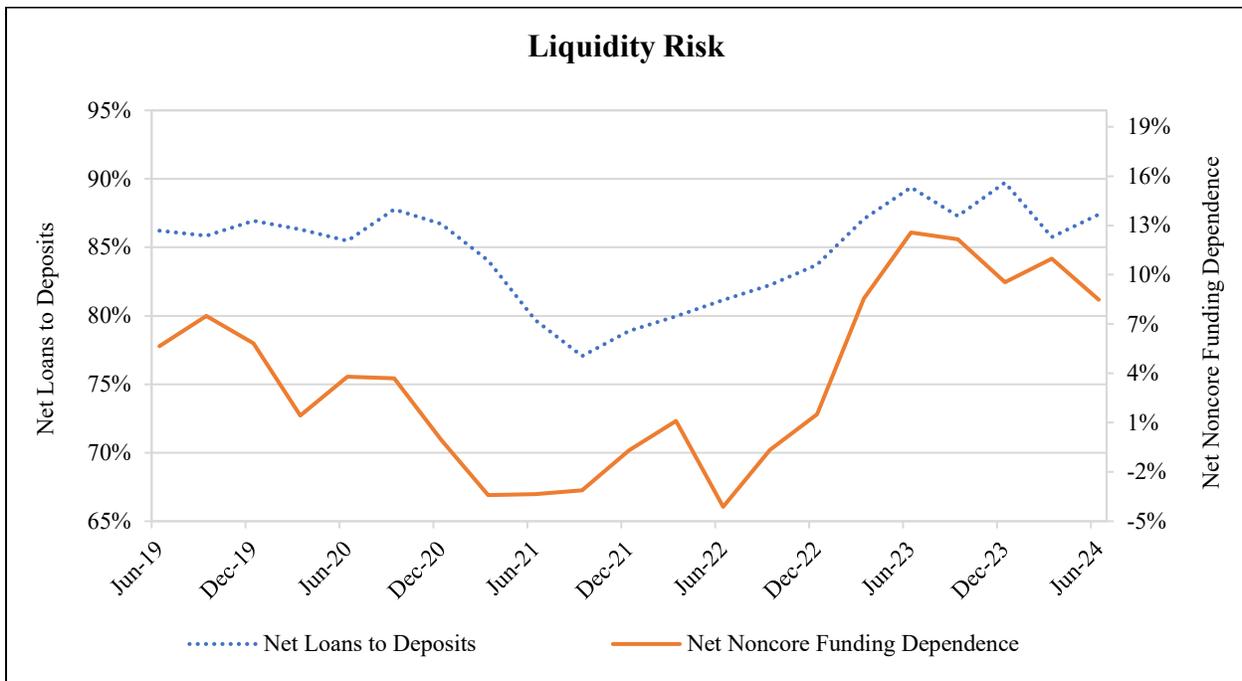
Earnings is the initial safeguard against the risk of engaging in the banking business, and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management’s strategic initiatives. The net interest or profit margin is 3.46%. Non-performing asset levels remain low at 0.18% 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 June 30, 2024, long-term assets to total assets ratio increased to 47.63%.



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 8.48%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 87.41%.



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.

On September 13, 2024, Integrity Bank, SSB, a proposed de novo bank, was approved and opened to the public on October 11, 2024.

Outreach and Training

On September 19, 2024, the Department held the 17th Annual Thrift Industry Day in Austin, Texas. The following topics were covered:



17TH ANNUAL THRIFT INDUSTRY DAY

THURSDAY, SEPTEMBER 19, 2024

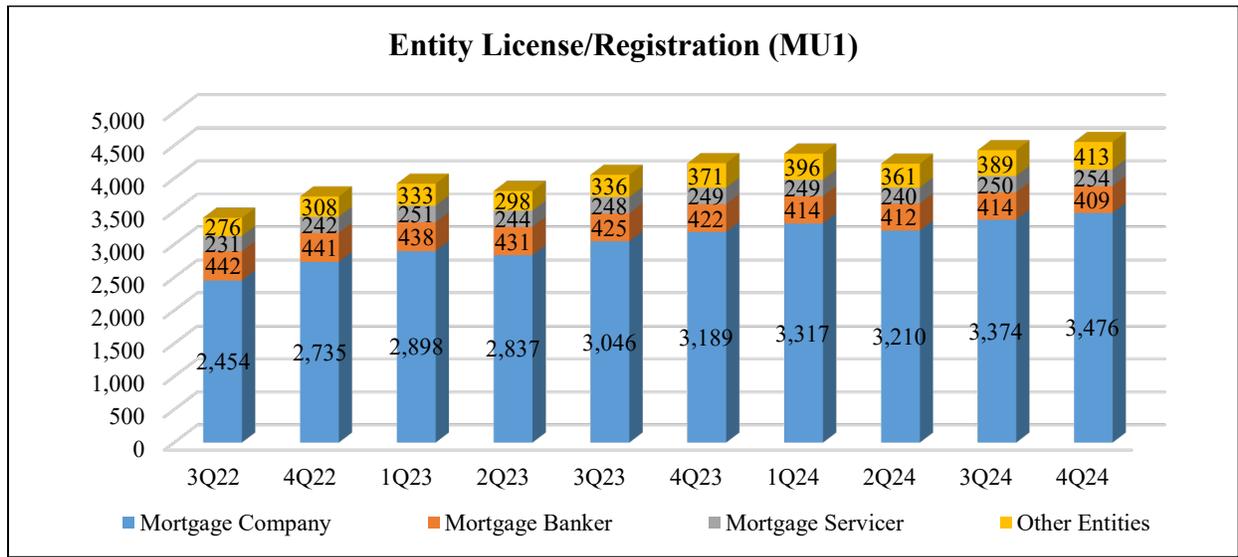
12:30 pm – 1:00 pm	<u>Registration</u> Meet & Greet
1:00 pm – 1:10 pm	<u>Welcome and Opening Comments</u> Hector Retta, <i>Commissioner</i> Department of Savings and Mortgage Lending
1:10 pm – 2:10 pm	<u>Macro and Real Estate Update</u> Dr. Daniel Oney, <i>Research Director</i> Texas Real Estate Research Center at Texas A&M University
2:10 pm – 2:30 pm	Break
2:30 pm – 3:30 pm	<u>Cyber Threat Briefing</u> Kevin Chin, <i>Director of Threat Specialist Management</i> Microsoft Corporation
3:30 pm – 3:45 pm	<u>Consumer Compliance</u> Bill Poe, <i>Supervisory Compliance Examiner</i> Department of Savings and Mortgage Lending
3:45 pm – 4:00 pm	Break
4:00 pm – 4:20 pm	<u>Legal and Legislative Update</u> Iain Berry, <i>General Counsel</i> Department of Savings and Mortgage Lending
4:20 pm – 4:50 pm	<u>Hot Topics</u> Stephany Trotti, <i>Deputy Commissioner/Director of Thrift Regulation</i> Department of Savings and Mortgage Lending
4:50 pm – 5:00 pm	<u>Agency Overview and Adjournment</u>

b) Mortgage Regulation Division Activities

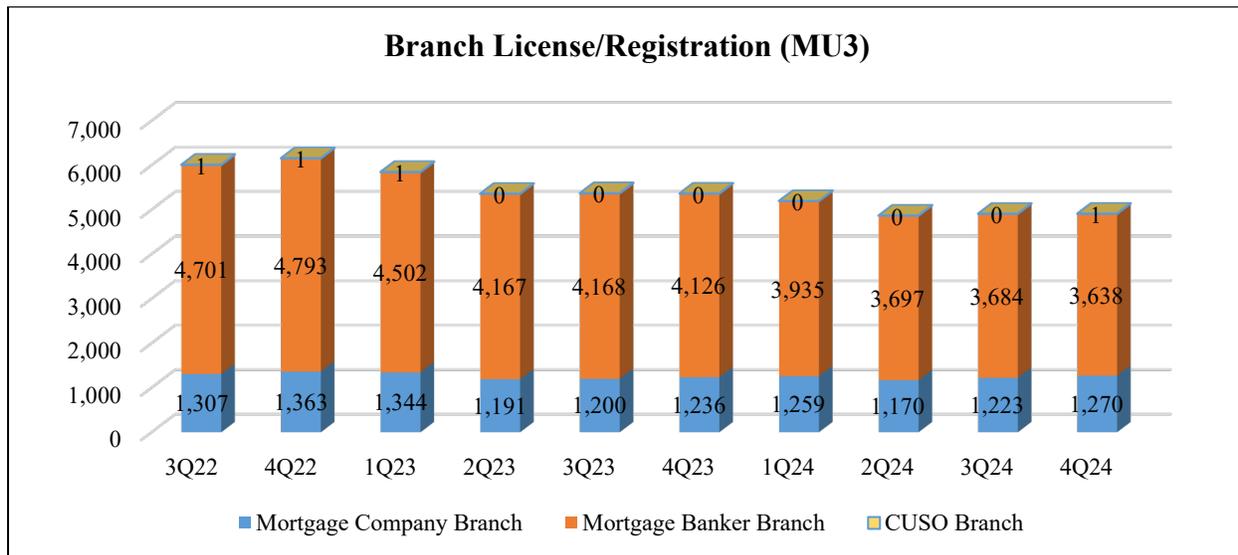
Industry Status

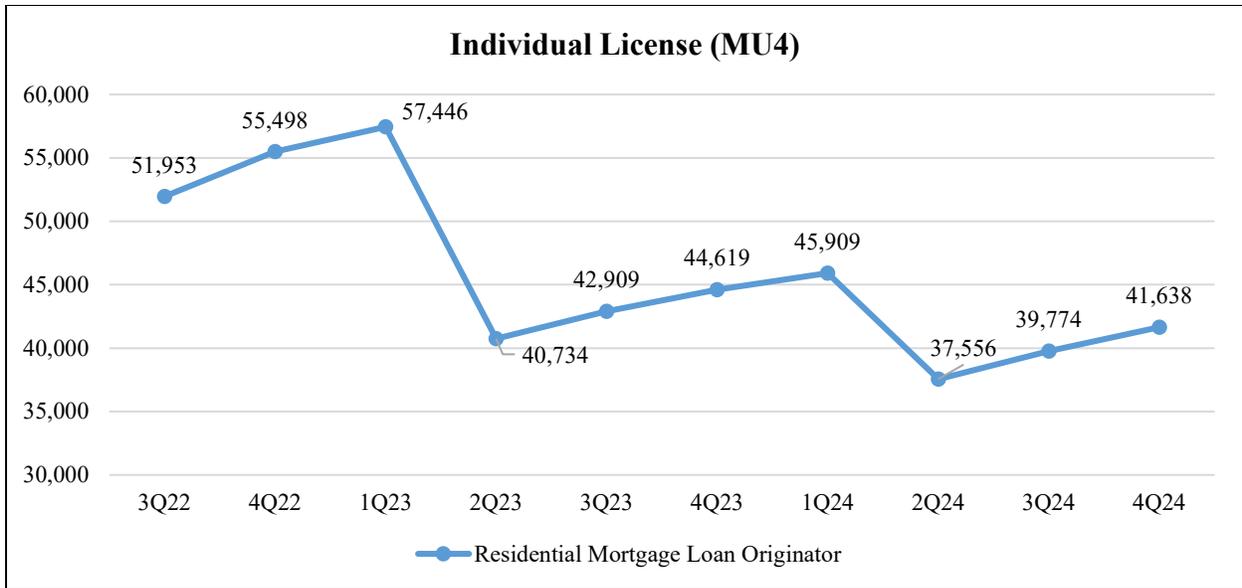
The Department continues to monitor various local, state, and national sources to identify issues impacting the mortgage industry, including interest rate changes, housing supply and demand, availability and affordability of homeowner's and flood insurance, mortgage-backed securities (MBSs) market, and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

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



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

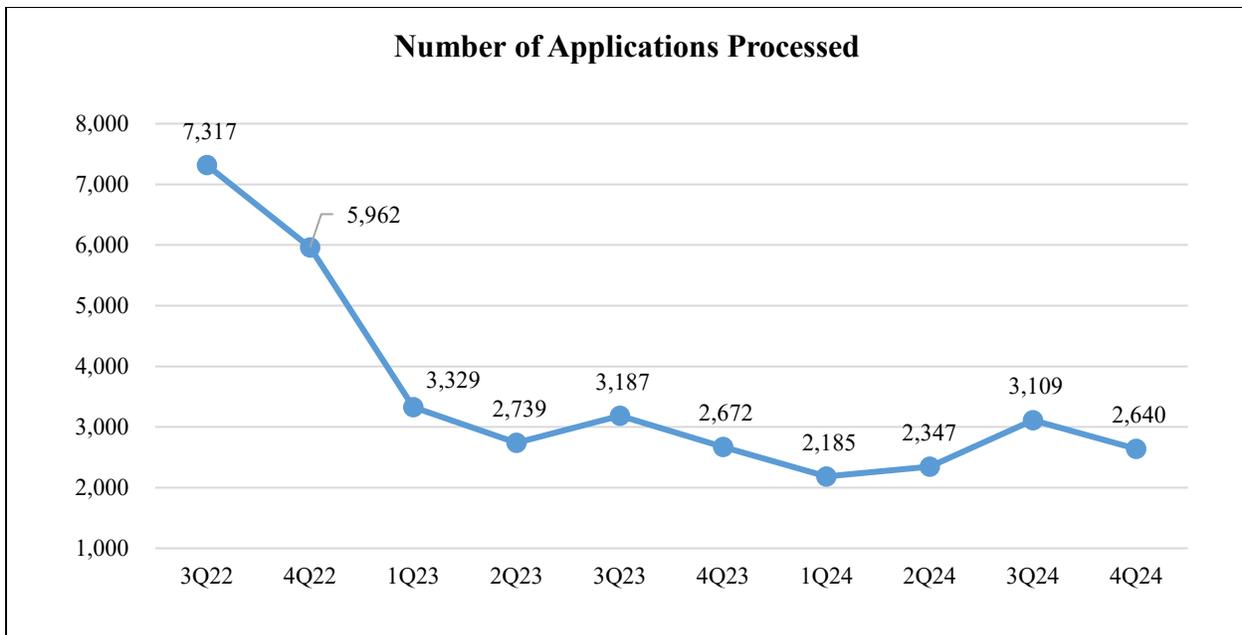




The most notable point from the three graphs above is the continued growth of the licensed mortgage companies count. During FY2024, the Department approved 640 new mortgage companies. After adjusting for the number of residential mortgage loan companies that voluntarily surrendered or did not renew their existing license, the Department added 287 mortgage companies in FY2024, a 9% year-over-year increase.

Licensing Activity Report

During the fourth quarter of FY2024, the Mortgage Licensing section processed 2,672 applications and approved 2,640 applications, including 173 mortgage entities, 303 branch offices, and 1,893 residential mortgage loan originators. The remaining 271 applications were either withdrawn by the applicant, or denied by the Department.



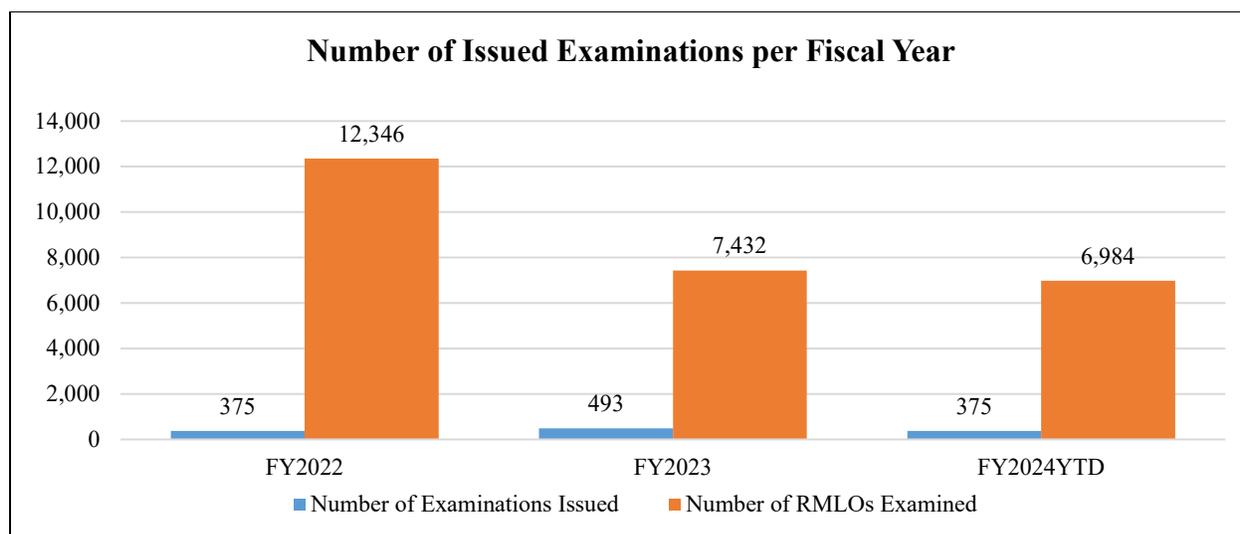
As observed in the chart above, the number of applications processed for FY2024 has remained consistent with the previous fiscal year.

According to NMLS Data Analytics for FY2024, the Mortgage Licensing section processed 94,522 license amendments, 10,968 credit report reviews, 17,155 sponsorship removals, and 17,059 sponsorship requests.

Mortgage Examination Activity Report

During the fourth quarter of FY2024, the Mortgage Examination section issued 89 examinations covering 959 individual licensees. Compared to the same reporting period in FY2023, the overall number of examinations issued (89 versus 166) and the number of individual licensees examined (959 versus 1,831) declined by 86.51% and 90.92%, respectively.

The chart below shows the number of issued examinations and the corresponding number of licensed residential mortgage loan originators (RMLOs) employed by the licensee/registrant for those examinations for the last three fiscal years.



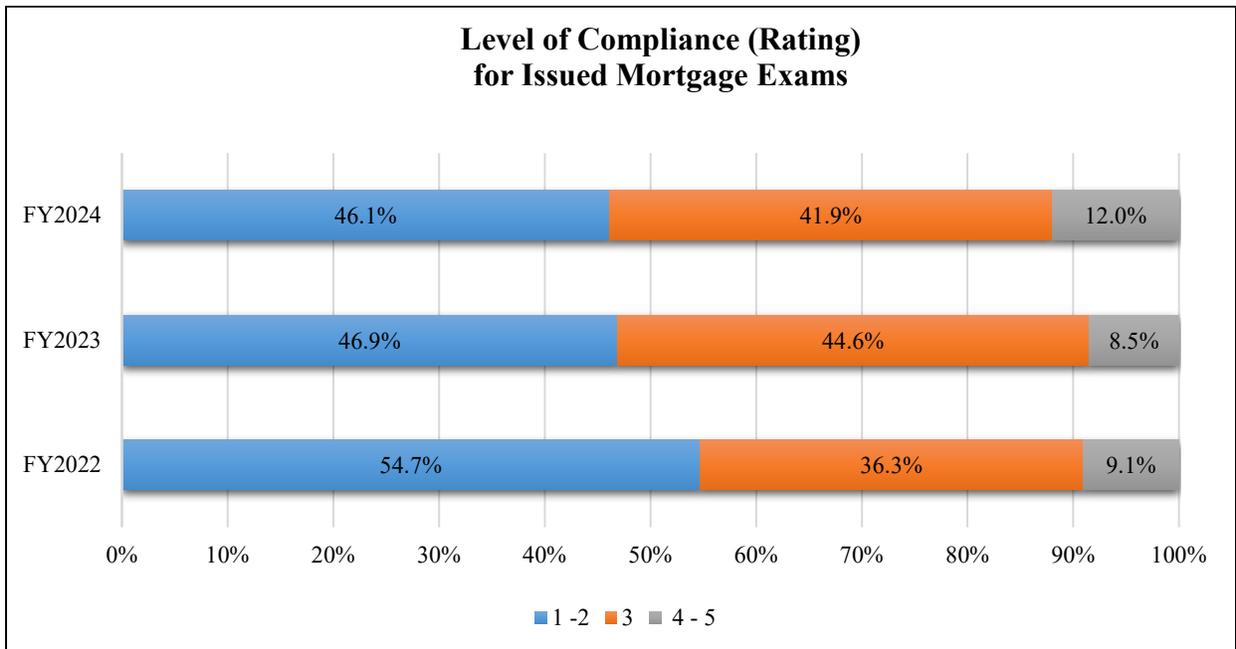
The number of examinations issued was impacted by numerous factors, including:

- 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 three trained Financial Examiners (turnover);
- the majority of the examination staff's attendance of the American Association of Residential Mortgage Regulators (AARMR) Spring 2024 Examiner Training School, covering topics related to loan originator compensation, advertising, and marketing service agreements;
- the training and development of newly hired examiners (41.2% of the current mortgage examination staff was hired in the past two years);
- 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.

Even though the number of examinations issued was below expectations, the number of examinations issued for FY2024 was identical to FY2022, with a comparable number of fully trained examiners.

Below is a breakdown of mortgage examination results by compliance rating for the past three fiscal years. As shown in the chart below, the stratification of examination ratings for FY2024 reflected a decreased percentage of 3-rated examination reports and a higher percentage of 4- and 5-rated examination reports, compared to FY2023. Examination ratings of 1, 2, or 3, are considered acceptable levels of compliance. The mortgage examination ratings for FY2024 fell within the acceptable variance percentage from the satisfactory level of compliance - 90% or more of the examinations within an acceptable level of compliance.



During the fourth quarter of FY2024, three 5-rated examination reports were issued. The 5-rated examination reports reflected significant areas of non-compliance, including:

- Failure to Produce Records upon Request
- Failure to File an Accurate and Timely Mortgage Call Report
- Failure to Comply with Remote Work Rules
- Failure to Provide Required Information in an Advertisement
- Failure to Maintain Records Related to Requirements for Loan Originator Compensation
- Collection of Time-Restricted Verifying Information
- Failure to Comply with Information Security Program Requirements
- Improper Association with an Unlicensed Entity (Wrap Lender)

- Unlicensed Activity
- Improper Sponsorship
- Failure to Contract a Properly Licensed Loan Processor
- Failure to Maintain Complete Mortgage Transaction Log
- Failure to Deliver Properly Completed Texas Mortgage Company Disclosure
- Failure to Maintain Complete Loan File Documentation
- Failure to Document Delivery of Notice of Penalties Statement
- Failure to Properly Execute Wrap Mortgage Disclosure
- Failure to Evidence Delivery of Wrap Mortgage Disclosure to Pre-Existing Lienholders
- Unauthorized Fees on a Second Lien
- Collection of Time-Restricted Fees
- Failure to Document Delivery of Properly Completed Loan Estimate
- Failure to Document Delivery of Properly Completed Written List of Providers
- Consummation of Loan Before Required Waiting Period
- Failure to Disclose Fees within Permitted Tolerances
- Failure to Deliver Properly Executed Closing Disclosure
- Failure to Meet the Requirements for Higher-Priced Mortgage Loans
- Failure to Document Delivery of Homeownership Counseling Organizations List
- Failure to Disclose Affiliated Business Arrangement
- Failure to Deliver a Complete Credit Score Disclosure and Notice to the Home Loan Applicant
- Failure to Document Delivery of Properly Completed Initial Privacy Notice
- Failure to Document Delivery of the Special Information Booklet
- Failure to Document Delivery of the Consumer Handbook on Adjustable Rate Mortgages
- Failure to Comply with the Red Flags Rule
- Failure to Comply with Anti-Money Laundering Requirements

The most common violations for the other examinations included 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 Approval Letters.

Outreach and Training

During the week of August 5, 2024, Director of Mortgage Regulation William Purce, Chief Mortgage Examiner Ellena Meier, Manager of Licensing Chris Osuna, Senior Review Examiner Justin Accola, Review Examiner Len Hicks, and Senior Mortgage Examiner Julianna Schwab attended the 34th American Association of Residential Mortgage Regulators (AARMR) Annual Conference.

c) Operations Division Activities

Accounting, Budget, and Financial Reporting

Staff has closed out fiscal year 2024. In compliance with Government Code, Section 2101.011, and in accordance with the requirements established by the Comptroller of Public Accounts, the Department has prepared and submitted the Annual Financial Report for fiscal year 2024 to oversight agencies.

Pursuant to Government Code, Section 661.902(d), the Department has reported information to the Comptroller of Public Accounts on emergency leave granted to employees during the prior fiscal year.

Pursuant to Government Code, Section 403.0147, the Department has submitted information on implemented programs for which no funding was appropriated for fiscal years 2023 and 2024.

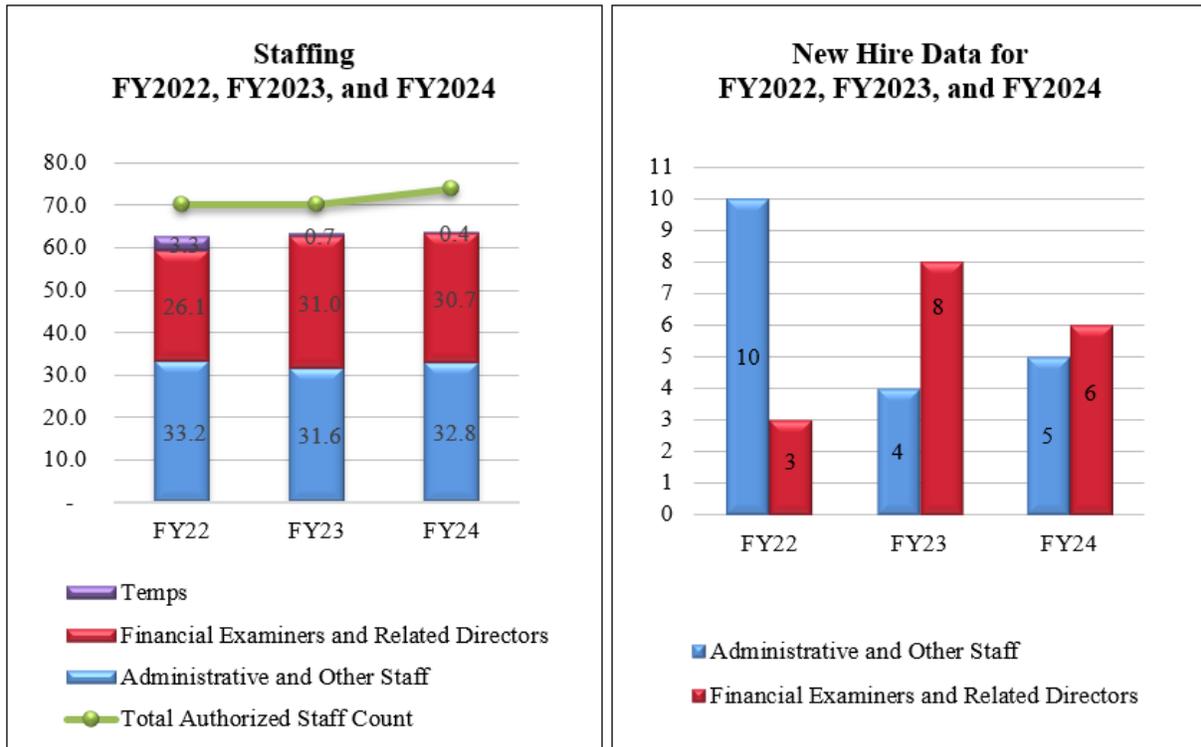
Audit

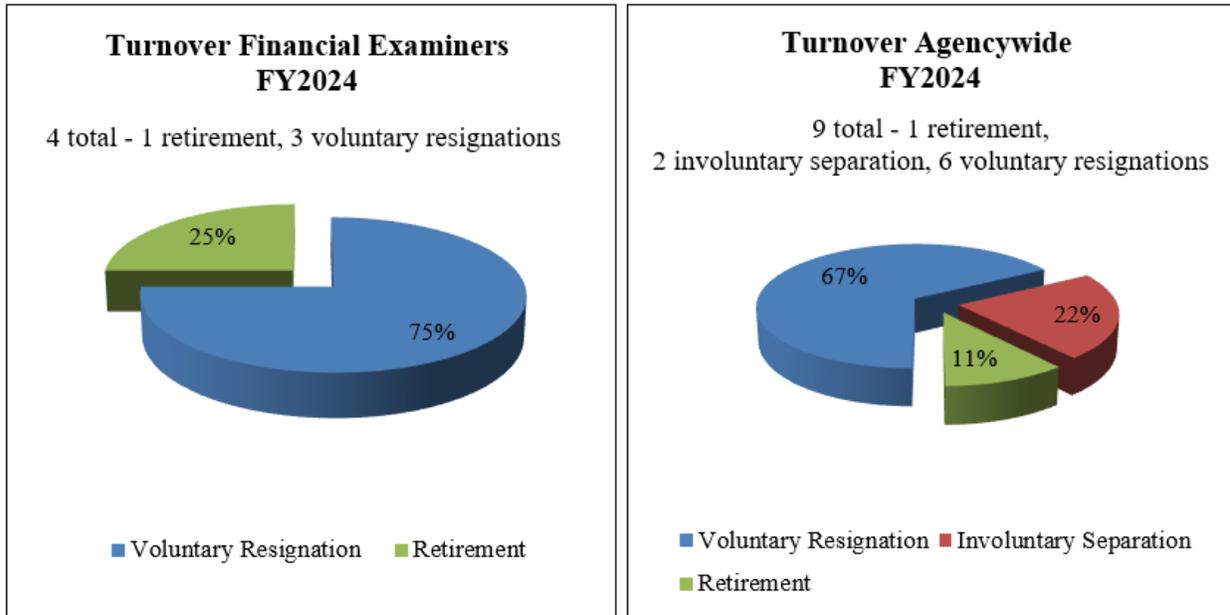
The Department is undergoing a Post-Payment and Procurement Audit conducted by the Comptroller of Public Accounts.

The annual risk assessment conducted by Garza/Gonzales and Associates is in progress.

Human Resources

Staffing Charts as of August 31, 2024





As of September 30, 2024, the Department was staffed at 65 regular full-time employees and one temporary worker. Since last reported, there was one separation – an accountant, and three new hires – two Mortgage Examiners and one Investigator.

Below is the status of the Department’s vacancies:

Vacancy Status	
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	
Administrative Assistant III/V	
Accountant VI/VII	

Activities and Projects

Human Resources staff reviewed, updated, and provided all personnel policies for the annual attestation to the Department’s staff. All staff completed timely.

The Department is undergoing a Texas Workforce Commission Review of policies, procedures, and practices. Human Resources staff has assembled and submitted the requested materials to the reviewer.

In October 2024, the Department began implementation of CAPPS Recruit with expected project length of four months. Human Resources staff is working with CAPPS Recruit team to deploy the product.

Outreach and Training

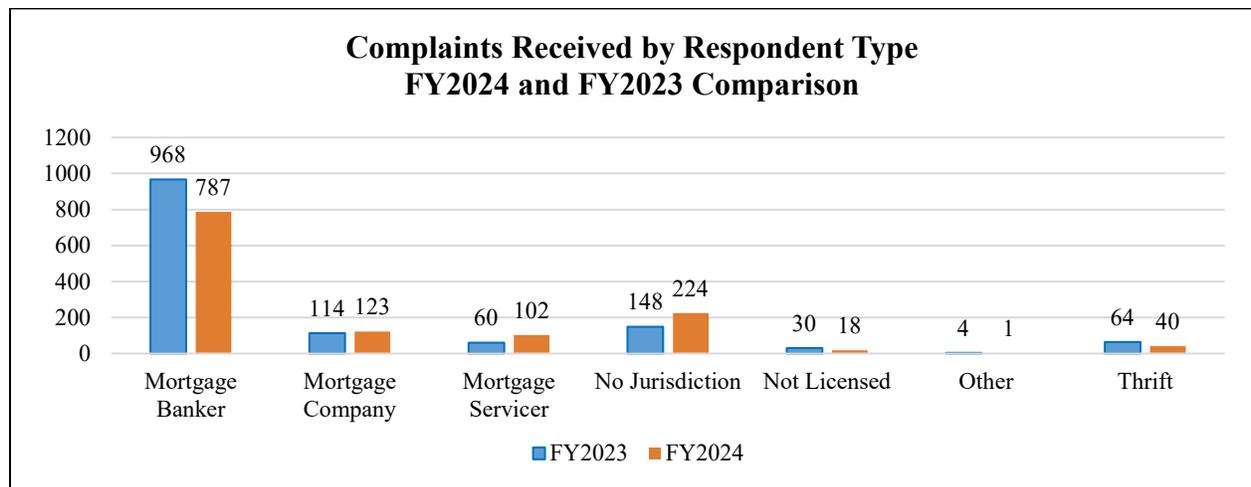
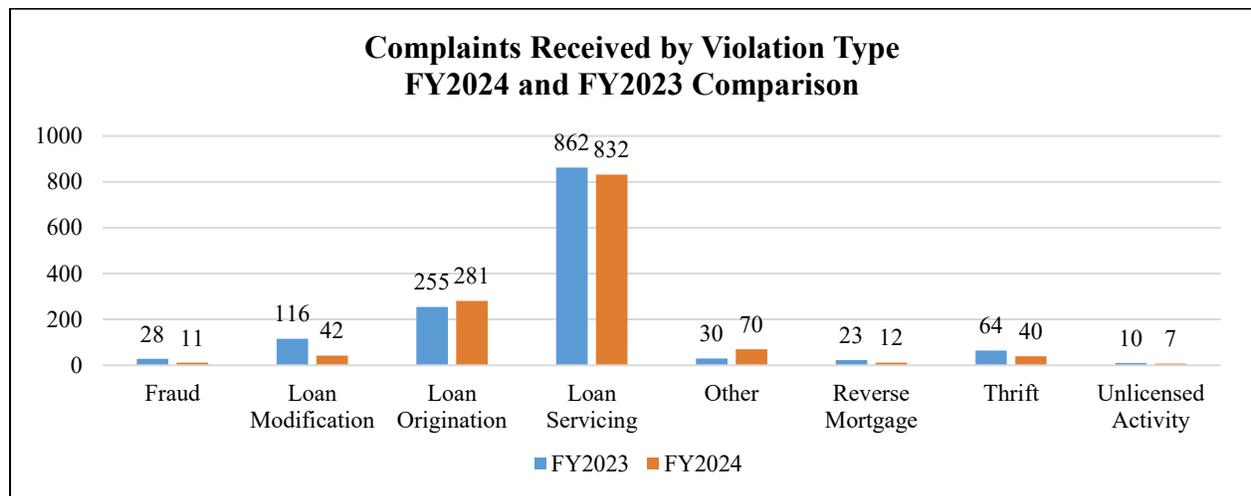
The quarterly agencywide meeting and training was held on August 29, 2024. Topics presented to the employees included FY2024 summary and achievements, internal policies and procedures, fiscal year-end processes, and information technology topics.

The next quarterly agencywide meeting and training is scheduled for November 21, 2024.

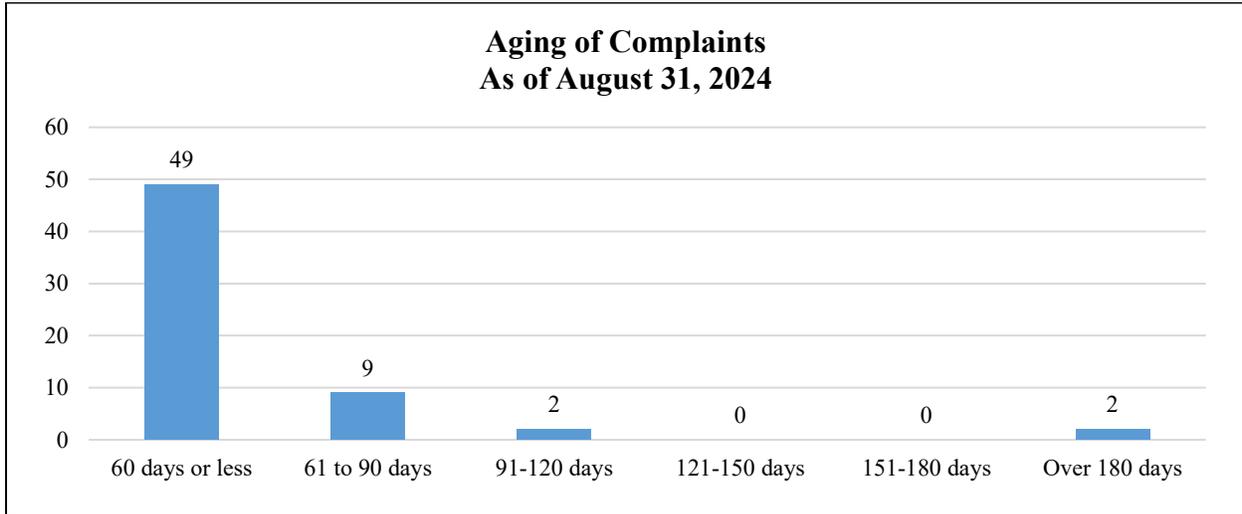
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

Complaints Received – In FY2024, SML received 1,295 complaints, compared to 1,388 received in FY2023 - a 6.7% decrease.



Aging of Open Complaints – As of August 31, 2024, there were 62 open complaint files. Complaint aging is acceptable with 97% of complaints aged 120 days or less.



Closed Complaints	FY2024			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Servicing Complaints				
Number of Servicing Complaints Closed	211	208	245	194
Average Number of Days to Close a Complaint	27	22	16	20
Percentage of Complaints Closed Within 90 Days	90%	94%	99.5%	98%
Non-Servicing Complaints				
Number of Non-Servicing Complaints Closed	118	113	113	125
Average Number of Days to Close a Complaint	24	23	19	12
Percentage of Complaints Closed Within 90 Days	92%	94%	96%	99%
Total	329	321	358	319

Legal and Enforcement Activity Report

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

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

Status of Pending Recovery Claim Applications as of August 31, 2024	
Pending Investigation	0
Pending Preliminary Determination Letter	9
Preliminary Determination Letter Issued, Pending Opportunity to Appeal	1
On Appeal	0
Open to Facilitate Resolution by the Parties	0
Total	10

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

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

Currently, the Department does not have any cases pending at SOAH.

Public Information Requests	FY2024			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Requests Received	39	44	46	48

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
Chapter 51, Department Administration	Rule Review	April 2025

Gift Reporting

During August 6-8, 2024, Chief Mortgage Examiner Ellena Meier and Senior Mortgage Examiner Justin Accola attended the American Association of Residential Mortgage Regulators (AARMR) 34th Annual Regulatory Conference. The registration fees totaling \$1,930.00 were waived and the lodging expenses totaling \$845.85 were paid by AARMR.

e) Legislative Activities

The Legislature is holding committee hearings concerning the 88th Legislature's interim charges. On September 10, 2024, Lt. Governor Dan Patrick released his second round of interim charges to the Texas Senate, including, notably:

❖ Business and Commerce

- Non-Compete Agreements. Examine the impact of the [FTC's] final rule on non-compete agreements on Texas employers including, but not limited to, contractual exceptions and limitations on independent contractors, for-profit and non-profit businesses, and senior executives. Identify ways to address balancing legitimate business interests of employers while also protecting employment mobility, increasing innovation, and fostering new business formation. Report on whether any changes should be made to existing law on the criteria, procedures, and remedies on enforcing non-compete and alternative agreements.

❖ Criminal Justice

- Financial Crimes. Evaluate financial criminal activity trends in Texas, including the fiscal impact on consumers, financial institutions, local economies, and businesses. Determine the extent of payment fraud by transnational criminal gangs. Study the impact of the Financial Crimes Intelligence Center (FCIC). Make recommendations that enhance penalties for check and payment fraud and identify ways to strengthen financial crime investigations in Texas.

The 89th Legislature convenes on January 14, 2025. The prefiling of bills begins on November 11, 2024.

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

Anticipated Litigation

None

Pending Litigation

None

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

Type/Strategy/Measure	2024 Target	2024 Actual	2024 YTD	Percent of Annual Target	Comparable Historical Data for the same quarter ending time period					
					FY2023	FY2022	FY2021	FY2020	FY2019	
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	7	15	78.95%						
Quarter 4	19	3	18	94.74%						*
					15	18	16	20	22	
* 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	3,109	7,641	81.72%						*
Quarter 4	9,350	2,640	10,281	109.96%						*
					11,927	24,808	20,373	10,801	8,922	
* 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%						*
Quarter 4	575	89	375	65.22%						*
					493	N/A	N/A	N/A	N/A	
* 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%						
Quarter 4	1,350	319	1,327	98.30%						
					1,374	1,506	1,264	1,024	1,134	

* Varies by 5% or more from the target

Department of Savings and Mortgage Lending

Actual Performance for Outcome Measures

Type/Strategy/Measure	2024 Target	2024 YTD	Percent of Annual Target
Outcome Measures-Key - Annual Reporting			
1-1-1 Thrift Safety and Soundness			
1. Percentage of State Chartered Savings Institutions Receiving Examination within the Required Timeframes	100%	100%	100%
2. Percentage of Savings Institutions Classified Safe and Sound	80%	70%	88% *
* The banking environment has resulted in elevated risk within the portfolio.			
2-1-1 Mortgage Regulation			
1. Percentage of Satisfactory Levels of Compliance Reported Through Examination	90%	88%	98%
2. Percentage of Examinations Initiated within Established Timeframes	75%	60%	80% *
* The overall timeliness of examinations was impacted by employee turnover, training of newly hired examiners, and increase in the number of licensed mortgage companies.			
3. Percentage of Applications Processed within Established Timeframes	80%	89%	111% *
* Processing times significantly improved due to the reduced number of applications (8.45% reduction between FY24 and FY23) and the experience gained by the recently hired License & Permit Specialists.			
3-1-1 Consumer Responsiveness			
1. Percentage of Complaints Closed within Ten Business Days of Receipt of Complete Information	99%	99%	100%
2. Percentage of Written Complaints Closed within 90 Days	95%	95%	100%
4-1-1 Agency Administration			
1. Percentage of Employees Separated from the Agency	10%	14%	142% *
* The experienced turnover is higher than the target due to internal adjustments to the workforce in order to maintain high performance standards and external factors related to a competitive job market.			
2. Percentage of Actual Expenditures to Budgeted Expenditures	95%	89%	94% *
* The deviation of actual to budget expenditures is primarily due to unfilled vacancies.			

Department of Savings and Mortgage Lending
Actual Performance for Outcome/Efficiency Measures

Type/Strategy/Measure	2024 Target	2024 YTD	Percent of Annual Target
Explanatory Measures-Key - Annual Reporting			
1-1-1 Thrift Safety and Soundness			
1. Number of State-Chartered Savings Institutions	21	20	95%
2. Dollar Amount of Assets under Regulation (in Billions)	\$340.0	\$316.60	93% *
* The industry contracted more than expected.			

* Varies by 5% or more from the target

Department of Savings and Mortgage Lending
Actual Performance for Non-Key Measures

Type/Strategy/Measure	2024 Target	2024 YTD	Percent of Annual Target
Thrift Safety and Soundness			
01-01 Outcome Measures			
4. Percentage of State Chartered Savings Institution Applications Processed within Statutory Timeframes	100%	100%	100.00%
Output Measures			
4. Number of State Chartered Savings Institution Applications Processed.	15	6	40.00% *
* Application activity has been lower than originally anticipated.			
Efficiency Measures			
1. Assets Examined Per Examiner Day (in Millions)	\$151.5	\$241.80	159.60% *
*Additional supervisory activity has resulted in higher levels of assets reviewed per			
2. Average Time (Business Days) to Complete Analysis of Quarterly Financial Data	7	7.00	100.00%
Mortgage Regulation			
02-01 Efficiency Measures			
1. Average Cost Per Application Processed	\$125.00	\$121.08	96.86%
Explanatory Measures			
1. Total Number of Licensees/Registrants in an Approved Status	50,000	51,099	102.20%
2. Number of Licensees Examined	5,500	6,984	126.98% *
* The number of licensed originators employed with the largest mortgage companies and mortgage bankers examined exceeded the original estimations.			
Consumer Responsiveness			
03-01 Efficiency Measures			
1. Average Cost Per Complaint Closed	\$250.00	\$256.72	102.69%

* Varies by 5% or more from the target

2. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 55, Concerning 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 adoption.

RECOMMENDED ACTION: SML recommends that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 55.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 55.

**CHAPTER 55. RESIDENTIAL MORTGAGE
LOAN ORIGINATORS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts 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. The commission's proposal was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6864). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting 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 adopted rules effectuate these changes.

Changes Concerning General Provisions (Subchapter A)

The adopted 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 adopted 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 adopted 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 adopted 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 adopted rules 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.

Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§55.1 - 55.6

Statutory Authority

The rules are adopted 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

ADOPTION OF NEW RULES
7 TAC CHAPTER 55
PAGE 3 OF 32

federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). The rules are also adopted under the authority of Finance Code §180.004(a), 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.

The adopted rules affect 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:

(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

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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.

(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.

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(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.

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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 legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.



SUBCHAPTER B. LICENSING

7 TAC §§55.100 - 55.114

Statutory Authority

The rules are adopted 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). The rules are also adopted 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. §55.100 is also adopted under the authority of, and to implement, Finance Code: §§156.002(4-a), 156.004(a), 156.105(a), 157.012, 157.0021, 157.02012(a), 180.051, and 180.152. §55.101 is also adopted under the authority of, and

to implement, Finance Code: §§157.013, 157.015, and §180.053. §55.102 is also adopted under the authority of, and to implement, Finance Code: §§157.013, 157.015, 180.058, and 180.061(2). §55.103 is also adopted under the authority of, and to implement, Finance Code: §157.0141, 157.015, 157.016, 180.059, and 180.060. §55.104 is also adopted under the authority of, and to implement, Finance Code §180.061. §55.105 is also adopted under the authority of, and to implement, Finance Code §157.0141. §55.106 is also adopted under the authority of, and to implement, Finance Code §180.061(4). §55.107 is also adopted under the authority of, and to implement, Finance Code: §157.019 and §180.061(4). §55.108 is also adopted under the authority of, and to implement, Finance Code: §§180.056, 180.057, and 180.060. §55.109 is also adopted under the authority of, and to implement, Finance Code §180.0511. §55.110 is also adopted under the authority of, and to implement, Occupations Code Chapter 55. §55.111 and §55.112 are also adopted under the authority of, and to implement: Finance Code: §§157.0132, 180.054, 180.055, and 180.061(1); and Government Code §411.1385. §55.113 is also adopted under the authority of, and to implement, Occupations Code §53.025. §55.114 is also adopted under the authority of, and to implement, Occupations Code Chapter 53, Subchapter D.

The adopted rules affect 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.

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

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(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 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.

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(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

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(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).

(c) 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.

(d) 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.

(e) 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 (nationwidelicingsystem.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

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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 license.

§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

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§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 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

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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:

(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

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§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

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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

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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) (.pdf)

(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

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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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§55.200 - 55.205

Statutory Authority

The rules are adopted 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). The rules are also adopted under the authority of Finance Code §180.004(b),

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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. §55.200 is also adopted under the authority of, and to implement, Finance Code: §§156.004, 157.0021, 180.061(4) and 180.151. §55.201 is also adopted under the authority of, and to implement, Finance Code: §§156.105, 157.0023(b), and 157.02012. §55.202 and §55.203 are also adopted under the authority of, and to implement, Finance Code: §§157.02015, 157.024(a)(2) and (3), 180.151, 180.152, and §180.153. §55.204 is also adopted under the authority of, and to implement, Finance Code: §157.02015(b) and §180.061(5). §55.205 is also adopted under the authority of, and to implement, Finance Code §157.020(a-1) and §180.101.

The adopted rules affect 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 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

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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.

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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;

(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

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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.);

(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

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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

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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 adoption and found it to be a valid exercise of the agency's legal authority.

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



SUBCHAPTER D. SUPERVISION AND ENFORCEMENT

7 TAC §§55.300 - 55.303, 55.310, 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). The rules are also adopted 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. §§55.300 - 55.303 are also adopted under the authority of, and to implement, Finance Code: §§157.021, 157.0211, 157.025, 180.061(5), and 180.062. §55.310 is also adopted under the authority of, and to implement, Finance Code: §§157.017, 157.023, 157.024, and 157.031. §55.311 is also adopted under the authority of, and to implement, §157.017.

The adopted rules affect 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.

§55.300. 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

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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 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.

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(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); and

(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).

§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 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

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(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 §157.024(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 §157.024(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

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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 adoption and found it to be within the state agency's legal authority.

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

3. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 56, Concerning 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 adoption.

RECOMMENDED ACTION: SML recommends that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 56.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 56.

**CHAPTER 56. RESIDENTIAL MORTGAGE
LOAN COMPANIES**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts 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. The commission's proposal was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6881). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting 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 adopted rules effectuate this change.

Changes Concerning General Provisions (Subchapter A)

The adopted 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 adopted rules, in §56.100, Licensing Requirements, clarify when a mortgage company license is required. §56.100(c) clarifies, among other things, 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 §56.100(c) seeks to impose licensing requirements on certain seller-finance mortgage lenders selling residential real estate (seller-finance lenders) currently operating under the belief that a mortgage company license is not required if the seller-finance 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 the licensing requirements referenced by §56.100(c) are imposed by Finance Code §156.202(a-1)(3), not the proposed rules, and the statute plainly states a mortgage company license is required for a person that makes (as the lender) more than the number of exempt transactions allowed under the statute. §56.100(c) clarifies 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 §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.

Other Changes Concerning Licensing (Subchapter B)

The adopted 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 (examinations) of a mortgage company or an individual residential mortgage loan originator (originator) sponsored by a mortgage company (sponsored originator) to

determine compliance with the requirements of Chapter 156 and the rules adopted thereunder. Examinations 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 sponsored originators, pursuant to Finance Code §157.021(a), SML may conduct examinations of an originator to determine compliance with Chapter 157 and the Texas SAFE Act, or the rules adopted thereunder. Examinations 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 adopted rules, in §56.204, Books and Records: clarify that a mortgage company must maintain books and records on behalf of its sponsored originators; expand existing requirements by establishing 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; establish a requirement for a mortgage company to maintain 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 §56.304; and establish recordkeeping requirements for the handling of unclaimed funds of the consumer under §56.305. The records and information a mortgage company is required to maintain under §56.204 are required by other state and federal law or otherwise generated in the ordinary course of doing business. The adopted 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 by 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 only learns 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 adopted 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 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 §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 adopted 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 adopted 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 adopted rules 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.

Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments.

SML received a comment from the Texas Mortgage Bankers Association (TMBA). TMBA

commented that §56.201(d), requiring a residential mortgage loan originator working for a mortgage company to sign a conditional pre-qualification letter or conditional approval letter is unnecessarily burdensome on industry as it would require reprogramming the loan origination systems used by mortgage companies and outweighs any public benefit derived from the rule. SML respectfully disagrees with the comment. A conditional pre-approval letter or conditional approval letter is used to document a mortgage applicant's purchasing power in the marketplace and is relied on by the mortgage applicant to make an offer on residential real property and execute a real estate sales contract. The contract typically requires the mortgage applicant to tender an option fee and earnest money of several thousand dollars. If the mortgage applicant fails to complete the purchase, that money is often forfeited. Most claims made on the recovery fund established pursuant to Finance Code Chapter 156, Subchapter F are as a result of improperly issued conditional pre-qualification and conditional approval letters. It is important to establish that a residential mortgage loan originator issued the letter as evidenced by his or her signature so that SML can properly evaluate claims made on the fund. SML notes that the form for the conditional pre-qualification letter and conditional approval letter (required by Finance Code §156.105) is unchanged from the preexisting rule and contemplates that a residential mortgage loan originator issue the letter. With respect to costs, SML notes that the rule does not require the use of loan origination systems. As such, costs associated with making changes to such systems as a result of the adopted rules are not directly related to the rules. §56.107(a), among other things, requires that a mortgage company must not allow a residential mortgage loan originator to work on behalf of a mortgage company until that residential mortgage loan originator is officially sponsored of record by the mortgage company in the Nationwide Multistate Licensing

System (NMLS), the licensing database system used by SML. TMBA commented that §56.107(a) should include provisions backdating the sponsorship of a residential mortgage loan originator in its employ to the time the request for sponsorship was made in the system. SML respectfully disagrees with the comment. SML relies on NMLS to determine when a residential mortgage loan originator is properly sponsored. As stated in the rule, a mortgage company is responsible for violations of law committed by its sponsored originators. The backdating of sponsorship is not feasible in NMLS and would create uncertainty as to whether a residential mortgage loan originator is truly sponsored. Additionally, a residential mortgage loan originator who knows his or her sponsorship will be backdated may not be properly motivated to remedy deficiencies holding up approval of a sponsorship request in the system. TMBA commented that §56.210, concerning Reportable Incidents, is outside of SML's statutory authority. SML respectfully disagrees with the comment. §56.210 requires a mortgage company to report to SML when it is subject to certain catastrophic events or security incidents. SML recited the statutory authority for the rule in its proposal. The rule is an extension of SML's examination authority and is similar to preexisting rules requiring a mortgage company to compile and maintain certain information in order to facilitate the examination process. As indicated in the proposal, a mortgage company, in order to comply with federal law, is already required to compile the information that is reported to SML under the rule. TMBA commented that §56.303, concerning Corrective Action, is outside of SML's statutory authority. SML respectfully disagrees with the comment. SML recited the statutory authority for the rule in its proposal. The rule lays out certain actions a mortgage company may be asked to take to correct violations of law determined during examination. As stated in the rule, corrective action is voluntary. SML sees great benefit in establishing

protocols in rule to guide and facilitate corrective action so that industry is aware of SML's expectations.

SML received a comment from the Texas Land Developers Association (TLDA). TLDA's comment relates to §56.100, which clarifies the exemption from licensing requirements created by Finance Code §156.202(a-1), concerning seller-finance lenders. TLDA, among other things, commented that it disagrees with SML's evaluation of the costs associated with §56.100 and questioned the methodology of SML's analysis, insisting that SML underestimated the potential number of seller-finance lenders required to be licensed under Finance Code. SML respectfully disagrees with the comment. As stated in the proposal, the requirement to be licensed is imposed by the Finance Code, not §56.100. The proposal included an exhaustive analysis of the licensing requirements imposed by the Finance Code. This analysis was done based on publicly available data concerning the number of seller-finance lenders that is inherently difficult to discern. Although TLDA challenges SML's methodology and the conclusions it reached, TLDA fails to identify another source of publicly available information that it suggests SML should have relied on. As stated in the proposal, SML intends to have a delayed implementation date for the rule in order for industry to come into compliance with statutory requirements, and for the Legislature to potentially take up and consider this issue during the 89th Legislative Session.

TLDA included with its comment purported comments from eight individuals who appear to be consumers. The TLDA comment also included a comment from the Mayor of Los Indios, Texas, a small city (population 1,008 in the 2020 census) situated along the Texas/Mexico border in Cameron County. The commenters generally extol the importance of the seller-finance lending in the mortgage

industry and encourage the commission to take a position on the rules that would maintain access to financing who might not be eligible for traditional financing. SML recognizes the impact of the seller-finance industry in the residential mortgage loan market; however, SML must administer and enforce the licensing requirements of the finance code as enacted by the Texas Legislature.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§56.1 - 56.6

The rules are adopted 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).

The adopted rules affect 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 administration and enforcement of Finance Code Chapter 156 (other than Subchapters F and G), the following definitions apply, unless the context 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 legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER B. LICENSING

7 TAC §§56.100 - 56.108

Statutory Authority

The rules are adopted 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). §56.100 is also adopted under the authority of, and to implement, Finance Code §156.201 and §156.202. §56.101 and §56.102 are also adopted under the authority of, and to implement, Finance Code: §156.203 and §156.208. §56.103 is also adopted under the authority of, and to implement, Finance Code: §§156.208, 156.2081, and 156.210. §56.104 is also adopted under the authority of, and to implement, Finance Code §156.211. §56.105 is also adopted under the authority of, and to implement, Finance Code §156.210. §56.107 is also adopted under the authority of, and to implement, Finance Code: §156.201(c) and §156.211. §56.108 is also adopted under the authority of, and to implement, Finance Code: §156.201(c).

The adopted rules affect 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

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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).

(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, 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). SML is limited to the license status options available in NMLS. The NMLS Resource Center (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 (nationwidelicencingsystem.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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER C. DUTIES AND
RESPONSIBILITIES

7 TAC §§56.200 - 56.206, 56.210

Statutory Authority

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The rules are adopted 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). §56.200 is also adopted under the authority of, and to implement, Finance Code §156.004. §56.201 is also adopted under the authority of, and to implement, Finance Code §156.105. §§56.202, 56.203, and 56.210 are also adopted under the authority of, and to implement, Finance Code §156.303(a)(2) and (3). §56.204 is also adopted under the authority of, and to implement, Finance Code: §156.102(c) and §156.301. §56.205 is also adopted under the authority of, and to implement, Finance Code §156.213. §56.206 is also adopted under the authority of, and to implement, Finance Code §156.212.

The adopted rules affect 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) (.pdf)

(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) (.pdf)

(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) (.pdf)

(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(l).

(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

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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 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

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(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 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

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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:

(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 SML, the transferee must provide SML 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:

(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

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

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

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

(iv) 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 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

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(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));

(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: 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) that sets 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):

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

(2) application/loan identification number assigned by the mortgage company;

(3) 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 paragraph (2) of this subsection;

(4) loan identification number assigned by the lender, if different than paragraphs (2) or (3) of this subsection;

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

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

(7) 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;

(8) closing date;

(9) 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));

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

(11) 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

(12) 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:

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(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;

(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 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).

(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.

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(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 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 SML 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 SML 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 SML 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 plans to take to resolve or address the reportable incident; and

(5) the point of contact designated by the mortgage company for inquiries 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 adoption and found it to be a valid exercise of the agency's legal authority.

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



SUBCHAPTER D. SUPERVISION AND ENFORCEMENT

7 TAC §§56.300 - 56.304, 56.310, 56.311

Statutory Authority

The rules are adopted 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). §§56.300 - 56.304 are also adopted under the authority of, and to implement, Finance Code: §156.301 and §156.305. §56.310 is also adopted under the authority of, and to implement, Finance Code: §§156.209, 156.302, 156.303, and

156.406. §56.311 is also adopted under the authority of, and to implement, Finance Code §156.209.

The adopted rules affect 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.

(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) 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 SML 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, 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. 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); and

(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.

(b) Required Records. The mortgage company must maintain records reflecting bona fide attempts to pay the funds to the mortgage applicant or customer.

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(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

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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 adoption and found it to be within the state agency's legal authority.

Iain A. Berry
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October 7, 2024

Finance Commission of Texas
Attn: Chairman Philip Holt
Department of Savings and Mortgage Lending
Attn: Commissioner Hector Retta via email to: HRetta@sml.texas.gov
2601 North Lamar Blvd
Austin, Texas 78705

Re: Response to Proposed Department of Savings and Mortgage Lending Rules

Chairman Holt, Commissioner Retta and members,

This law firm represents the Texas Land Developers Association (TLDA) with regard to the Texas Department of Savings and Mortgage Lending's (the "Department") proposed rules relating to Residential Mortgage Lending Companies, published September 6, 2024. Please forward any correspondence regarding this matter to me.

TLDA is disappointed that its pre-publication comments regarding the exceptionally broad scope and unprecedented negative effect of proposed changes to Rule 56.100 on small businesses and rural areas seem to have been ignored. Similarly, Department of Savings and Mortgage Lending staff appear to have gathered inaccurate and incomplete data upon which it bases important conclusions in the preamble to the proposed rules. Both prior to the Finance Commission's consideration of the proposed rules and after the Commission's August 16, 2024 decision to publish the rules for formal public comment, TLDA members offered to meet and provide evidence to educate and assist the Department in fulfilling its statutory duty to fully understand and correctly communicate the effect that the proposed rules will have on the regulated entities and on the general public. That was not done. Even though the TLDA provided several people to testify at the August 16th Finance Commission hearing regarding the devastating effect Rule 56.100 will have on small businesses and rural communities, TLDA was not asked to review or check the Department's alleged data or methodology. As a result, the proposed rules are rife with factual and legal inaccuracies that violate the spirit and letter of Texas Law. The TLDA requests that the Finance Commission delay passage of these proposed rules until the procedural and substantive deficiencies are cured. The procedural and substantive deficiencies are set out below.

The Department's conclusion that the proposed rules will have only a small or moderate effect on the number of new licenses is wrong.

Perhaps the most obvious and glaring error underpinning the Department's regulatory analysis is its underestimation of the effect Rule 56.100 will have on the number of licensed mortgage loan companies in Texas. Without an accurate understanding of the impact on total licensing numbers,

any subsequent analysis based on that incorrect data suffers. The Department's mistake is easily demonstrated by looking at a single, recent examination of an owner-financing land developer.

In 2022, the Department conducted an examination of a well-known land developer: Colony Ridge. Although Colony Ridge is independently licensed as a residential mortgage loan company ("RMLC"), it originates loans for its owner-financed sales as permitted by the prior two Department Commissioners. Stated differently, all of Colony Ridge's regulated financing activity is handled through a licensed third-party residential mortgage loan originator ("RMLO"). Therefore, the Department's examination was technically of the RMLO's records, because it was the RMLO that created all of the financing documents and assured that the buyer received all of the proper disclosures in the financing transaction. In the Department's examination of Colony Ridge's RMLO, the Department had access to the Colony Ridge's transaction call log which listed over 11,000 individuals and 9,954 closed owner-financing transactions in 2022. A review of more recent Colony Ridge data would reflect over 9,000 individuals on the call log and 7,496 closed owner-financing transactions in 2023.¹

Colony Ridge is only one of approximately 50 "large" owner-financing land developers in Texas; there are other developers and TLDA members with marginally smaller sales volumes and loan portfolios. Moreover, TLDA members and the numerous businesses that support owner-financing operations understand that there are thousands of rural Texan landowners who regularly engage in small developments outside of incorporated cities; in fact, these small developers constitute the bulk of the entities that will be affected by Rule 56.100.² When contrasted against the Department's estimate that there were only 20,922 total seller-finance loans in Texas in 2022,³ it is clear that the Department's estimate is inaccurate. It is not credible to assume that one company accounts for almost 40% of the Department's estimated 20,922 total owner financing transactions in Texas in 2022, especially considering TLDA's additional membership and their own comparable sales volumes. This is direct evidence that the Department's assessment of the size of the owner-financing real estate market in Texas is grossly underestimated. As a result, the Department's attempt to derive and estimate the future licensing universe created by this proposed regulatory

¹ Thus, the Department's estimate of 17,575 total Texas residential seller-financed loans in 2022, with only 1,231 of those loans being made by seller-financed lenders making four or more loans is obviously incorrect. See 49 TexReg 6884.

² Indeed, TLDA's knowledge of the industry is consistent with the Department's finding that the vast majority of entities affected by the changes to proposed rule 56.100 meet the definition of "small business" in Texas Government Code § 2006.001(2) because they are independently owned and operated for-profit entities with fewer than 100 employees or less than \$6 million in annual gross receipts.

³ The Department's reliance on information from only Advanced Seller Data Services is a fatal flaw, because the majority of Texas owner-financed notes are not disclosed to or known by Advanced Seller Data Services. For example, the vast majority of land developers do not have a loan portfolio size that would permit a sale on the secondary market. TLDA members, with their third-party RMLO contacts and owner-financed loan servicing connections, possess more accurate information about the size and state of the Texas owner-financing community and the businesses that support those owner-financing developers.

change suffers from the same undercounting error.⁴ The Department’s reliance on the Comptroller’s data showing the number of registered non-depository credit intermediaries is equally unhelpful because owner-financing land developers consider themselves land developers, not credit or financing companies. These owner-financing companies do not register as credit intermediaries or self-identify as credit companies. Nevertheless, TLDA believes that approximately 85% of owner financing land developers, equal to approximately 5,000-10,000 business entities, are small businesses that are currently selling in excess of the statutory de minimus exception. In short, the Department’s findings and conclusions about the number of licenses that will need to be issued is profoundly miscalculated. The Department appears to be engaging in a flawed analysis that suppresses the probable number of new licenses that will be issued in an attempt to justify a policy change. This is an error of fact that does not place the public on notice of the nature and extent of the effect of the proposed rules on the public and the regulated entities that will be affected by the change.⁵ These are proper legal bases to challenge the proposed rules if they were to be adopted.

This statement at 49 Tex. Reg 6881 is incorrect: “However the licensing requirements referenced by §56.100(c) are imposed by Finance Code §156.202(a-1)(3), not the proposed rules, and the statute plainly states a mortgage company license is required for a person that makes (as the lender) more than the number of exempt 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.”

The Department’s statement is not factually correct. The Department’s inaccurate account of the current state of the licensing process appears to be an attempt to justify a regulatory change that is nothing more than the Department’s Commissioner and staff imposition for their novel interpretation of the Finance Code. It is undisputed that for at least the last decade the Department—in particular, the last two Commissioners—have interpreted the Finance Code to permit otherwise unlicensed owner-financed sales to occur through a third-party RMLO. Thus, this regulatory change is not a *clarification* at all; it is a wholesale departure from the longstanding and well-accepted practice of formally and officially permitting third-party RMLOs to handle all of the regulated responsibilities in an owner-financed transaction. Again, this is not an industry “belief”. It is the current state of the law, and this current state of the law was officially adopted through a published FAQ page on the Department’s website. As previously explained in pre-

⁴ The Department estimates that there were 308 seller-finance lenders that would have been required to be licensed in 2022. See 49 TexReg 6884. The TLDA membership alone consists of more than 350 separate seller-financed development entities that would each have to be separately licensed under the proposed rule. TLDA estimates that its membership consists of less than 10% of the seller-financing residential land development entities in Texas. Thus, the total number of licenses that will be required under the proposed rule will be at least 5,000.

⁵ *Unified Loans, Inc. v. Pettijohn*, 955 S.W.2d 649, 651 (Tex.App. Austin 1997, no pet.) (“Adequate notice is essential for fairness as well as a meaningful opportunity to comment on a proposed rule. See *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 393–394 (D.C.Cir.1973), cert. denied, 417 U.S. 921, 94 S.Ct. 2628, 41 L.Ed.2d 226 (1974) (“It is not consonant with the rulemaking proceeding to promulgate rules on the basis of inadequate data . . .”)

comment communications to the Department, the Department is prohibited from changing an interpretation of law issued by a prior Commissioner unless that change is made through a legislative change to the statute, or the change is made through formal notice and comment rulemaking as required by the Administrative Procedure Act. Thus, the Department's characterization of this change as a "clarification" instead of the "redefinition" that it is is an error of fact and law that does not place the public on notice of the true nature of this proposed rule, and it violates the Administrative Procedure Act.

This statement at 49 Tex. Reg 6884 is incorrect: "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)."

The Department's statement that Government Code §2001.024(a)(5) concerns only direct costs is incorrect. Notice of any proposed rule must include:

(a)(5) a note about public benefits and costs showing the name and title of the officer or employee responsible for preparing or approving the note and stating for each year of the first five years that the rule will be in effect:

- (A) the public benefits expected as a result of adoption of the proposed rule; and
- (B) the probable economic cost to persons required to comply with the rule;

The law makes is no reference to or delineation of "direct" versus "indirect" costs.

Moreover, the Department's analysis concedes that licensees will incur a significant level of various fees and costs. In addition to direct licensing fees of \$1,975 over the first five years, companies should expect to incur a substantial administrative cost associated with employing subject matter experts and financial professionals to generate the applications and financial reporting documents required for NMLS licensure. Most of the newly licensed entities will be small business such as "mom-and-pop" developers with only 5 to 50 land sales a year. These businesses do not employ CPAs or full-time financial professionals to generate the required detailed financial reporting that licensure will demand. That cost will be a significant percentage of the revenue these businesses generate. These costs were ignored by the Department. The Department's consideration of these fees and costs is required by Texas Government Code § 2006.001(2). The failure to do so is a legal error that violates the Administrative Procedure Act and Texas Government Code § 2006.001.

The Department's requirement that each company employ an originator to be the qualified individual (QI) at an estimated cost of \$62,210 to \$84,230 per year to the company⁶ is another Department assumption that is at odds with the Department's conclusions that there will be no direct costs to the new licensees. The requirement to employ a QI is a significant cost, especially on the small businesses most affected by the proposed changes to rule 56.100. Again, the

⁶ See 49 TexReg 6885

conclusion that this expense is not an economic cost to businesses is factually incorrect. It also creates a legal error that violates the Administrative Procedure Act and Texas Government Code § 2006.001.

This statement at 49 Tex. Reg 6881 is incorrect: “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 that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code § 2006.002 are not required.”⁷

The Department’s statement is not legally or factually correct. As stated above, the Department has noted that new licensees will be required to carry at least \$62,000 to \$84,000 per year in QI employment costs, plus licensing fees and additional administrative costs to generate required NMLS financial statements. That is a direct and adverse economic cost on small businesses, so the Department’s statement to the contrary is factually incorrect and fails to provide the required notice to the public as required by the Administrative Procedure Act.

In addition, because the vast majority of the new licensees are small “mom-and-pop” businesses, the law requires the Department to prepare an economic impact statement that estimates the number of small businesses or rural communities subject to the proposed rule, projects the economic impact of the rule on small businesses or rural communities, and describes alternative methods of achieving the purpose of the proposed rule and a regulatory flexibility analysis that includes the agency’s consideration of alternative methods of achieving the purpose of the proposed rule.⁸ Compliance with the requirements of §2006.002 is mandatory.⁹ There is no exception. The proposed rules do not engage in the statutorily required analysis; the proposed rules do not accurately estimate the number of small businesses subject to the proposed rule and do not estimate the number of rural communities affected by the rule; the proposed rules do not accurately project the economic impact of the rule on small businesses; and the proposed rules do not consider

⁷ TLDA has received copies of a letter from the mayor of the City of Los Indios opposing the proposed rule, and is attaching the letter for the Department’s consideration and response. Los Indios is a rural community near the South Texas border.

⁸ Tex. Gov’t Code §2006.002.

⁹ *Southwest Pharmacy Solutions, Inc. v. Texas Health and Human Services Com’n*, 408 S.W.3d 549, 562 (Tex.App.-Austin 2013) (“Section 2001.024 of the APA requires that the published notice of a rule include certain statements and “any other statement required by law.” Id. § 2001.024(a)(8). Among the other statements required to be included in the notice are the economic impact statement and regulatory flexibility analysis required by section 2006.002. Id. § 2006.002(d); *Unified Loans, Inc. v. Pettijohn*, 955 S.W.2d 649, 651 (Tex.App.-Austin 1997, no pet.). Failure to substantially comply with section 2001.024 renders a rule voidable. Tex. Gov’t Code § 2001.035(a) (rule voidable unless agency adopts it in substantial compliance with APA sections 2001.0225 through 2001.034).”)

how the additional costs associated with regulatory compliance will drive the costs of the final product to the consumer (who is often a rural community resident).¹⁰

For example, the additional costs associated with just the employment of a QI will multiply the loan costs to consumers in rural areas. The competitive advantage enjoyed by land developers, most of whom develop residential property in rural areas, is the low regulatory burden placed on owner-developed lots. Many, if not most, lot sales currently carry a total transaction cost of between \$100-400, which is what third party loan originators are commonly paid to handle the regulatory responsibilities under the SAFE Act. Because most land developers are small businesses that sell less than 50 lots a year, the expense of \$62,000 - \$84,000 QI alone will increase the cost to consumers by at least \$1,240 – 1,680 per lot. This is an increase in transaction closing costs of 300% – 1,500%, assuming 50 sales a year. For smaller developers that sell fewer lots, the percentage increase is even higher. For developers that sell 5 – 10 lots a year, the cost is prohibitive, especially in relation to the cost of the actual land. Because land developer lots are usually priced in the \$30,000 - \$75,000 range, this single additional regulatory expense significantly increases the price to the consumer. In some cases, this single QI expense will increase total consumer price by more than 10%. After factoring in licensing fees, additional accounting and financial reporting expenses, and other administrative costs (such as advertising changes to include the entity’s new NMLS license number, etc.), the regulatory burden of proposed rule 56.100 on small businesses is significant. It will push many of the small business developers out of business or force these businesses, many of which currently hold millions of dollars in minimally developed real estate and future development commitments, to do business illegally.

The proposed rules also do not project the economic impact of the proposed rules on rural communities,¹¹ who benefit from the development and sale of construction material, utility services, and low-cost housing options in the current environment, but who will be negatively affected by the proposed rules. For rural areas, rural development is the lifeblood of their commerce. The main competitive advantage they have is a surplus of relatively inexpensive land. It is not subject to reasonable dispute that increasing the consumer price of land will negatively affect rural communities, and in a substantial way. The Department’s economic impact statement to the proposed rule wholly fails to investigate or report on this impact. These are legal and factual deficiencies that constitute proper bases to invalidate the proposed rule.

¹⁰ TLDA has received copies of consumer letters opposing the proposed rule, and is attaching those letters to this correspondence for the Department’s consideration and response.

¹¹ It is certainly incorrect when the Department states that “No local economies are substantially affected by the proposed rules.” Most rural areas are strongly impacted by TLDA and small land developer activities. To the extent these rules drive development expenses, increase consumer costs, or otherwise create conditions that will slow or stop local development in rural Texas, there will be a strong corresponding effect on local property receipts, development receipts, and local sales taxes. The Department’s failure to prepare a local employment impact statement pursuant to Government Code §2001.022 is another error of law that may invalidate the proposed rules.

There is no reasonable justification for expanding required licensure because there is no enforcement crisis, and no new information is created by licensing the owner-financing developers.

The Department's history of examining third party RMLOs reveals that there is no new information that will be generated or gathered by the newly licensed owner-financing land developers. For the past decade, the Department has examined the files of third party RMLOs to assure that owner-financed sales meet the requirements of State and federal law. When deficiencies were found by Department examiners, the Department has taken appropriate administrative action against the entity responsible for the regulated action (e.g. the third party RMLO if one was engaged in the transaction, or owner-financing seller who may have failed to use a third party RMLO). Proposed rule 56.100 will not generate any new information on owner-financed transactions, and it will not provide further Department expanded insight into owner-financed transactions in Texas. The use of third party RMLOs effectively assures that owner-financed sales are compliant with all state and federal disclosures, while imposing a minimal cost on the transaction. It is noteworthy that the Department's comments to the proposed rule 56.100 do not justify its expansion of licensing as the result of an enforcement crisis or any similar inability to take action against noncompliant owner-financiers.

TLDA wonders what issues the Department has encountered with its current oversight system that makes the proposed licensing requirement necessary. Conversations between TLDA and the Department staff in 2017 and 2019 revealed that the Department had received no complaints regarding the substance of an unlicensed owner-financed sale in this industry. TLDA remains certain that the Department has never received any complaint against, and have never sought administrative action against, an unlicensed owner-financing seller who engaged a licensed RMLO to handle the regulated portion of the transaction. There is no public interest or public safety justification for requiring independent licensure of owner-financing sellers. Nor has there been a public outcry for such licensure. Requiring licensure in this circumstance is unwarranted from a public interest perspective.

The reason the Department has never seen a complaint or prosecuted an administrative action against an unlicensed owner-financing seller is obvious: the current requirement that owner-financed sales use a third-party RMLO provides all of the necessary criminal, civil and administrative leverage to assure compliance with state and federal standards and disclosures. Finance Code §156.103 permits the Commissioner to enjoin a violation of the law, whether the violation is due to a licensed individual or not. Further, in the event the Commissioner believed inappropriate mortgage origination was occurring, the Commissioner still retains authority to pursue a long list of remedies, including injunctive relief, restitution, Deceptive Trade Practice actions, etc. Requiring licensing of owner-financing lenders is simply unnecessary under State law. The Department's absence of a reasonable enforcement justification for expanded licensure violates Texas Government Code Ch. 2006.

The third-party independent contractor QI proposed by the Department does not exist.

The Department appears to recognize that expanding licensure to small business land developers imposes a heavy regulatory and compliance framework that has traditionally been imposed on large mortgage banks and other traditional government backed lenders. Perhaps the most burdensome component of this expanded licensure is the need to employ or engage a third-party QI. To small business land developers who have traditionally relied on third-party RMLOs to satisfy the relatively complex regulatory requirements of SAFE Act financing, the ability to outsource that compliance element has been crucial.

To address the new compliance requirement that all licensed residential mortgage companies must employ a QI, the Department proposes that owner-financing developers similarly retain “the services of an independent contractor to serve as [the] qualified individual, and also allows a seller-finance lender that may be accustomed to securing the services of a third-party originator to continue to do so, and allow the qualified individual for that third-party entity to also serve as qualified individual for the seller-finance lender that may seek licensure as a result of the statutory clarification made in proposed §56.100.” While well meaning, the Department’s proposal is impossible. Setting aside the fact that Department’s proposed rule 56.108 requires a QI to be sponsored by only one mortgage company, and requires the QI’s address and contact information on file with the Department to match of the QI’s mortgage company,¹² there are practical barriers to the existence of third-party QIs.

To start, there is no such thing as a third-party QI. Unlike third-party RMLOs, who are narrowly responsible for the compliance portion of an owner-financed transaction, third-party QIs will be held fully responsible for all the business activity of the owner-financing business. As the recent case of *CFPB, et al v Colony Ridge Development, LLC et al*, 4:23-CV-04729 (S.D. Tex.) demonstrates, third-party RMLOs are not held responsible for the general business activities of the owner-financier, even when there are allegations of redlining by the owner-financier. Thus, the fact that RMLOs are not liable for alleged violations of law is a critical distinction from the Department’s creative proposal to manufacture a market for third-party, independent contractor QIs. TLDA’s research indicates that the only people that are acting as QIs today are in loan origination companies including mortgage banks and traditional government backed lending institutions. These QIs are not only captive to their employers, but they are also specialized in an area of mortgage lending that is vastly different than the owner-financing market. Stated clearly, there are no QIs available for such third-party independent contracting, and even if there were any available, they have no knowledge or experience in the raw land sale private loan market, or the small business environment served by land developers. Nevertheless, assuming that there were qualified, knowledgeable, and experienced QIs to oversee all aspects of a small, unsophisticated owner-financing land sale business, it seems extremely unlikely that a QI would accept responsibility for all aspects of the small business—from advertising, call reports, financial disclosures, and all other regulatory compliance responsibilities—as an independent contractor,

¹² Proposed rule 56.108 contemplates one or more QIs for a mortgage company but permits only one mortgage company for any QI.

much less a standard employee. The power associated with the independent ability and responsibility to bind the licensed mortgage company concerning all its operations cannot be understated. Indeed, the crucial role QIs play in a mortgage company business is commensurate with a leadership or ownership position, not an independent contractor. To allow an independent contractor to force company action and generally bind a company in all its operations is incongruent with most business structures. It seems likely that many small businesses will require a change in the company's business structure and/or company operating agreement to afford a third-party QI the authority to oversee and govern the businesses' activities as required by law. The costs associated with this change can be significant to small businesses, but the Department fails to consider either the cost or disruption to the business required by this corporate structure, leadership and management change. These constitute errors of law that are a basis to invalidate the proposed rules.

Conclusion

While perhaps well-meaning, the Department's proposed changes to 56.100 that expand required licensing to all owner financing land developers are poorly conceived, inaccurately researched, erroneously justified, and ultimately untenable to the Texas land development market. TLDA's previous comments on these proposed rules are reiterated and incorporated for this comment period. TLDA is committed to working with the Department to address its concerns and find common ground that meets the parties' commitment to protecting consumers while imposing minimal regulatory burdens on Texas businesses. While TLDA's objections are voiced above, the Department may have received similar objections from municipalities and consumers. TLDA urges the Department to strongly consider the overwhelming opposition that proposed rule 56.100 is generating. There are no stakeholders, consumers, or municipalities that are in favor of the expanded licensure requirements.

In light of these concerns, TLDA requests the Finance Commission and the Department amend proposed rule 56.100 to exclude the new expanded licensing requirement for owner-financing developers, or amend the preamble to the proposed rules to include the reports and comply with the Texas Government Code Chapters 2001 and 2006, or delay the effective date of proposed §56.100 to January 2026.

Sincerely,



Jason Ray E-signature

C: Iain Berry, IBerry@sml.texas.gov

w/ attachments

CITY OF LOS INDIOS
P.O. BOX 369
LOS INDIOS, TEXAS 78567
E-mail: *shoppie2lulu@yahoo.com*



OFFICE: (956) 399-4255

FAX: (956) 399-4582

September 17, 2024

Texas Finance Commission
Texas Department of Savings and Mortgage Lending
2601 N. Lamar Blvd
Austin, TX 78705

Dear Board Members,

First, I would like to introduce myself. My name is Jaime Gonzalez, and I am currently the Mayor for the City of Los Indios. I have been part of the City of Los Indios Board of Aldermen for the past 10 years. Our city is small but has grown a lot within the past two years. There are currently new subdivisions under construction, and we are hoping to continue this growth. Although we have made outstanding progress, there is still a lot of work to be done. We are trying our best to grow this city.

With that being said, I kindly request your reconsideration of the proposed regulation changes in Chapters 80, 156, and 158. These changes could have a negative impact on the growth of our community. It's important to note that most of the homes in our city were not financed by traditional mortgage loans, and local banks are unwilling to finance residential lots under terms and conditions that are manageable for most buyers. This limitation leaves very few options for our citizens.

The City of Los Indios opposes any changes in regulations that would make it difficult for citizens to own their own homes. If you have any questions or concerns, please feel free to contact me at (956) 456-7384.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jaime Gonzalez".

Jaime Gonzalez

Mayor, City of Los Indios

Lot 105 block 1

Villa Nueva Subdivision

September 2, 2024

Attention: Texas Dept of Finance

Good Afternoon,

My name is Juan Gabriel Rios and I relocated to Texas from Kansas back in 2016.

My wife and I rented in Kansas for over 8 years, but we knew we wanted to buy land somewhere and build or buy a home to place on our property. We moved to Houston, TX for work purposes.

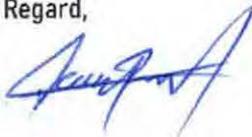
After renting for 1 year in Houston area, we knew it was time to look for something affordable and for us to own as we liked it here in TX. I started my own company – 2 Rivers.

We were recommended to SR Campbell Properties as we heard they offered what we were looking for at the time- bigger properties and seller financing options. April 2017 we bought our first Texas property for our future home. This was our first time ever to be property owners. Although we had saved up, our credit was not near where it needed to be to get approved for a vacant land loan through the traditional big banks.

Our sweet home is now established in Texas and we enjoy having such a beautiful large field and the extra space we could never enjoy at any other place we ever rented. My daughter bought the property next to us and she's our friendly neighbor now. Our family has become a family of SR Campbell Properties- my brother and his son have also bought in my neighborhood and my sister Marta Rios who relocated shortly after us from Kansas has also purchased here and called Villa Nueva neighborhood home.

We will continue to refer family and friends to SR Campbell as we want them to have the same possibilities that we were given through them.

Regards,



Juan Gabriel Rios

Alejandra Rios Dominguez

40 Road 7001 Cleveland, TX 77327

September 2, 2024

Texas Dept. of Finance

2601 N. Lamar

Austin, TX 78705

Ref: Lot 27, Block 1 Royal Vista Subdivision

To Whom it May Concern,

Before encountering the property we purchased from SR Campbell Properties at Royal Vista subdivision, we had struggled for several years to find the financing we needed. My husband and I were not able to get the loan we needed for the land to build a home on through the traditional banks. We did not have the credit scores required to meet the strict loan requirements.

My family and I had been renting an apartment for almost 11 years prior to finding out about seller financing. Therefore, when we found out SR Campbell Properties offered seller financing options and we decided to look into what they had available to help us fulfill our home dream for our growing family. The ability to purchase with minimal credit score requirement made it possible to move on with our goal of building a home.

We were fortunate to find a nice half acre in a desirable up and coming neighborhood of theirs. We have since then completed the build out of our nice 2-story home and our family couldn't be happier for opportunities like this.

Sincerely,



Ana Karina Flores Peralas

346-479-4399

23 de Septiembre-2024

#113 VNS
Acct# VN1191113

Tx Comisión de Finanzas-

Yo, Nemesio Pech, compre una propiedad en la colonia de Villa Nueva en el 2019. Apenas el año pasado terminé de construir mi primera casa en esa propiedad.

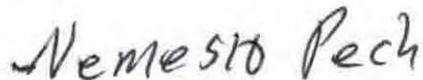
Mi familia y yo teníamos muchos años, casi 20, de rentar piso en una estación para casas móviles en Pasadena, Tx. Mi esposa exigió que ya era tiempo de comprar algo por nosotros mismo y dejar de pagar renta. Pero la posibilidad de financiamiento no se daba por no tener el crédito necesario para ser aprobado por los bancos Bank of America, Wells Fargo, Chase, y otros.

SR Campbell Properties nos ayudó con lo del financiamiento de nuestro nuevo terreno con pagos accesibles, bajo enganche y no requerían largo historial de crédito establecido.

Estamos orgullosos de la nueva casa que hemos construido con mucho esfuerzo. Tenemos otras 2 familiares que también compraron aquí en esta misma colonia por la facilitación de préstamo con esta compañía . Estamos contentos con nuestra decision y las posibilidades brindadas.

Esperemos que continuen poder con esta flexibilidad de financiamiento para nuestras futuras generaciones que tal vez esten en la misma situacion.

Buen Día,



Nemesio Pech NP
832-798-9104
70 Road 7003
Cleveland, TX 77327

Agosto 30, 2024

Departamento de finanzas de Texas,

Mi testimonio es de poder haber comprado una propiedad en una área más cómoda y rural en la área de afuera de Houston hecho posible con la posibilidad de financiamiento directo con la compañía Sr Campbell.

Los precios de las propiedades y la acomodación de pagos que me ofrecieron fue lo que me atrajo a esta compañía y colonia de Villa Nueva en el 2019.

Tenía tiempo de vivir en la ciudad y quería un cambio de estilo de vida y las propiedades en la ciudad eran muy caras y los bancos pedían muchos requisitos no a mi alcance.

Aquí pude construir mi casa a mi manera y continuar trabajando en lo que me gusta en un mucho mejor ambiente.

Atentamente,



Lauro Barrientos
713-416-6636
Lote 153 Villa Nueva

August 26, 2024

Reference: Lots 7&8

Royal Vista Subdivision

Commission of Finance:

My name is Rigoberto Mejia. I bought my property in May 2020 from Sr Campbell Properties. Although I had been working for many years and have my SS#, I was declined by the banks when trying to buy property. My credit was not sufficient and they wanted a high amount of down payment for that reason.

With the help of my daughter, we found this company who offered financing for the type of property we had been looking for. We found a beautiful lot with them.

Sr. Campbell Properties made it convenient for us to get a loan without the hassles we had been through the other banks. We were able to get our loan with an easy down payment and no credit requirement. Because of the flexibility, we were able to purchase not just one but 2 lots for our home to be built on. With our hard work and savings, we have now finished building a place we call "home" and "ours".

Thank you,

A handwritten signature in black ink that reads "Rigoberto Mejia". The signature is written in a cursive, slightly slanted style.

Rigoberto Mejia

285 Road 3371A

Cleveland, TX 77327

August 26, 2024

RE: Lot 169, Block 4 Villa Nueva

Texas Commission of Finance,

I wanted to state that due to the seller financing assistance offered by Campbell Properties LLC, I was able to finally buy land to build my house back in 2015.

After renting for almost 15 years, our biggest wish was to have our own spacious place. As it was even hard to open a bank account at times with the bigger banks, it was even much harder to get a loan to buy a home or land to build a home on. No established credit and high down payment requests made it almost impossible to make it happen.

We were excited when we found out we could buy a property with no credit check and a very low down payment. Our hopes for home ownership revived once again.

We have built our house and paid off our seller finance loan as of last summer 2023. We have purchased 2 additional properties through this company since then and my son just recently bought a property as well.

Grateful that these financing options exist for those of us not qualified through traditional banks.

Thank you,



Generoso Ramon O.

Leydi Lopez Domensais

Generoso Ramon Ortega

Lots 169-168-151 Villa Nueva

1194 Road 7000 Cleveland TX
77327

09-03-24

Lot. # 252 Villanueva

Atención Comisión de Finanzas:

Antes de mi compra con
Sr Campbell properties,
tenia 10 años viviendo en un
apartamento;

al encontrar propiedad con esta
Compania fue una oportunidad
sin tantos requisitos de obtener
esta propiedad. mi familia y yo
pudimos salir adelante y construir
nuestra primera casa en el USA.

Estoy agradecida por la oportunidad
brindada por financiamiento por esta
compania. Ojala puedan seguir
dandoles la oportunidad a demas
personas. gracia.

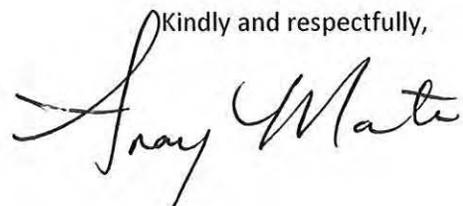
Atentamen: Ma. Guadalupe Santoyo.
Tel 346 401 70 26

To who it may concern,

Hello I would like to introduce myself my name is Anay Mata and I current reside at 418 Del Rio Dr., San Benito, Texas 78586. My residence is located on the very first subdivision that SRA Campbell constructed back in 1988. My testimony is to share how we first came about living in what was known as RT. 169J.

My parent came to obtain the opportunity to buy their first property back in the late 1987. My father was a construction worker in Dallas at the time when he surfer an accident. Due to the incident, my father was able to obtain a sum of money after the settlement that when they took the biggest decision of their lives was letting go of the mobile that they were paying month and invest. At the time, my parents and their first child who is my eldest brother at the time were in the hunt of better future. My parents were taking a drive on military highway 281 where they came across a sign property for sale and they knew it was a sign of God. They were given the opportunity to plant there first mustard seed in one of the Campbells lots with very little requirements which was great news and never the less a blessing. As they continue to work hard to reach their dreams and goals they bought and camper and started to build the foundation that was the start of a new beginning for their future. I was born into that home that was still a skeleton the inner part of the home in August 1988. Not because they are my parent but they work so hard to stay with what was a piece of land to their names along with those neighbors that surround them as well. That all those that were also given the same opportunity with very little requirements and owner financing have settle there and build. Now 36 years later I currently also have my home in the same street that I grow along with my sibling where we live happy and thankful for the opportunity that the SRC Campbell offer to the community of Los Indios. That one street that stated of nine lots have grown so much throughout the years because of the lesser requirement that are in place by the Campbells and Nueva Frontera. They continue to believe in the people especially in the Hispanic community to where they given the opportunity to own their little piece of property and see their dreams grow. Which is something I believe is great on their part to offer because we have to face lot obstacles to be even consider the chance to get a piece of land to our name. We work hard on the daily bases to reach our goals in life and do not stop until we are successful and more when that mustard seed is place, planted and watered. Many may look down at one from a higher height and believe that the opportunity that SRC Campbell should not be giving them to the low-income individuals. That they should implement higher requirements, but with all honesty that would be a mistake and to the community because not all are fortune to have a great credit score standpoint and others do not even know what credit score is and how to build it. So please let the SRC Campbell properties continue to help the community because in the end it is been done for the right reason. Seeing family grown and build and given the chance to see their dreams from the first piece of 2x4 to the framing on a foundation to even a mobile home where they can still call home. Let us continue to grow and dream together to meet our goals. If you have any question please feel free to contact me at 956-862-5633. Thank you for your time.

Kindly and respectfully,

A handwritten signature in black ink that reads "Anay Mata". The signature is written in a cursive, flowing style.



VIA EMAIL

Mr. Ian A. Berry
General Counsel
Texas Department of Savings and Mortgage Lending
2601 North Lamar Blvd., Suite 201
Austin, Texas 78705

Re: Texas Department of Savings and Mortgage Lending Proposed Rules

Texas Mortgage Bankers Association expresses its appreciation to Commissioner Retta and staff of the Texas Department of Savings and Mortgage Lending for the opportunity to review and share comments related to the proposed rules for non-depository mortgage lenders.

TMBA appreciates and supports the intent of SML to reorganize the existing rules into new chapters that better segregate the rules into separate chapters for each license or registration type. This is no small task and TMBA commends the Commissioner and SML staff for taking on this endeavor and making the navigation of rules much easier for those regulated by SML.

The SML Forms and signature requirements.

TMBA appreciates SML's removal of the proposed requirement in proposed rules 55.200 (a); 56.200 (b); and 57.200(b) that the notice relating to SML's oversight role be signed by both the originator and the applicant and instead allows the option of obtaining the applicant's signature.

With regard to signatures, TMBA would like to express our concerns with the new proposed rules that would require MLOs to sign Form A (pre-qual) and Form B (pre-approval) as required by the Form A/B signing requirement for Mortgage Companies: Section 56.201(d); and the Form A/B signing requirement for Mortgage Bankers: Section 57.201(d).

As SML is aware, the loan origination process today operates on electronic technology origination platforms. Mortgage lenders invest large sums of capital to have systems that are compliant for each state in which the lender originates loans. The proposal to require the

signature of the originator would require reprogramming to add this new requirement. In addition, the rule imposes a significant additional cost burden for monitoring compliance with this new requirement, with negligible consumer benefit.

TMBA believes the additional costs outweigh any public benefit of requiring a signature, and the addition of the signature requirements should not be proposed without full consideration of these costs as required by Government Code 2001.0045, Requirement For Rule Increasing Costs To Regulated Persons; Government Code 2001.0221 Government Growth Impact Statements; and the analysis required by Government Code 2001.024 (a)(5)(B) of the probable economic costs to persons required to comply with the rule. Ultimately, consumers bear the burden of these increased costs.

While on the topic of prequalification and preapproval letters TMBA would be remiss if it did not bring to SML's attention that Texas has the most complex requirements for prequals and preapprovals. TMBA members have previously shared with SML the difficulty in getting LOS software providers to input all the information required by SML in their respective systems. This requires manual intervention thereby thwarting the efficiencies of a paperless digital transaction which is contrary to Texas' pioneering work in the area of eClosings and Remote Online Notarization. TMBA is unaware of any other states with specific statutes or regulations dictating the requirements for prequalification and preapproval letters. TMBA respectfully encourages SML to reassess the necessity of these cumbersome requirements. TMBA would welcome the opportunity to join with SML and form a committee to evaluate and assess an efficient and effective path forward to streamline the prequalification and preapproval process to maintain consumer protection while optimizing current technologies.

Issues related to change of sponsorship and inactive licenses.

TMBA very much appreciates that SML agreed with our suggestion regarding the initial proposed drafts for 55.202(a)(9); 56.202 (9) and (10) and 57 202(9) and (10) and has labeled these violations as "improper dealing" in the proposed rules published in the Texas Register.

The proposed rules for 56.107 and 57.107 carry over the existing rule that an RMLO cannot begin originating for a new company until the date SML has approved the change in sponsorship or the moving from inactive status to active status. While this is the long-standing rule, it can result in delays in the RMLO transitioning to a new employer. TMBA has from time to time informally urged SML to consider policies that would deem the sponsorship effective from the time of notice filed by the RMLO and the new sponsor. While we understand that the NMLS system may not be currently able to recognize this transition,

we do believe that SML could adopt a “no adverse action” policy if the originator otherwise is current on licensing requirements. Adoption of such policy could include the ability for SML to act immediately if the originator did not in fact meet applicable requirements.

Adoption of this policy would eliminate a lot of the “Sooner” violations where qualified originators begin originating with new sponsors before SML acts but where no consumer harm or risk of consumer harm exists, and the new sponsor is fully responsible for the RMLO’s activity. In fact, under the SML proposal, consumers may be harmed in that there can be a delay in the loan officer permissibly taking the loan application and such delay may put a potential consumer’s purchase contract in peril or can cause the consumer to miss an advantageous opportunity to lock an attractive interest rate. TMBA believes both consumers and the industry would be better served by SML taking a practical approach to allow loan officers to more seamlessly transition from one sponsor to another. Respectfully, we encourage SML to revisit this option.

TMBA supports the proposed rule on trigger leads.

As we know, federal legislation to address trigger leads is moving in Congress, but as often happens on the federal level, legislation gets stalled and ultimately does not pass. TMBA is very pleased to see SML being proactive and protecting consumers by drafting rules related to trigger leads. The draft proposals for 55.202(a)(9), 56.202(a)(9) and 57.202(a)(9) makes the misuse of trigger leads a fraudulent, misleading, or deceptive practice. The draft creates the right balance between the proper use of trigger leads and the abusive and deceptive use of trigger leads. As SML knows, when a mortgage lender pulls a credit report on a prospective applicant, the credit bureaus sell that information to subscribers who then use that information often in violation of the federal law that permits it. As a result, consumers have reported being contacted by 50 or more persons soliciting loan applications, none of whom were requested by the consumer. Consumers incorrectly accuse their lender of having sold the information when in fact the lender did not. Frequently the solicitor misrepresents who they are or create the impression that they are affiliated with the consumer’s lender when they are not. TMBA fully supports the draft proposals for addressing trigger leads, and thanks SML for addressing this important issue.

Certain rules expand beyond the authority and provisions of the Finance Code.

TMBA appreciates SML accepting our suggestion related to the deletion of proposed 57.202(b)(l) as Chapter 158 does not require mortgage bankers to register under that Chapter and thus the proposed rules.

TMBA appreciates that SML removed the requirement to report the loss of a line of credit and loss of a third-party provider as these disclosures could cause unnecessary consumer concern and potentially loss of business for situations that can be remedied very quickly, or perhaps were simply a business decision to change relationships.

TMBA respectfully suggests that proposed rules 57.210, 56.210, and 58.210 create a new rule related to Reportable Incidents not contemplated by statute in FC Chapters 156, 157, and 158. The purpose of FC Chapters 156, 157, and 158 is the registration and licensing of residential mortgage loan companies, the registration of mortgage bankers and the licensing of residential mortgage loan originators, and the registration of residential mortgage loan servicers. Respectfully, FC Chapters 156, 157, and 158 contain no language in statute related to reportable incidents, nor does FC Chapter 180 – SAFE Act. TMBA respectfully asks that SML reconsider these additional requirements.

TMBA believes proposed rules 56.303, 57.303, and 58.303 related to Corrective Action exceed the statutory authority under FC Chapters 156, 157, and 158. FC Chapter 156.301 and 157.021 detail statutory authority related to inspections and investigations. Rule-making authority in these sections is related to the following: determine the information and records to which the commissioner may demand access during an inspection or an investigation; establish what constitutes reasonable cause for an investigation, and the finance commission by rule shall set the maximum amount for the reimbursement of expenses authorized under this subsection. There is no mention of corrective action in these sections. There is also no mention of corrective action in all of FC Chapter 156, Chapter 157, Chapter 158, or in FC Chapter 180 – SAFE Act. Respectfully, TMBA asks SML to reconsider these additional requirements.

TMBA thanks Commissioner Rhett and SML staff for their diligent and hard work, and for the opportunity to share our comments on these proposed rules.

Respectfully,

Meredyth Fowler

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4. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 57, Concerning 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 adoption.

RECOMMENDED ACTION: SML recommends that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 57.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 57.

CHAPTER 57. MORTGAGE BANKERS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts 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. The commission's proposal for the rules was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6905). The rules are adopted without changes to the published text and will not be republished.

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 adopted rules effectuate these changes.

Changes Concerning General Provisions (Subchapter A)

The adopted 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 adopted 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 SML 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 [SML] 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 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 by 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 only learns 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 adopted 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 adopted 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 adopted rules 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.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments.

SML received a comment from the Texas Mortgage Bankers Association (TMBA). TMBA commented that §57.201(d), requiring a residential mortgage loan originator working for a mortgage banker to sign a conditional pre-qualification letter or conditional approval letter, is unnecessarily burdensome on industry as it would require reprogramming the loan origination systems used by mortgage bankers and outweighs any public benefit derived from the rule. SML respectfully disagrees with the comment. A conditional pre-approval letter or conditional approval letter is used to document a mortgage applicant's purchasing power in the marketplace and is relied on by the mortgage applicant to make an offer on residential real property and execute a real estate sales contract. The contract typically requires the mortgage applicant to tender an option fee and earnest money of several thousand dollars. If the mortgage applicant fails to complete the purchase, that money is often forfeited. Most claims made on the recovery fund established pursuant to Finance Code Chapter 156, Subchapter F are as a result of improperly issued conditional pre-qualification and conditional approval letters. It is important to establish that a residential mortgage loan originator issued the letter as evidenced by his or her signature so that SML can properly evaluate claims made on the fund. SML notes that the form for the conditional pre-qualification letter and conditional approval letter (required by Finance Code §157.02012) is unchanged from the preexisting rule and contemplates that a residential mortgage loan originator issue the letter. With respect to costs, SML notes that the rule does not require the use of loan origination systems. As such, costs associated with making changes to such systems as a result of the adopted rules are not directly related to the rules. §57.107(a), among other

things, requires that a mortgage company must not allow a residential mortgage loan originator to work on behalf of a mortgage company until that residential mortgage loan originator is officially sponsored of record by the mortgage company in the Nationwide Multistate Licensing System (NMLS), the licensing database system used by SML. TMBA commented that §57.107(a) should include provisions backdating the sponsorship of a residential mortgage loan originator in its employ to the time the request for sponsorship was made in the system. SML respectfully disagrees with the comment. SML relies on NMLS to determine when a residential mortgage loan originator is properly sponsored. As stated in the rule, a mortgage company is responsible for violations of law committed by its sponsored originators. The backdating of sponsorship is not feasible in NMLS and would create uncertainty as to whether a residential mortgage loan originator is truly sponsored. Additionally, a residential mortgage loan originator who knows his or her sponsorship might be backdated may not be properly motivated to remedy deficiencies holding up approval of a sponsorship request in the system. TMBA commented that §57.210, concerning Reportable Incidents, is outside of SML's statutory authority. SML respectfully disagrees with the comment. §57.210 requires a mortgage company to report to SML when it is subject to certain catastrophic events or security incidents. SML recited the statutory authority for the rule in its proposal. The rule is an extension of SML's examination authority and is similar to preexisting rules requiring a mortgage company to compile and maintain certain information in order to facilitate the examination process. As indicated in the proposal, a mortgage company, in order to comply with federal law, is already required to compile the information that is reported to SML under the rule. TMBA commented that §57.303, concerning Corrective Action, is outside of SML's statutory authority. SML respectfully disagrees with the comment.

SML recited the statutory authority for the rule in its proposal. The rule lays out certain actions a mortgage company may be asked to take to correct violations of law determined during examination. As stated in the rule, corrective action is voluntary. SML sees great benefit in establishing protocols in rule to guide and facilitate corrective action so that industry is aware of SML's expectations.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§57.1 - 57.6

The rules are adopted 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).

The adopted rules affect 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, 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.

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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, 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

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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 legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER B. REGISTRATION

7 TAC §§57.100 - 57.104, 57.106, 57.107

Statutory Authority

The rules are adopted 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). §57.100 is also proposed under the authority of, and to implement, Finance Code §157.003. §§56.101 - 57.103 are also proposed under the authority of, and to implement, Finance Code §157.006 - 157.0062. §57.104 is also proposed under the authority of, and to implement, Finance Code §157.005. §57.107 is also proposed under the authority of, and to implement, Finance Code §157.019.

The adopted rules affect 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 (nationwidelicingsystem.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 (nationwidelicensingsystem.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).

(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

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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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER C. DUTIES AND
RESPONSIBILITIES

7 TAC §§57.200 - 57.207, 57.210

Statutory Authority

The rules are adopted 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). §57.200 is also adopted under the authority of, and to implement, Finance Code §157.0021. §57.201 is also adopted under the authority of, and to implement, Finance Code: §157.0023(b) and §157.02012. §§57.202, 57.203, 57.207, and 57.210 are also adopted under the authority of, and to implement, Finance Code §157.009. §57.204 is also adopted under the authority of, and to implement, Finance Code §157.02015(b). §57.205 is also adopted under the authority of, and to implement, Finance Code §157.020. §57.206 is also adopted under the authority of, and to implement, Finance Code §157.003(6).

The adopted rules affect 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) (.pdf)

(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). 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) (.pdf)

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(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) (.pdf)

(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;

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(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 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

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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 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 (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):

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(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 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

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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 Consumer Financial Information rules (16 C.F.R. §313.4);

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

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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);

(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 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: 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) that sets 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):

- (1) full name of each mortgage applicant (last name, first name);
- (2) application/loan identification number assigned by the mortgage banker;
- (3) 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 paragraph (2) of this subsection;
- (4) loan identification number assigned by the lender, if different than paragraphs (2) or (3) of this subsection;
- (5) address of the subject property (street address, city, state, zip code);
- (6) full name and NMLS ID of the mortgage company or mortgage banker to which the mortgage banker is providing loan processing or underwriting services;
- (7) 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;
- (8) closing date;

(9) 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));

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

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

(12) 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

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mortgage call report and applicable filing deadlines is available on the NMLS Resource Center website (nationwidelicensingsystem.org).

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

(1) Residential Mortgage Loan Activity (RMLA);

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

(3) Statement of Financial Condition.

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

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

(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;
- (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

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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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER D. SUPERVISION AND ENFORCEMENT

7 TAC §§57.300 – 57.304, 57.310, 57.311

Statutory Authority

The rules are adopted 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). §§57.300 - 57.304 are also adopted under the authority of, and to implement, Finance Code: §§157.0022, 157.009(d), 157.021, and 157.0211. §57.310 is also adopted under the authority of, and to implement, Finance Code: §157.003(e) and §157.009.

The adopted rules affect 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) 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); and

(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.

(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 adoption and found it to be within the state agency's legal authority.

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



5. Discussion of and Possible Vote to Take Action on the Adoption of New Rules in 7 TAC, Part 4, Chapter 58, Concerning 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 adoption.

RECOMMENDED ACTION: SML recommends that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 58.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 58.

**CHAPTER 58. RESIDENTIAL MORTGAGE
LOAN SERVICERS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts 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. The commission's proposal for the rules was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6924). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting 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 adopted rules effectuate this change.

Changes Concerning General Provisions (Subchapter A)

The adopted 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 adopted 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 §55.104, 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 by 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 only learns 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 adopted rules: in §58.200, 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

Adopted rules 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.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments.

SML received a comment from the Texas Mortgage Bankers Association (TMBA). TMBA commented that §58.210, concerning Reportable Incidents, is outside of SML's statutory authority. SML respectfully disagrees with the comment. §58.210 requires a mortgage company to report to SML when it is subject to certain catastrophic events or security incidents. SML recited the statutory authority for the rule in its proposal. The rule is an extension of SML's examination authority and is similar to preexisting rules requiring a mortgage company to compile and maintain certain information in order to facilitate the examination process. As indicated in the proposal, a mortgage company, in order to comply with federal law, is already required to compile the information that is reported to SML under the rule. TMBA commented that §58.303, concerning Corrective Action, is outside of SML's statutory authority. SML respectfully

disagrees with the comment. SML recited the statutory authority for the rule in its proposal. The rule lays out certain actions a mortgage company may be asked to take to correct violations of law determined during examination. As stated in the rule, corrective action is voluntary. SML sees great benefit in establishing protocols in rule to guide and facilitate corrective action so that industry is aware of SML's expectations.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§58.1 - 58.5

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.).

(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 legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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

The rules are adopted 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. §58.100 is also adopted under the authority of, and to implement, Finance Code §158.051. §58.101 and §58.102 are also adopted under the authority of, and to implement, Finance

Code: §158.053 and §158.058. §58.103 is also adopted under the authority of, and to implement, Finance Code §158.058. §58.104 is also adopted under the authority of, and to implement, Finance Code §158.054. §58.107 is also adopted under the authority of, and to implement, Finance Code §158.055.

The adopted rules affect 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 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 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 (nationwidelicensingsystem.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) 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 SML 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 with SML 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 adoption and found it to be within the state agency's legal authority.

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

The rules are adopted 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. §58.200 is also adopted under the authority of Finance Code §158.101.

The adopted rules affect 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 servicer'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;

(B) a "security event" as defined by this 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 inquires 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 adoption and found it to be within the state agency's legal authority.

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

SUBCHAPTER D. SUPERVISION AND ENFORCEMENT

7 TAC §§58.301 - 58.304, 58.310, 58.311

Statutory Authority

The rules are adopted 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. §§58.301 - 58.304 are also adopted under the authority of, and to implement, Finance Code §158.102 and §158.106. §58.310 is also adopted under the authority of, and to implement, Finance Code: §§158.058 - 158.060, 158.103, 158.105, and 158.106.

The adopted rules affect the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§58.301. Investigations.

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(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 paragraph (1) of this subsection, 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; and

(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) 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).

§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 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 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 adoption and found it to be within the state agency's legal authority.

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 Adoption of New Rules in 7 TAC, Part 4, Chapter 59, Concerning 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 adoption.

RECOMMENDED ACTION: SML recommends that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 59.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the new rules in 7 TAC Chapter 59.

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CHAPTER 59. WRAP MORTGAGE LOANS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts 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. The commission's proposal for the rules was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6933). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting 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 adopted rules effectuate this change.

Changes Concerning General Provisions (Subchapter A)

The adopted 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 adopted rules 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.

Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§59.1 - 59.5

Statutory Authority

The rules are adopted 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.

The adopted rules affect 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

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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.

(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;
- (6) Georgia;
- (7) Lucinda Sans;
- (8) Times New Roman;
- (9) Trebuchet; and
- (10) Verdana.

§59.4. Electronic Delivery and Signature of Notices.

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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 legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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. §59.101 is also proposed under the authority of, and to implement, Finance Code: §159.101 and §159.102. §59.102 is also proposed under the authority of, and to implement, Finance Code §159.105.

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;

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(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) (.pdf)

(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) 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 adoption and found it to be within the state agency's legal authority.

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

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SUBCHAPTER C. BORROWER'S RIGHTS AND RESPONSIBILITIES

7 TAC §59.200, §59.201

Statutory Authority

The rules are adopted 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. §59.201 is also proposed under the authority of, and to implement, Finance Code §159.202.

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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

The rules are adopted 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. §59.301 and §59.303 are also adopted under the authority of, and to implement, Finance Code §159.152. §59.302 is also adopted under the authority of, and to implement, Finance Code §159.151.

The adopted rules affect 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.

(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 adoption and found it to be within the state agency's legal authority.

Iain A. Berry
General Counsel
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SUBCHAPTER E. SUPERVISION AND ENFORCEMENT

7 TAC §§59.400 - 59.403

Statutory Authority

The rules are adopted 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. §§59.401 - 59.403 are also adopted under the authority of, and to implement, Finance Code §159.252.

The adopted rules affect 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 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

(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

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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, 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) of this subparagraph 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;

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(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

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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.

(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, 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.

§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 SML 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 adoption and found it to be within the state agency's legal authority.

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

7. Discussion of and Possible Vote to Take Action on the Adoption 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 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 adoption.

RECOMMENDED ACTION: SML recommends that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 78.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 78.

CHAPTER 78. WRAP MORTGAGE LOANS.

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts the repeal of all preexisting 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. The commission's proposal was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6941). The rules are adopted without changes to the published text and will not be republished.

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 concerning wrap mortgage loans by relocating the rules to Chapter 59 (a vacant chapter). The adopted rules repeal all preexisting rules in Chapter 78. In a related proposal published elsewhere in this issue of the *Texas Register*, SML adopts 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.

Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§78.1 - 78.3

Statutory Authority

The rule repeals are adopted 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.

The adopted rule repeals affect 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 legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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General Counsel
Department of Savings and Mortgage Lending



SUBCHAPTER B. LENDER REQUIREMENTS AND RESPONSIBILITIES

7 TAC §§78.100 - 78.102

The rules are adopted 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.

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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

The rules are adopted 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.

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER D. WRAP LENDER AND SERVICER REQUIREMENTS

7 TAC §§78.300 - 78.303

Statutory Authority

The rules are adopted 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.

The adopted rules affect 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



**SUBCHAPTER E. COMPLIANCE AND
ENFORCEMENT**

7 TAC §§78.400 - 78.403

Statutory Authority

The rules are adopted 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.

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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

8. Discussion of and Possible Vote to Take Action on the Adoption 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 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 adoption.

RECOMMENDED ACTION: SML recommends that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 79.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 79.

**CHAPTER 79. RESIDENTIAL MORTGAGE
LOAN SERVICERS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts the repeal of all preexisting 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. The commission's proposal was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6943). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting 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 adopted rules repeal all existing rules in Chapter 79. In a related proposal published elsewhere in this issue of the *Texas Register*, SML adopts new rules in Chapter 59 affecting mortgage servicers that are patterned after the existing rules in Chapter 79.

Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§79.1 - 79.5

Statutory Authority

The rules are adopted 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.

The adopted rules affect 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 legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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



**SUBCHAPTER B. COMPLAINTS AND
INVESTIGATIONS**

7 TAC §79.20

Statutory Authority

The rules are adopted 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.

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER C. HEARINGS AND APPEALS

7 TAC §79.30

Statutory Authority

The rules are adopted 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.

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER D. INTERPRETATIONS

7 TAC §79.40

Statutory Authority

The rules are adopted 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.

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER E. SAVINGS CLAUSE

7 TAC §79.50

Statutory Authority

The rules are adopted 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.

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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

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9. Discussion of and Possible Vote to Take Action on the Adoption 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 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 adoption.

RECOMMENDED ACTION: SML recommends that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 80.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 80.

**CHAPTER 80. RESIDENTIAL MORTGAGE
LOAN COMPANIES**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts the repeal of all preexisting 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. The commission's proposal was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6945). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting 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 adopted rules repeal all existing rules in Chapter 80. In a related proposal published elsewhere in this issue of the *Texas Register*, SML adopts new rules in Chapter 56 affecting mortgage companies that are patterned after the existing rules in Chapter 80.

Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§80.1 - 80.5

Statutory Authority

The rules are adopted 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).

The adopted rules affect 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 legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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

ADOPTION OF REPEALS
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The rules are adopted 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). The rules are also adopted 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.

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.200 - 80.206

Statutory Authority

The rules are adopted 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).

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §§80.300 - 80.302

Statutory Authority

The rules are adopted 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).

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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



10. Discussion of and Possible Vote to Take Action on the Adoption 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 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 adoption.

RECOMMENDED ACTION: SML recommends that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 81.

RECOMMENDED MOTION: I move that the Finance Commission approve adoption of the repeals in 7 TAC Chapter 81.

ADOPTION OF REPEALS
7 TAC CHAPTER 81
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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), adopts the repeal of all preexisting rules in 7 TAC Chapter 81: §§81.1 - 81.5, 81.100 - 81.111, 81.200 - 81.206, and 81.300 - 81.302. The commission's proposal was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6947). The rules are adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rules

The preexisting 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 adopted rules repeal all existing rules in Chapter 81 concerning mortgage bankers. In a related proposal published elsewhere in this issue of the *Texas Register*, SML adopts 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 adopted rules repeal all existing rules in Chapter 81 concerning originators. In a related proposal published elsewhere in this issue of the *Texas Register*, SML adopts new rules in Chapter 55 affecting originators that are patterned after the existing rules in Chapter 81.

Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§81.1 - 81.5

Statutory Authority

The rules are adopted 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). The rules are also adopted 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.

The adopted rules affect 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 legal counsel has reviewed the adoption and found it to be within the state agency's legal authority.

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

The rules are adopted 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). The rules are also adopted 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.

The adopted rules affect 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.

§81.110. Criminal Conviction Guidelines.

§81.111. Request for Criminal History Eligibility Determination.

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

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



SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§81.200 - 81.206

Statutory Authority

The rules are adopted 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). The rules are also adopted 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.

The adopted rules 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 adoption and found it to be within the state agency's legal authority.

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



SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §§81.300 - 81.302

Statutory Authority

The rules are adopted 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). The rules are also adopted 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.

The adopted rules affect 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 adoption and found it to be within the state agency's legal authority.

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General Counsel
Department of Savings and Mortgage Lending

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