Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 65. COMMERCIAL FERTILIZER RULES

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes to amend TAC Title 4, Part 3, Chapter 65, Subchapter B, §65.13 concerning Waste Products Distributed as Fertilizers as well as TAC Title 4, Part 3, Chapter 65, Subchapter C, §65.24 concerning Warnings or Cautionary Statements Required. The changes are to §65.13 by adding subsection (c) and §65.24 by adding section (4). This prevents application of forever chemicals founds in waste products from permanently contaminating farm ground and water systems in Texas.

Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, has assessed that approximately 34 firms may be affected by the updated rules and that approximately 100 tons of waste products sold as fertilizer are used in the state.

Dr. Herrman concludes that for the first five-year period there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Public Benefit Cost Statement

Dr. Herrman has concluded that during the first five years the rule will be in effect the rule will have a positive impact on Small Businesses, Microbusinesses, and Rural Communities by preventing per- and polyfluoroalkyl substances (PFAS) and other adulterants in waste products sold as commercial fertilizer from contaminating agricultural land in rural communities.

Dr. Herrman has concluded that during the first five years the rule will be in effect there will be no effect on local employment, as it does not require the creation of new employee positions or the elimination of existing employee positions.

Dr. Herrman has also determined that the benefit afforded to the public includes avoiding contamination of the environment and life systems in Texas through the use of waste products distributed as fertilizers. The principle thrust of this rule is to avoid contamination by forever chemicals with known deleterious impact to the environment and life systems including, but not limited to, per and polyfluoroalkyl substances. Compliance cost associated with this regulation is estimated at $50 per ton for analytical testing and risk management associated with preventing adulteration of the environment and harming life systems from adulterated waste products distributed as fertilizers.

Government Growth Impact Statement

During the first five years the rule will be in effect, the proposed rule neither creates nor eliminates a government program; implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency; the proposed rule does not require an increase or decrease in fees paid to the agency; the proposed rule creates a new regulation, prohibiting application of waste products sold as commercial fertilizer containing adulterants; the proposed rule expands an existing regulation; the proposed rule neither increases nor decreases the number of individuals subject to the rule's applicability; and the proposed rule positively affects this state's economy.

Comments on the proposal may be submitted to Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160; by fax at (979) 845-1389; or by e-mail at tjh@otsc.tamu.edu.

SUBCHAPTER B. PERMITTING AND REGISTRATION

4 TAC §65.13

Statutory Authority: The amendment to §65.13 is proposed under the Texas Agriculture Code 63, §63.004 which provides the Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial fertilizers. The amendment also aligns with Texas Agriculture Code 63, §63.001 as it relates to terms and definitions adopted by the Association of American Plant Food Control Officials in its last published official publication.

Cross Reference: The Texas Agriculture Code, Chapter 63, the Texas Commercial Fertilizer Control Act, Subchapter I, §63.143, is affected by the proposed amendment.

§65.13. Waste Products Distributed as Fertilizers.

(a) No person shall sell, offer or expose for sale, or distribute in this state, any industrial or municipal product originally designated as a waste by any governmental agency -- federal, state or local -- intended for, promoted or represented, advertised as or distributed as a fertilizer as defined in the Texas Agriculture Code, Chapter 63, §63.002 prior to registering the same as specified in §63.031.

(b) In addition to other requirements of the Law and the Rules, applications for registration of sewage, sludge, and septage or mixed fertilizer containing same shall be accompanied by the following:

(1) A detailed description of the facilities, equipment and method of manufacture to be used in processing, manufacturing and testing of the product.

(2) A sampling schedule, a full description of all tests made prior to application for registration and the results of such tests which shall include, but not necessarily be limited to, those pollutants and pathogens required to be tested by United States Environmental Protection Agency Code of Federal Regulations, Title 40 CFR: Protection of Environment, Part 503 Standards for the Use or Disposal of Sewage Sludge.

(3) A schedule for periodic testing which initially shall be conducted on each production run no less than once (1) each calendar quarter.

(A) Less frequent testing may be allowed where data show continued uniformity and a consistent margin of compliance.

(B) More frequent testing shall be required where the data show the process is not under control.

(C) Sequential testing shall again be required when periodic analysis or any other information available to the manufacturer indicates that:

(i) changes are made in the manufacturing process; or

(ii) new or expanded sources of the raw ingredients are used.

(4) A statement that any product consisting in whole or part of sewage, septage or sludge meets the CFR Part 503 and specifically it meets the requirements of 503.32(a) and one of the vector attraction reduction requirements in 503.33(b)(1) through 503.33(b)(8).

(c) The waste products shall not contain any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label.

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

Filed with the Office of the Secretary of State on August 23, 2024.

TRD-202403912

Tim Herrman

Texas State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Earliest possible date of adoption: October 6, 2024

For further information, please call: (979) 845-1121

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SUBCHAPTER C. LABELING

4 TAC §65.24

Statutory Authority: The amendment to §65.24 is proposed under the Texas Agriculture Code 63, §63.004 which provides the Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial fertilizers. The amendment also aligns with Texas Agriculture Code 63, §63.001 as it relates to terms and definitions adopted by the Association of American Plant Food Control Officials in its last published official publication.

Cross Reference: The Texas Agriculture Code, Chapter 63, the Texas Commercial Fertilizer Control Act, Subchapter I, §63.143, is affected by the proposed amendment.

§65.24. Warnings or Cautionary Statements Required.

A warning or cautionary statement is required on any fertilizer product which:

(1) contains 0.10% or more boron in water soluble form. The statement shall include:

(A) the word "Warning" or "Caution" conspicuously displayed;

(B) the crop(s) for which the fertilizer is recommended; and

(C) that the use of the fertilizer on any crop(s) other than those recommended may result in serious injury to the crop(s);

(2) contains 0.001% or more of molybdenum. The statement shall include:

(A) the word "Warning" or "Caution" conspicuously displayed; and

(B) that the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum which are toxic to ruminant animals;

(3) when applied according to the directions for use adds to the land levels of trace elements exceeding the limits set forth in Table 2, subparagraph (B) of this paragraph.

(A) The statement, conspicuously displayed, shall read "WARNING: Application according to the directions for use EXCEEDS the allowable limits of certain trace elements which can be applied to one acre of land in a calendar year."

(B) Table 2. Cumulative Element Loading Rate When Conforming to §65.17(d)(1).
Figure: 4 TAC §65.24(3)(B) (No change.)

(4) Contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water.

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

Filed with the Office of the Secretary of State on August 23, 2024.

TRD-202403913

Tim Herrman

Texas State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Earliest possible date of adoption: October 6, 2024

For further information, please call: (979) 845-1121

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TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 55. RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes new rules in 7 TAC Chapter 55: §§55.1 - 55.6, 55.100 -

55.114, 55.200 - 55.205, 55.300 - 55.303, 55.310, and 55.311 (proposed rules).

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, affect mortgage bankers registered with SML and individual residential mortgage loan originators (originators) licensed by SML under Finance Code Chapter 157.

Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Originator Rules from Chapter 81 to Chapter 55

SML has determined it should reorganize its rules concerning originators by relocating the rules to Chapter 55, a vacant chapter, and devoting such chapter exclusively to rules affecting originators. The proposed rules, if adopted, would effectuate these changes.

Changes Concerning General Provisions (Subchapter A)

The proposed rules: in §55.2, Definitions, adopt new definitions for "E-Sign Act," "making a residential mortgage loan," "person," "SML," "State Examination System," and "trigger lead," while eliminating definitions for "Commissioner's designee," and "Department"; in §55.3, Formatting Requirements for Notices, adopt formatting requirements for the various disclosures an originator is required to make; in §55.4, Electronic Delivery and Signature of Notices, clarify that any notice or disclosure made by an originator may be delivered and signed electronically; and, in §55.5, Computation of Time, clarify how time periods measured in calendar days are computed.

Changes Concerning Licensing (Subchapter B)

The proposed rules: in §55.100, Licensing Requirements, clarify when an originator license is required (including as it relates to a loan processor or underwriter who is an independent contractor); in §55.102, Fees, clarify that the license fee charged by SML is exclusive of fees charged by the Nationwide Multistate Licensing System (NMLS), and clarify that an insufficient funds fee under Finance Code §157.013(d) may be charged if the originator makes a payment to SML by automated clearing house and that payment fails; in §55.103, Renewal of the License, clarify that a license approved with a pending deficiency is a conditional license and requires the originator to resolve the deficiency within 30 days after the date the license is approved, and clarify that, if a license is not renewed within the reinstatement period provided by Finance Code §157.016, the individual must apply for a new license; in §55.105, Conditional License, clarify the terms and conditions under which a conditional license may be granted; in §55.106, Surrender of the License, clarify circumstances under which SML may not grant a request made by the originator to surrender his or her license; in §55.107, Sponsorship of the Originator, clarify that an originator may be sponsored by more than one mortgage company or mortgage banker, and establish requirements for an originator sponsored by more than one mortgage company or mortgage banker; in §55.108, Required Education, clarify that the pre-licensing examination required by Finance Code §180.057 means the uniform national examination approved by NMLS on or after April 1, 2013; and, in §55.109, Temporary Authority, clarify that the maximum duration for temporary authority under Finance Code §180.0511 is 120 days.

Changes Concerning Duties and Responsibilities (Subchapter C)

The proposed rules: in §55.200, Required Disclosures, remove the requirement that the disclosure to consumers required by Finance Code §156.004(a) or §157.0021(a) be signed by the originator and the mortgage applicant; in §55.202, Fraudulent, Misleading, or Deceptive Practices and Improper Dealings, clarify that an originator commits a violation if the originator knowingly misrepresents the lien position of a residential mortgage loan, create requirements concerning the use of trigger leads, clarify that an originator commits a violation if the originator solicits a consumer on the federal do-not-call registry, clarify that an originator commits a violation if the originator issues a conditional pre-qualification letter or conditional approval letter that is inaccurate, erroneous, or negligently-issued, and clarify that an originator commits a violation if the originator acts as an originator when his or her license is inactive; in §55.204, clarify that the books and records of an originator must be maintained by the mortgage company or mortgage banker sponsoring his or her license, and require that the originator work diligently and cooperatively with the mortgage company or mortgage banker to fulfill such requirements; and, in §55.205, Mortgage Call Reports, clarify that mortgage call reports are filed by the mortgage company or mortgage banker sponsoring the originator's license, and remove that seeming requirement.

Changes Concerning Supervision and Enforcement (Subchapter D)

The proposed rules: in §55.300, Examinations, provide that examinations are conducted using the State Examination System, and that SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority; in §55.302, Confidentiality of Examination, Investigation, and Inspection Information, clarify the confidentiality of information arising from an examination, investigation, or inspection by SML; in §55.303, Corrective Action, clarify when SML may direct an originator to voluntarily take corrective action, and creating requirements for refunds made to consumers; in §55.310, Appeals, establish various deadlines by which an originator or other individual subject to an enforcement action must appeal; and, in §55.311, Hearings, clarify how hearing costs assessed against an individual under Finance Code §157.017(f) are calculated.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because

SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing originators to be easier to find by members of the public; and, to better protect members of the public who are consumers seeking a residential mortgage loan from the wrongful conduct of an originator licensed by SML.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency. The proposed rules related to Changes Concerning Licensing (Subchapter B) may result in additional fees paid to SML in connection with the insufficient funds fee for failed automated clearing house payments sent to SML, as discussed in such section; however, those fees may be avoided entirely and therefore an increase in fees is not required; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning General provisions (Subchapter A), Changes Concerning Licensing (Subchapter B), Changes Concerning Duties and Responsibilities (Subchapter C), and Changes Concerning Supervision and Enforcement (Subchapter D) establish various rule requirements, as discussed in such sections; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Duties and Responsibilities (Subchapter C) have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§55.1 - 55.6

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(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.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§55.1. Purpose and Applicability.

This chapter governs SML's administration and enforcement of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act (other than Subchapter C), and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Texas SAFE Act), concerning the licensing and conduct of residential mortgage loan originators. This chapter applies to individuals licensed by SML as a residential mortgage loan originator or those required to be licensed, except for individuals engaged in authorized activity subject to the authority of the regulatory official under Finance Code §180.251(c).

§55.2. Definitions.

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapters 157 (other than Subchapter C) and 180, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Application," as used in Finance Code §157.002(6) and §180.002(19), and paragraphs (7) and (18) of this section means

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

(2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

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

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

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

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

(7) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator in response to a solicitation) to obtain a residential mortgage loan and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., the Fannie Mae Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

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

(9) "Mortgage company" means, for purposes of this chapter, a "residential mortgage loan company," as defined by Finance Code §157.002.

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

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

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

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

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

(12) "Originator" has the meaning assigned by Finance Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (11) and (18) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Finance Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Finance Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Finance Code §180.051.

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

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

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

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

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

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

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

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

§55.3. Formatting Requirements for Notices.

Any notice or disclosure (notice) required by Finance Code Chapters 157 or 180, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. A font point generally equates to 1/72 of an inch. If Finance Code Chapters 157 or 180, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice must be made using those font types. The following typefaces are deemed to be easily readable for purposes

of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

(1) Arial;

(2) Aptos;

(3) Calibri;

(4) Century Schoolbook;

(5) Garamond;

(6) Georgia;

(7) Lucinda Sans;

(8) Times New Roman;

(9) Trebuchet; and

(10) Verdana.

§55.4. Electronic Delivery and Signature of Notices.

Any notice or disclosure required by Finance Code Chapters 157 or 180, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

§55.5. Computation of Time.

The calculation of any time period measured in days by Finance Code Chapters 157 or 180, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

§55.6. Enforceability of Liens.

A violation of Finance Code Chapters 157 or 180, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

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

Filed with the Office of the Secretary of State on August 26, 2024.

TRD-202403925
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 475-1535

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SUBCHAPTER B. LICENSING

7 TAC §§55.100 - 55.114

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act. §55.100 is also proposed 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 proposed under the authority of, and to implement, Finance Code: §§157.013, 157.015, and §180.053. §55.102 is also proposed under the authority of, and to implement, Finance Code: §§157.013, 157.015, 180.058, and 180.061(2). §55.103 is also proposed under the authority of, and to implement, Finance Code: §157.0141, 157.015, 157.016, 180.059, and 180.060. §55.104 is also proposed under the authority of, and to implement, Finance Code §180.061. §55.105 is also proposed under the authority of, and to implement, Finance Code §157.0141. §55.106 is also proposed under the authority of, and to implement, Finance Code §180.061(4). §55.107 is also proposed under the authority of, and to implement, Finance Code: §157.019 and §180.061(4). §55.108 is also proposed under the authority of, and to implement, Finance Code: §§180.056, 180.057, and 180.060. §55.109 is also proposed under the authority of, and to implement, Finance Code §180.0511. §55.110 is also proposed under the authority of, and to implement, Occupations Code Chapter 55. §55.111 and §55.112 are also proposed 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 proposed under the authority of, and to implement, Occupations Code §53.025. §55.114 is also proposed under the authority of, and to implement, Occupations Code Chapter 53, Subchapter D.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§55.100. Licensing Requirements.

License Required. An individual, unless exempt as provided by Finance Code §157.0121 or §180.003, or acting under temporary authority as provided by Finance Code §180.0511 and §55.109 of this title (relating to Temporary Authority), is required to be licensed as an originator under Finance Code Chapter 157 if the individual acts or attempts to act in the capacity of an originator concerning a loan or prospective loan secured or designed to be secured by residential real estate located in Texas, including, but not limited to:

(1) representing or holding that individual out to the public through advertising or other means of communication as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise representing that the individual can or will perform residential mortgage loan origination services as an originator;

(2) signing a residential mortgage loan application as the originator (e.g., signing the "Loan Originator Information" section of the Fannie Mae Form 1003 Uniform Residential Loan Application; which is deemed to be a certification by the originator that he or she took the residential mortgage loan application);

(3) providing disclosures to a mortgage applicant or prospective mortgage applicant or discussing or explaining such disclosures (an individual who prepares a disclosure at the direction and under the supervision of a licensed originator who does not send the disclosure to or discuss the disclosure with the mortgage applicant or prospective mortgage applicant and does not sign the disclosure is deemed not to have provided a disclosure for purposes of this paragraph), including:

(A) the disclosures required by Finance Code §156.004 or §157.0021, and §55.200(a) of this title (relating to Required Disclosures);

(B) the good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar; and

(C) the disclosure for acting in the dual capacity of an originator and real estate broker, sales agent, or attorney, as described by Finance Code §157.024(a)(10);

(4) determining the lender or investor to which the prospective residential mortgage loan will be submitted;

(5) issuing or signing a conditional pre-qualification letter or conditional approval letter, or similar, as specified by Finance Code §156.105 and §157.02012, and §55.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters); and

(6) being a loan processor or underwriter who is an independent contractor, as provided by Finance Code §180.051(b). An individual working for a mortgage company licensed by SML or a mortgage banker registered with SML, whose compensation for federal income tax purposes is not reported on a W-2 form (e.g., a self-employed worker who is issued an IRS Form 1099-NEC), that acts as a loan processor or underwriter, is deemed to be an independent contractor loan processor or underwriter for purposes of Finance Code §180.051(b) and must be licensed as an originator. All individuals working for a mortgage company that is an independent loan processor underwriter company, regardless of how their income is documented (including W-2 employees), who act as a loan processor or underwriter or otherwise perform work in connection with the provision of loan processing or underwriting services by the company, are deemed to be independent contractors for purposes of Finance Code §180.051(b) and must be licensed as an originator.

§55.101. Applications for Licensure.

(a) NMLS. Applications for licensure must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation deemed necessary or appropriate to determine that the licensing requirements of Finance Code Chapters 157 and 180 are met.

(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.

§55.102. Fees.

(a) License Fees. The license fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §157.013(b)(1), exclusive of fees charged by NMLS, as described in subsection (b) of this section, and exclusive of the recovery fund fee required by Finance Code §157.013(b)(2). The Commissioner may establish different fee amounts for a new license versus renewal of the license. The current fee is set in NMLS and posted on SML's website (sml.texas.gov). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The license fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges various fees to process the application. Such fees are determined by NMLS and must be paid by the applicant at the time he or she files the application. The current fees are set in NMLS and posted on the NMLS Resource Center website (nationwidelicensingsystem.org). Specifically, NMLS charges the following types of fees:

(1) application processing fee;

(2) credit report fee; and

(3) criminal background check fee.

(c) All fees are nonrefundable and nontransferable.

(d) Insufficient Funds Fee. The Commissioner may collect a fee in an amount determined by the Commissioner not to exceed $50 for any returned check, credit card chargeback, or failed automated clearing house (ACH) payment. A fee assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

§55.103. Renewal of the License.

(a) A license may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees;

(2) a determination by SML that the originator continues to meet the minimum requirements for licensure, including the requirements of Finance Code §§157.012(c), 157.015(g), and 180.055; and

(3) completion of the continuing education required by Finance Code §180.060 and §55.108 of this title (relating to Required Education) as reflected in NMLS.

(b) Application of §55.101. A renewal request is a license application subject to the requirements of §55.101 of this title (relating to Applications for Licensure). A renewal request withdrawn under §55.101(c) of this title will be rejected in NMLS.

(c) Commissioner's Discretion to Approve with a Deficiency; Conditional License. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the originator to continue conducting regulated activities while the originator works diligently to resolve the deficiency. A renewal request approved by the Commissioner under this subsection will be assigned the NMLS license status "Approved - Deficient." Approval under this subsection does not relieve the originator of the obligation to resolve the deficiencies. A license approved under this subsection is deemed to be a conditional license for which the originator, in order to maintain the license, must resolve the deficiencies within 30 days after the date the license is approved, unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the license.

(d) Reinstatement. This section applies to an individual seeking reinstatement of an expired license (assigned the license status "Terminated - Failed to Renew") during the reinstatement period described by Finance Code §157.016 and must be construed accordingly. An originator license cannot be renewed beyond the reinstatement period; instead, the individual must apply for a new license and comply with all current requirements and procedures governing issuance of a new license.

§55.104. NMLS Records; Notices Sent to the Originator.

(a) NMLS License Status. SML is required to assign a status to the license in NMLS. The license status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the license status options available in NMLS. The NMLS Resource Center website (nationwidelicensingsystem.org) describes the available license status options and their meaning.

(b) Amendments to License Records Required. Unless Finance Code §157.019 applies and requires additional notice, an originator must amend his or her NMLS license records (MU4 filing) within 10 days after the date of any material change affecting any aspect of the MU4 filing, including, but not limited to:

(1) name (which must be accompanied by supporting documentation submitted to SML establishing the name change);

(2) phone number;

(3) email address (including his or her NMLS account email address, as described by subsection (d)(1) of this section);

(4) mailing address:

(5) residential history;

(6) employment history; and

(7) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(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 (nationwidelicensingsystem.org).

(b) Number of Sponsorships. An originator may be sponsored by more than one mortgage company or mortgage banker if:

(1) the originator clearly identifies to the mortgage applicant the sponsoring entity or entities on whose behalf the originator is acting prior to taking an application;

(2) the application clearly states the sponsoring entity on whose behalf the originator is acting (e.g., in the "Loan Originator Information" section of the Fannie Mae 1003 Uniform Residential Loan Application). The mortgage applicant may apply with more than one sponsoring entity, provided, there are separate applications for each such entity that clearly identifies the sponsoring entity to which the application was submitted;

(3) the authorization forms, disclosures, loan estimates, pre-qualification letters, conditional approval letters, closing disclosures, and other materials provided to the mortgage applicant clearly identify the mortgage company or mortgage banker providing residential mortgage loan origination services in the transaction;

(4) the originator does not misrepresent or misconstrue to the mortgage applicant the mortgage company or mortgage banker providing residential mortgage loan origination services in the transaction;

(5) the originator discloses to his or her sponsoring entities the existence the originator's multiple sponsorships;

(6) the originator does not steer the mortgage applicant to a sponsoring entity offering terms less favorable to the mortgage applicant and that might have the effect of increasing the originator's compensation; and

(7) the originator is only compensated for services actually performed and does not share or split any fee.

(c) Inactive License Status Pending Sponsorship. An applicant may be issued a license in an inactive status if the applicant has met all requirements for licensure except the requirement that the originator be sponsored by an appropriate entity, as provided by Finance Code §157.012(a)(1). While in an inactive status, an originator must not act in the capacity of an originator and must continue to meet the minimum requirements for licensure. A license in an inactive status is assigned the license status "Approved - Inactive" in NMLS.

(d) Termination of Sponsorship. Sponsorship may be terminated by the mortgage company or mortgage banker, or the originator. If sponsorship is terminated, the party terminating the sponsorship must immediately notify SML of the termination by making a filing in NMLS to show the sponsorship as terminated in the system, as provided by Finance Code §156.211 and §157.019.

(e) Failure to Maintain Sponsorship; Inactive Status. If an originator's license does not maintain sponsorship by a mortgage company or mortgage banker, the license will revert to an inactive status ("Approved - Inactive") until a new sponsorship becomes effective, during which time the originator must not act or attempt to act in the capacity of an originator. An originator may voluntarily place his or her license in an inactive status by terminating all sponsorships as described by subsection (d) of this section.

§55.108. Required Education.

(a) Pre-Licensing Education and Examination. As provided by Finance Code §180.056, an individual applying for an originator's license (applicant) must complete the pre-licensing education and coursework prescribed by the federal S.A.F.E. Mortgage Licensing Act (federal SAFE Act) and approved by NMLS. Such education and coursework must include 3 hours of instruction relating to the applicable laws, rules, and practice considerations governing residential mortgage loan origination in Texas. As provided by Finance Code §180.057, an applicant must pass a written test prescribed by the federal SAFE Act and approved by NMLS.

(b) Lapsing of Pre-Licensing Education and Examination. An applicant other than a current license holder seeking renewal under §55.103 of this title (relating to Renewal of the License; i.e., an individual seeking a new license) must have completed the required pre-licensing education and coursework described by subsection (a) within the 3 years preceding the date of application; otherwise, the applicant must take the pre-licensing education and coursework approved and offered at the time of the application. Additionally, if an applicant for a new license did not pass the National Component with Uniform State Content examination approved by NMLS on or after April 1, 2013, the applicant must pass the current pre-licensing examination approved by NMLS in order to satisfy the requirements of Finance Code §180.057 (examinations taken prior to April 1, 2013, will not satisfy such requirements).

(c) Recognition of Pre-Licensing Education Taken in Another Jurisdiction. As provided by Finance Code §180.056, SML will recognize pre-licensing education and coursework taken in another jurisdiction subject to the requirements of the federal SAFE Act; provided, it is approved by NMLS for that purpose and otherwise meets the requirements of the federal SAFE Act, and Finance Code Chapter 180. However, SML will not recognize those hours of pre-licensing education and coursework taken in another jurisdiction the content of which was specific to that jurisdiction and that comprised the 12-hour undefined electives portion of such pre-licensing education and coursework. An applicant may take coursework that is of limited duration and limited in scope to the applicable laws, rules, and practice considerations governing residential mortgage loan origination in Texas in order to supplement and remedy a shortfall in hours derived from non-recognition of pre-licensing education taken in another jurisdiction, as provided by this subsection.

(d) Continuing Education. As provided by Finance Code §180.060 and §55.103 of this title, an originator must complete, on

an annual basis, continuing education and coursework approved by NMLS in order to renew the 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 §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 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 §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 un-

der subsection (d)(1) or (2) of this section (concerning crimes involving fraud, falsification, dishonesty, deception and breach of trust, and theft or embezzlement, respectively) is deemed to constitute a crime involving an act of fraud, dishonesty, breach of trust, or money laundering for purposes of Finance Code §180.055(a).

(c) Duties and Responsibilities of a Residential Mortgage Loan Originator. An originator acts as an intermediary between the consumer seeking a residential mortgage loan and the lender or underwriter that determines whether the consumer qualifies for the loan. The originator may assist the consumer in reviewing his or her income, expenses, and credit worthiness to determine whether he or she will qualify for a loan, and on what terms he or she might qualify. The originator may assist the consumer in completing the loan application, and sometimes directs the consumer to present his or her financial information in the manner to which the lender or underwriter is accustomed. A residential mortgage loan often takes place in the context of a real estate transaction, and as a result, an originator sometimes advises the consumer of his or her financial ability to purchase residential real estate, including providing a conditional pre-qualification letter to establish the consumer's purchasing power while shopping in the marketplace. Once the loan has entered the underwriting process, the originator may assist the consumer in resolving any outstanding conditions of the underwriter to qualify for the loan and obtain approval, including addressing items of concern on a consumer's credit report, immigration/residency status, available cash-on-hand for the transaction, and income which may not be readily established by documentary evidence such as that of an independent contractor. The originator communicates to the consumer the ever-changing loan terms as interest rates in the marketplace fluctuate and is often a key figure in advising the consumer of when and how he or she may "lock" the loan in advance of closing to solidify the loan terms. The originator may serve as communications liaison between the consumer and various parties to the transaction, including the lender, the underwriting department or a third-party underwriter, real estate brokers and sales agents, appraisers, surveyors, insurance providers, closing/settlement agents, and the representatives of various taxing authorities. In performing his or her duties, an originator has access to sensitive information of the consumer, including his or her social security number, date of birth, immigration/residency status, and all the personal financial details of the consumer, including employment, income, assets, and expenses.

(d) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission of Texas and the Commissioner have determined the following categories of criminal offenses are directly related to the duties and responsibilities of acting as an originator:

(1) criminal offenses involving fraud, falsification, dishonesty, deception, and breach of trust;

(2) criminal offenses involving theft or embezzlement; and

(3) criminal offenses involving intoxication by drugs or alcohol.

(e) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission of Texas and the Commissioner have determined the criminal offenses in the following schedule meet one or more of the categories deemed to relate to residential mortgage loan origination by subsection (d) of this section and are directly related to the duties and responsibilities of an individual licensed by SML to act as an originator. The schedule includes those criminal offenses most likely to be encountered by SML and is made from the perspective of the criminal laws of the State of Texas and the United States federal government. However, the schedule is not an exhaustive review of all offenses and does not limit SML from considering a criminal offense not specifically listed in the schedule. The schedule should be construed to include any criminal offense meeting one or more of the categories deemed to relate to residential mortgage loan origination, as provided by subsection (d) of this section. The schedule should further be construed to include the substantially similar or functionally equivalent crime of any state or territory of the United States, violations of the Texas Code of Military Justice (Government Code Chapter 432), violations of the Uniform Code of Military Justice (10 U.S.C. §801 et seq.), or crimes of a foreign country or governmental subdivision thereof. In determining whether a criminal offense of another jurisdiction is substantially similar or functionally equivalent, an inquiry will be made comparing the subject offense with an offense on the schedule to determine whether the subject offense has similar elements, including intent and classification of punishment, and whether the crime would have been punishable had the acts been committed in Texas.
Figure: 7 TAC §55.113(e)

(f) Factors. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in determining whether a criminal offense is directly related to the duties and responsibilities of an individual licensed by SML to act as an originator, the Commissioner will consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to act as an originator;

(3) the extent to which an originator license might offer an opportunity for the individual to engage in further criminal activity of the same type as that in which the individual has previously been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed originator; and

(5) any correlation between the elements of the crime and the duties and responsibilities of licensed originator.

(g) In addition to the factors in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Finance Code §157.0131 and subsection (h) of this section) is unfit and ineligible for licensure, will consider:

(1) the extent and nature of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

(3) the amount of time that has elapsed since the individual's criminal activity;

(4) the amount of time that has elapsed since the individual's release from incarceration;

(5) the conduct and work activity of the individual before and after the criminal activity;

(6) evidence of the individual's rehabilitation or rehabilitative efforts;

(7) letters of recommendation, signed and dated, by a current employer, if the individual is employed, or a previous employer, stating that the employer has specific and complete knowledge of the individual's criminal history and the reasons the employer is recommending that the individual be considered fit to be licensed by SML; and

(8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and his or her character and fitness, with specific and complete knowledge of the individual's criminal history, able to offer competent information about the nature and extent of the applicant's rehabilitative efforts.

(h) Convictions Considered. The determination of whether a criminal proceeding is considered to have resulted in a conviction for purposes of this section will be made in accordance with Finance Code §157.0131, which states that an individual is considered to have been convicted of a criminal offense if:

(1) a sentence is imposed on the individual;

(2) the individual received probation or community supervision, including deferred adjudication or community service; or

(3) the court deferred final disposition of the individual's case.

(i) Consideration of Disciplinary Actions. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, SML may consider the individual's past history of disciplinary actions with SML, or another regulatory body or official of another jurisdiction regulating residential mortgage loan origination or other financial services, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure.

(j) Consideration of Financial Responsibility, Character and General Fitness. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, the Commissioner may consider the individual's financial responsibility, and other evidence of character and general fitness, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure. A conviction for a criminal offense having a nexus to residential mortgage loan origination arising from the categories of criminal offenses deemed to relate to residential mortgage loan origination under subsection (d) of this section is indicative of a failure to demonstrate requisite character and general fitness to command the confidence of the community in accordance with Finance Code §180.055(a)(3), and honesty, trustworthiness and integrity in accordance with Finance Code §157.012(c)(1).

§55.114. Request for Criminal History Eligibility Determination.

(a) Purpose and Applicability. This section establishes the procedures by which an individual may seek a preliminary review of his or her eligibility to be licensed by SML with respect to his or her criminal history prior to formally applying with SML for licensure, as authorized by Occupations Code Chapter 53. Pursuant to Occupations Code §53.102, this section applies to an individual who has reason to believe he or she is ineligible to be licensed by SML due to a conviction or deferred adjudication for a felony or misdemeanor offense, and who is enrolled or is planning to enroll in an educational program that prepares an individual to be licensed by SML. The Commissioner will not offer advisory opinions concerning criminal convictions or sentences that have not actually occurred.

(b) Request for Preliminary Eligibility Determination; Supporting Documentation. The request must be made using the current form prescribed by SML and posted on its website (sml.texas.gov). The fee to make a request under this section is determined by the Commissioner and posted on SML's website. The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days.

(c) Review of Request for Preliminary Evaluation. A request made under this section will be reviewed by SML to determine the requestor's eligibility using the same procedures for review of an individual's criminal history when making an application for licensure and is subject to SML's criminal conviction guidelines in §55.113 of this title (relating to Criminal Conviction Guidelines). As a result, the requestor, in making the request, must list all offenses that actually resulted in a criminal conviction or that otherwise constitute a criminal conviction for purposes of Finance Code §157.0131 and §55.113 of this title. The requestor's incarcerated status that would render the individual ineligible for licensure pursuant to Occupations Code §53.021(b) will be disregarded; however, SML will consider the implications of the requestor's anticipated release from incarceration in making its determination.

(d) Determination of Eligibility. Within 90 days after the date the fully-completed request is received, SML will notify the requestor of his or her eligibility to receive a license issued under Finance Code Chapters 157 and 180.

(e) Effect of Determination. In the absence of new evidence known but not disclosed by the requestor, or not reasonably available to SML in consideration of the disclosures made by the requestor, the Commissioner's decision regarding eligibility of the requestor concerning his or her criminal history will be determinative for purposes of reviewing a subsequent application for licensure from the requestor. However, the Commissioner's decision regarding eligibility will not be determinative to the extent the request for preliminary eligibility determination contained fraudulent or misleading information or supporting documentation or otherwise failed to list a criminal conviction of the requestor that was not otherwise discovered by SML in investigating the request, regardless of whether or not the requestor was aware of the conviction at the time of the request, and including any subsequent conviction received by the requestor. A decision that the requestor is eligible will not be determinative if the requestor is determined to be ineligible for licensure by operation of law as provided by Finance Code §180.055(a) and §55.113 of this title.

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

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Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§55.200 - 55.205

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code

§180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act. §55.200 is also proposed under the authority of, and to implement, Finance Code: §§156.004, 157.0021, 180.061(4) and 180.151. §55.201 is also proposed under the authority of, and to implement, Finance Code: §§156.105, 157.0023(b), and 157.02012. §55.202 and §55.203 are also proposed 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 proposed under the authority of, and to implement, Finance Code: §157.02015(b) and §180.061(5). §55.205 is also proposed under the authority of, and to implement, Finance Code §157.020(a-1) and §180.101.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§55.200. Required Disclosures.

(a) Specific Notice to Applicant. An originator sponsored by a mortgage company licensed by SML must provide a mortgage applicant with the notice required by §56.200(b) of this title (relating to Required Disclosures). An originator sponsored by a mortgage banker registered with SML must provide a mortgage applicant with the notice required by §57.200(b) of this title (relating to Required Disclosures). The notice must be sent at the time the originator takes the initial application for a residential mortgage loan.

(b) Posted Notice on Websites. An originator sponsored by a mortgage company licensed by SML must comply with the requirements of §56.200(c) of this title. An originator sponsored by a mortgage banker registered with SML must comply with the requirements of §57.200(c) of this title.

(c) Disclosures in Correspondence. An originator must provide the following information on all correspondence sent to a mortgage applicant:

(1) the name of the mortgage company or mortgage banker sponsoring the originator and its NMLS ID;

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

(3) the name of the originator and his or her NMLS ID.

§55.201. Conditional Pre-Qualification and Conditional Approval Letters.

(a) Compliance with Mortgage Company and Mortgage Banker Rules. An originator sponsored by a mortgage company licensed by SML must comply with the requirements of §56.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters). An originator sponsored by a mortgage banker registered with SML must comply with the requirements of §57.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters).

(b) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the originator.

(c) Duty to Issue Accurate Letters; Caution. A conditional pre-qualification letter or conditional approval letter must be accurate and reflect the actual information that the originator considered in issuing the letter. An originator is cautioned that the issuance of an inaccurate, erroneous, or a negligently-issued conditional pre-qualification letter or conditional approval letter constitutes a violation as provided by §55.202 of this title (relating to Fraudulent, Misleading, or Deceptive Practices, and Improper Dealings) and may result in disciplinary action against the originator. Additionally, if an inaccurate, erroneous, or a negligently-issued conditional pre-qualification letter or conditional approval letter is relied on by the mortgage applicant to incur out-of-pocket costs in connection with the prospective mortgage loan, it may subject the originator to a recovery claim under Finance Code Chapter 156, Subchapter F.

§55.202. Fraudulent, Misleading, or Deceptive Practices and Improper Dealings.

(a) Fraudulent, Misleading, or Deceptive Practices. The following conduct by an originator constitutes fraudulent and dishonest dealings for purposes of Finance Code §157.024(a)(3), deceptive practices for purposes of Finance Code §180.153(2), a scheme to defraud a person for purposes of Finance Code §180.153(1), and a false or deceptive statement or representation for purposes of Finance Code §180.153(11):

(1) knowingly misrepresenting the originator's relationship to a mortgage applicant or any other party to a residential mortgage loan transaction or prospective residential mortgage loan transaction;

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

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

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

(5) knowingly participating in or permitting the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether to make or acquire a residential mortgage loan;

(6) as provided by Regulation X (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan for which the originator receives compensation for services not actually performed or where the compensation received bears no reasonable relationship to the value of the services actually performed;

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

(8) altering any document produced or issued by SML, unless otherwise permitted by statute or a rule of SML.

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

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

(i) the originator's name and mortgage company or mortgage banker on behalf of which the originator is acting;

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

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

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

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

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

(10) engaging in any other practice which the Commissioner, by published interpretation, has determined is fraudulent, misleading, or deceptive.

(b) Improper and Unfair Dealings. The following conduct by an originator constitutes improper dealings for purposes of Finance Code §157.024(a)(3) and unfair practices for purposes of Finance Code §180.153(2):

(1) Acting negligently in performing an act requiring a license under Finance Code Chapters 157 or 180;

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

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

(B) Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.);

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

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

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

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

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

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

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

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

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

(4) Issuing a conditional pre-qualification letter or conditional approval letter under §55.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters) that does not comply with the required form for the letter or is inaccurate, erroneous, or negligently-issued;

(5) Representing to a mortgage applicant that a charge or fee which is payable to the originator or the mortgage company or mortgage banker sponsoring the originator is a "discount point" or otherwise benefits the mortgage applicant unless the loan closes and:

(A) the mortgage company or mortgage banker sponsoring the originator is making the residential mortgage loan (lender); or

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

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

(7) acting as an originator when the originator is licensed but not sponsored by a mortgage company or mortgage banker, or the license is otherwise in an inactive status.

(c) Related Transactions. An originator engages in fraudulent and deceptive dealings for purposes of Finance Code §157.024(a)(3), deceptive practices for purposes of Finance Code §180.153(2), and a scheme to defraud a person for purposes of Finance Code §180.153(1) when, in connection with the origination of a residential mortgage loan:

(1) the originator:

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

(B) the originator engages in fraudulent, misleading, or deceptive acts in the related transaction; or

(2) the originator:

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

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

(C) the originator knew or should have known of the fraudulent, misleading, or deceptive acts of the affiliated person; and

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

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. An originator must not offer or agree to share or split any loan origination fees with a mortgage applicant, rebate all or a part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with performing residential mortgage loan origination services unless otherwise allowable under Regulation X (12 C.F.R. §1024.14) and Regulation Z (12 C.F.R. §1026.36(d)). An originator acting in the

dual capacity of an originator and real estate sales broker or agent licensed under Occupations Code Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described by this subsection occurs as a part of closing and is properly reflected in the closing disclosure. If a payment or other transfer described by this subsection occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the originator's fees for residential mortgage loan origination services and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption may only be overcome by clear and convincing evidence established by the originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection is deemed to constitute improper dealings for purposes of Finance Code §157.024(a)(3) and unfair practices for purposes of Finance Code §180.153(2).

(e) Education Fraud. The following conduct in connection with the pre-licensing education or examination, or continuing education required by §55.108 of this title (relating to Required Education) constitutes a false or deceptive statement or representation for purposes of Finance Code §180.153(11) and a false statement or omission of material fact for purposes of Finance Code §180.153(12):

(1) claiming credit for a pre-licensing education course, pre-licensing examination, or continuing education course the individual did not take; or

(2) taking a pre-licensing education course, pre-licensing examination, or continuing education course on behalf of another individual.

§55.203. Advertising.

An originator sponsored by a mortgage company licensed by SML must comply with the advertising requirements in §56.203 of this title (relating to Advertising). An originator sponsored by a mortgage banker registered with SML must comply with the advertising requirements in §57.203 of this title (relating to Advertising).

§55.204. Books and Records.

An originator sponsored by a mortgage company licensed by SML must comply with the books and records requirements in §56.204 of this title (relating to Books and Records). An originator sponsored by a mortgage banker registered with SML must comply with the books and records requirements in §57.204 of this title (relating to Books and Records). An originator fulfills the requirements of §56.204 of this title and §57.204 of this title, as applicable, if his or her sponsoring mortgage company or mortgage banker maintains the required books and records on behalf of the originator. An originator must work diligently and cooperatively with his or her sponsoring mortgage company or mortgage banker to ensure that the records arising from the originator's work are properly maintained by the mortgage company or mortgage banker sponsoring his or her license.

§55.205. Mortgage Call Reports.

(a) Purpose. This section clarifies and establishes requirements related to the mortgage call reports an originator is required to file under Finance Code §180.101.

(b) Fulfillment by Mortgage Company or Mortgage Banker. Mortgage companies licensed by SML and mortgage bankers registered with SML are required to file mortgage call reports. An originator is not expected to and should not attempt to file his or her own mortgage call reports. Instead, the originator's activity must be included in the mortgage call reports filed by the mortgage company or mortgage banker sponsoring the originator. An originator fulfills the requirements of Finance Code §180.101 if his or her sponsoring mortgage company or mortgage banker files mortgage call reports that include the originator's activity. An originator must work diligently and cooperatively with his or her sponsoring mortgage company or mortgage banker to ensure that the originator's activity is included in a mortgage call report filed by his or her sponsoring mortgage company or mortgage banker in compliance with §56.205 of this title (relating to Mortgage Call Reports), applicable to mortgage companies licensed by SML, and §57.205 of this title (relating to Mortgage Call Reports), applicable to mortgage bankers registered with SML.

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

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Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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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). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act. §§55.300 - 55.303 are also proposed 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 proposed under the authority of, and to implement, Finance Code: §§157.017, 157.023, 157.024, and 157.031. §55.311 is also proposed under the authority of, and to implement, §157.017.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§55.300. Examinations.

(a) Purpose. This section clarifies and establishes requirements related to examinations of an originator conducted by SML under Finance Code §157.021.

(b) State Examination System (SES). Examinations are conducted in SES (stateexaminationsystem.org). The mortgage company or mortgage banker sponsoring the originator must use SES to facilitate the examination.

(c) Examinations by Other State Agencies. SML may participate in, leverage, or accept an examination conducted by another state

agency or regulatory authority if that state agency's or regulatory authority's mortgage regulation program is accredited by the Conference of State Bank Supervisors.

(d) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person of the mortgage banker or mortgage company sponsoring the originator listed in NMLS or a person designated by the primary contact person advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which SML's examiners are scheduled to begin the examination. Failure to receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made available to facilitate the examination.

(e) Examination Scope. Examinations will be conducted to determine compliance with Finance Code Chapters 156, 157 and 180, and this chapter, and will specifically address whether:

(1) all persons are properly licensed and sponsored;

(2) all office locations are properly licensed or registered, as provided by §56.206 of this title (relating to Office Locations; Remote Work) and §57.206 of this title (relating to Office Locations; Remote Work);

(3) all required books and records are being maintained in accordance with §56.204 of this title (relating to Books and Records) and §57.204 of this title (relating to Books and Records);

(4) legal and regulatory requirements applicable to the originator and the mortgage banker or mortgage company sponsoring the originator are being properly followed (including, but not limited to, the requirements described in §55.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings); and

(5) other matters as SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapters 156, 157, and 180.

(f) Loan Sample. The examiners will review a sample of residential mortgage loan files identified by the examiners from the mortgage transaction log required by §56.204(c)(1) or (d)(1) of this title, applicable to mortgage companies licensed by SML, or §57.204(c)(1) or (d)(1) of this title, applicable to mortgage bankers registered with SML. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(g) Failure to Cooperate; Disciplinary Action. Failure by an originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in disciplinary action including, but not limited to, imposition of an administrative penalty.

(h) Reimbursement for Costs. The examiners may require an originator, at his or her own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report. When the examiners must travel outside of Texas to conduct an examination of an originator because the required records are maintained at a location outside of Texas, SML will require reimbursement for the actual costs incurred in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs. Any such costs will be assessed against the originator in NMLS and must be paid in NMLS.

§55.301. Investigations.

(a) Purpose. This section clarifies and establishes requirements related to investigations of an originator conducted by SML under Finance Code §157.021.

(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has no reason to believe is other than creditable 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

(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 cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.

(b) Hearing Costs for License Denials. Hearing costs assessed against an individual under Finance Code §157.017(f) include:

(1) filing fees;

(2) the costs of a court reporter;

(3) the costs of the administrative law judge (ALJ) or hearings officer presiding over the hearing;

(4) the expense of SML's staff to prepare for and attend the hearing or any ancillary proceedings (i.e., the hearing of motions, status conferences, etc.), and any related travel expenses;

(5) the cost of any outside counsel retained to represent SML; and

(6) the cost of any expert witness retained by SML.

(c) Determination of Hearing Costs for License Denials. Unless the ALJ makes more specific findings of fact or conclusions of law concerning the hearing costs described by subsection (b)(3) of this section, such costs are deemed to be $500. Hearing costs described by subsection (b)(4) of this section are measured based on the diversion of productivity of such staff away from their typical duties and toward the hearings process and are calculated by multiplying the number of hours spent by each staff member in furtherance of the hearings process (measured in increments of 1/10 of an hour) by their current hourly compensation rate. The Commissioner may rely on affidavit testimony of such staff members to make appropriate findings of fact and conclusions of law concerning the hearing costs described by subsection (b)(4) of this section.

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

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Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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CHAPTER 56. RESIDENTIAL MORTGAGE LOAN COMPANIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes new rules in 7 TAC Chapter 56: §§56.1 - 56.6, 56.100 - 56.108, 56.200 - 56.206, 56.210, 56.300 - 56.304, 56.310, and 56.311 (proposed rules).

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80, Residential Mortgage Loan Companies, affect residential mortgage loan companies (mortgage companies) licensed by SML under Finance Code Chapter 156 (Chapter 156).

Changes Concerning the Reorganization (Relocation) of Mortgage Company Rules from Chapter 80 to Chapter 56

SML has determined it should reorganize its rules concerning mortgage companies by relocating the rules to Chapter 56, a vacant chapter. The proposed rules, if adopted, would effectuate this change.

Changes Concerning General Provisions (Subchapter A)

The proposed rules: in §56.2, Definitions, adopt new definitions for "E-Sign Act," "engage in or conduct the business of a mortgage company," "making a residential mortgage loan," "mortgage banker," "SML," "State Examination System," "trigger lead," "UETA," "wrap lender," and "wrap mortgage loan" while eliminating definitions for "Commissioner's designee," and "Department"; in §56.3, Formatting Requirements for Notices, adopt formatting requirements for the various disclosures a mortgage company is required to make; in §56.4, Electronic Delivery and Signature of Notices, clarify that any notice or disclosure made by a mortgage company may be delivered and signed electronically; and, in §56.5, Computation of Time, clarify how time periods measured in calendar days are computed.

Changes Concerning Licensing Requirements (§56.100)

The proposed rules, in §56.100, Licensing Requirements, clarify when a mortgage company license is required. §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 proposed §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. Proposed §56.100(c), if adopted, would clarify the statutory requirements of Finance Code §156.202(a-1)(3) and dispel the belief that a license is not required under the circumstances described above. Given the apparent pervasiveness of this belief, SML is contemplating a delayed effective date of January 2026 for proposed §56.100, to provide time for industry to move toward compliance and allow the Texas Legislature to consider this issue during the 89th legislative session. SML welcomes comments to the proposal in this regard.

Other Changes Concerning Licensing (Subchapter B)

The proposed rules: in §56.102, Fees, clarify that the license fee charged by SML is exclusive of fees charged by the Nationwide Multistate Licensing System (NMLS), and clarify that an insufficient funds fee under Finance Code §156.203(e) may be charged if the mortgage company makes a payment to SML by automated clearing house and that payment fails; in §56.103, Renewal of the License, clarify that a license approved with a pending deficiency is a conditional license and requires the mortgage company to resolve the deficiency within 30 days after the date the license is approved, and clarify that, if a license is not renewed within the reinstatement period provided by Finance Code §156.2081, a person must apply for a new license; in §56.104, NMLS License Records; Notices Sent to the Mortgage Company, change the contact person in NMLS to whom notices are sent from the contact person under "Identifying Information" to the contact person designated as the "Primary Company Contact" under "Contact Employee"; in §56.105, Conditional License, clarify the terms and conditions under which a conditional license may be granted; in §56.106, Surrender of the License, clarify circumstances under which SML may not grant a request made by the mortgage company to surrender its license; in §56.107, Sponsorship of the Originator; Responsibility for Originator's Actions, provide that a mortgage company license will revert to inactive status if the mortgage company fails to maintain a sponsored individual residential mortgage loan originator; and, in §56.108, Qualified Individual, establish a requirement that the contact information for the Qualified Individual for the mortgage company must match the principal address of the mortgage company in NMLS.

Changes Concerning Books and Records (§56.204)

Pursuant to Finance Code §156.301(a), SML may conduct inspections (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 §157.02015(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 §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 proposed §56.304; and establish recordkeeping requirements for the handling of unclaimed funds of the consumer under proposed §56.305. The records and information a mortgage company is required to maintain under proposed §56.204 are required by other state and federal law or otherwise generated in the ordinary course of doing business. The proposed rules merely require that the mortgage company capture and maintain the records or information, including transposing certain information to the transaction logs required by the rule. Applicable state and federal law a mortgage company is required to comply with and that triggers the maintenance of the records and information includes, but not limited to: Article XVI, Section 50, Texas Constitution; Finance Code Chapter 156; Finance Code Chapter 159; Finance Code Chapter 343; the federal Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.); the federal Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.); the federal Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.); the federal Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.), Regulation P (12 C.F.R. §1016.1 et seq.), and the Federal Trade Commission's (FTC) Privacy of Consumer Financial Information Rules (16 C.F.R. §313.1 et seq.); the FTC's Standards for Safeguarding Customer Information Rule (16 C.F.R. §314.1 et seq.); the federal Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and Regulation N (Mortgage Acts and Practices-Advertising (MAP Rule)); 12 C.F.R. §1014.1 et seq.).

Changes Concerning Reportable Incidents (§56.210)

The mortgage industry in recent years, like many other industries, has experienced increasing operational risks to cybersecurity posed 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 §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 proposed §56.210 in the event of a security event. Moreover, a report made to the FTC or to the attorney general described above generally satisfies the requirements of the rule, other than the requirement to provide a "root cause analysis" concerning the "results or findings of an audit or investigation to determine the origin or root cause of security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event"; however, SML asserts that a root cause analysis is subsumed under the existing requirements of state and federal law related to security events, as described above, in order to meaningfully comply with such requirements.

Other Changes Concerning Duties and Responsibilities (Subchapter C)

The proposed rules: in §56.200, Required Disclosures, remove the requirement that the disclosure to consumers required by Finance Code §156.004(a) or §157.0021(a) be signed by the individual residential mortgage loan originator and the mortgage applicant, remove the requirement that a mortgage company make the disclosure on social media sites, and establish the requirement for a mortgage company to disclose its website address on all correspondence sent to the mortgage applicant; in §56.201, Conditional Pre-Qualification and Conditional Approval Letters, establish the requirement that a conditional pre-qualification letter or conditional approval letter be issued by an individual residential mortgage loan originator acting on behalf of the mortgage company; in §56.202, Fraudulent, Misleading, or Deceptive Practices and Improper Dealings, clarify that a mortgage company commits a violation if the mortgage company knowingly misrepresents the lien position of a residential mortgage loan, create requirements concerning the use of trigger leads, clarify that a mortgage company commits a violation if the originator solicits a consumer on the federal do-not-call registry, clarify that a mortgage company commits a violation if the mortgage company issues a conditional pre-qualification letter or conditional approval letter that is inaccurate, erroneous, or negligently-issued, and clarify that a mortgage company commits a violation if the mortgage company engages in business when its license is inactive; in §56.203, Advertising, establish the requirement for a mortgage company to state its website address when making an advertisement, and establish requirements for the use of team names by a mortgage company; in §56.205, Mortgage Call Reports, clarify the required components of the mortgage call report, and clarify that mortgage call reports must be complete and accurate when filed.

Changes Concerning Supervision and Enforcement (Subchapter D)

The proposed rules: in §56.300, Examinations, provide that examinations are conducted using the State Examination System, and that SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority; in §56.302, Confidentiality of Examination, Investigation, and Inspection Information, clarify the confidentiality of information arising from an examination, investigation, or inspection by SML; in §56.303, Corrective Action, clarify when SML may direct a mortgage company to take corrective action, and creating requirements for refunds made to consumers; in §56.304, establish requirements concerning the mortgage company's handling of unclaimed funds of the consumer, including requiring the maintenance of a log to track the handling of such funds; in §56.310, Appeals, establish various deadlines by which a mortgage company or other person subject to an enforcement action must appeal; and, in §56.311, Hearings, clarify how hearing assessed against a person under Finance Code §156.209(f) are calculated.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules, including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect, there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules.

Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing mortgage companies to be easier to find by members of the public; and, to better protect members of the public who are consumers seeking a residential mortgage loan from a mortgage company licensed by SML.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). However, SML includes a note concerning certain potential costs other than direct costs (indirect costs). SML incorporates by reference the Changes Concerning Licensing Requirements (§56.100) section above as if fully set forth herein. Some seller-finance lenders may seek licensure as a result of the statutory clarification made in the proposed §56.100, and, if so, would incur costs related to acquiring and maintaining the license (licensing costs) and costs related to ensuring compliance with Chapter 156 (compliance costs). However, these costs are indirect because the statute, not the proposed rules, imposes licensing requirements and such costs. The precise number of seller-finance lenders operating in Texas is indeterminate, as is the number of seller-finance lenders doing more than the statutory number of exempt transactions. TLDA estimates that perhaps as many as 5,000 - 10,000 seller-finance lenders will seek licensure as a mortgage company as a result of the statutory clarification in proposed §56.100. According to data from the Texas Comptroller of Public Accounts (Comptroller), there are approximately 2,626 Texas businesses operating in non-depository credit intermediation (NAICS Code 5222; a category that includes real estate credit (NAICS Code 522292; businesses offering credit secured by real estate)), among other types of lending by non-depository institutions). According to data from the U.S. Census Bureau, there are 1,640 Texas businesses operating in non-depository intermediation and 484 operating in real estate credit. (Given that the Comptroller and U.S. Census Bureau figures include businesses other than seller-finance lenders, and also include seller-finance lenders doing loans below the statutory number of exempt transactions and those already licensed, these figures are presumed to be higher than the actual figure that would seek licensure.) According to information made publicly available by Advanced Seller Data Services, an organization that facilitates the buying and selling of seller-finance loans on the secondary market and aggregates data concerning seller-finance loan activity, in 2022, there were 83,647 seller-finance loans made nationwide, with 20,922 made in Texas (25% of loan volume). According to that same industry source, 85% of seller-finance lenders nationwide made one loan in 12 months (below the statutory number of exempt transactions), 8% made two or three loans in that time (at or below the statutory number of exempt transactions), and 7% made four or more loans in that time (above the statutory number of exempt transactions). Assuming the percentage breakdown of seller-finance lenders making four or more loans (7%) is representative of loans made in Texas, of the 20,922 loans made in Texas, 1,465 loans were made by seller-finance lenders making four or more loans. Assuming further that such loan volume was by seller-finance lenders making only four loans (which has the tendency to create a maximal value of participant lenders), approximately 367 seller-finance lenders were required to be licensed in 2022. According to that same industry source, of the seller-finance loans made nationwide in 2022, 63% were residential, 16% were commercial, 17% were for unimproved land, and 4% were categorized as unknown. Assuming all transactions other than commercial transactions (84%) were residential (which has the tendency to create a maximal value of residential transactions; pursuant to Finance Code §156.002(15), residential real estate includes unimproved land on which a dwelling is intended to be constructed), and assuming further that the percentage breakdown of loan categories is representative of seller-finance loans made in Texas, the total loan volume of residential seller-finance loans in Texas in 2022 was approximately 17,575. Applying the same percentage breakdown of seller-finance lenders making four or more loans discussed above (7%) means that 1,231 of that loan volume was by seller-finance lenders making four or more loans, and that approximately 308 seller-finance lenders were required to be licensed in 2022. Beginning November 1, 2024, and at the time the proposed rules might be adopted, the fee charged by SML for an initial mortgage company license will be $325, and the renewal fee will be $275. The Nationwide Multistate Licensing System (NMLS) also charges a fee of $100 to process the license application. The license must be renewed annually. This would result in licensing costs of $425 in the first year, and $375 for each year thereafter, or a total licensing cost of $1,925 per person for the first five years the proposed rules are in effect. Using the $1,925 per person cost figure and applying it to the potential number of seller-finance lenders in Texas described above results in the following potential licensing costs: using the TLDA figures, $9.6m - $19.2m over the first five years, or an average of $1.9m - $3.8m per year; using the Comptroller figure, $5m over the first five years, or an average of $1m per year; using the U.S. Census figures, $931,700 - $3.1m, or an average of $186,340 - $631,400 per year; and using the Advanced Seller Data Services figures, $592,900 - $706,475, or an average of $118,580 - $141,295 per year. A mortgage company must appoint at least one individual to serve as its "qualifying individual" (qualified individual) for purposes of Finance Code §156.002(10-b) and §156.201(c). The qualified individual serves as a personal representative for the mortgage company and is responsible for violations of law by the mortgage company or its originators. The qualified individual must be licensed by SML as an originator and licensure of the originator has its own attendant licensing costs. Beginning November 1, 2024, and at the time the proposed rules might be adopted, the fee charged by SML for an initial originator license will be $125, plus a $25 sponsorship fee, and a $20 recovery fund fee required by Finance Code §156.502(a) (a total of $170). The fee to renew the license will be $90. NMLS also charges a fee of $30 to process the license application. The license must be renewed annually. This would result in licensing costs of $200 in the first year, and $120 per year thereafter, or a total licensing cost of $680 per person for the first five years the proposed rules are in effect. However, these costs are borne by the individual originator, not the person seeking the mortgage company license.

The mortgage company may choose to absorb these licensing costs as a part of the compensation package it offers the qualified individual, but that is at the election of the mortgage company, and such costs are therefore indirect costs. Regardless, using the $680 per person cost figure and applying it to the potential number of seller-finance lenders in Texas that may seek licensure, as described above, results in the following potential licensing costs relating to the originator who is the qualified individual for the mortgage company: using the TLDA figures, $3.4m - $6.8m, or an average of $680,000 - 1.3m per year; using the Comptroller figure, $1.7m, or an average of $357,136 per year; using the U.S. Census Bureau figure, $329,120 - $1.1m, or an average of $65,824 - $223,040 per year; using the Advance Seller Data Services figures, $209,440 - $249,560, or an average of $41,888 - $49,912 per year. A mortgage company may appoint a W-2 employee as its qualified individual or may contract with a third-party as an independent contractor to do so. The eligibility requirements for obtaining an originator license are not particularly onerous (23 hours pre-licensing education, passage of a pre-licensing examination, and an acceptable credit and criminal background), and a mortgage company could reasonably be expected to assign such duties to an existing employee after an initial, one-time cost of approximately $761.25 (consisting of pre-licensing education fees ($600), pre-licensing examination fees ($110), credit check ($15) and criminal background check ($36.25)), exclusive of the originator license fees described above. According to data from the U.S. Bureau of Labor Statistics, a loan officer working in non-depository credit intermediation in May 2023 had the following wage attributes: annual median wage, $62,210; annual mean wage, $80,010; annual 10th percentile wage, $31,380; annual 25th percentile wage, $39,920; annual 75th percentile wage, $98,180; and annual 90th percentile wage: $133,250. Meanwhile, a loan officer working in credit intermediation and related activities (NAICS Codes 5221 and 5223; a category that includes mortgage and nonmortgage loan brokers (NAICS Code 522310) had the following wage attributes: annual median wage, $84,230; annual mean wage, $72,690; annual 10th percentile wage, $40,630; annual 25th percentile wage, $51,550; annual 75th percentile wage, $99,910; 90th percentile wage, $136,440. Using the foregoing annual median wages, a seller-finance lender seeking licensure that hires a new employee to serve as qualified individual might reasonably be expected to incur a cost of between $62,210 - $84,230 in wages paid to that individual. Applying the higher figure ($84,230) to the potential number of seller-finance lenders in Texas that may seek licensure results in the following costs per year relating to employment wages of the qualified individual hired as a full time W-2 employee: using the TLDA figures, $421.1m - $842.3m, or an average of $84.2m - $168.4m per year; using the Comptroller figure, $221.1m, or $44.2m per year; using the U.S. Census Bureau figures, $40.7m - 138.1m, or $8.1m - $27.6m; using the Advanced Seller Data Services figures, $25.9m - $30.9m, or $5.1m - $6.1m per year. In a related rule proposal published elsewhere in this issue of the *Texas Register* concerning rules applicable to originators (see proposed new rules in 7 TAC Chapter 55), the rules provide that an originator may be sponsored by more than entity at a time, thereby allowing an originator to serve as qualified individual for more than one entity at a time. This dynamic should have the tendency to reduce costs for a mortgage company securing the services of an independent contractor to serve as 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. Regardless of the manner of employment, the qualified individual, in fulfilling his or her duties, could reasonably be expected to satisfy the other compliance costs described below. In accordance with Finance Code §156.213, a mortgage company is required to file mortgage call reports on a periodic basis, including a statement of financial condition. The mortgage call report is filed quarterly in the NMLS system. The filing of mortgage call reports may have some attendant costs; however, such costs are imposed by statute, not the proposed rules, and are therefore indirect costs. Seller-finance lenders that may seek licensure as a result of the statutory clarification in proposed §56.100 claim to be exempt from licensing requirements because they do not provide residential mortgage loan origination services but, instead, secure the services of a third-party to do so. If these persons continue secure the services of a third-party originator, they will not have reportable origination activity on the mortgage call report and will merely report this inactivity, resulting in any costs to file mortgage call reports being insignificant. Regardless, any such costs are subsumed within the costs to secure the services of the qualified individual, described above. A seller-finance lender becoming licensed as a mortgage company would be required to maintain books and records as provided by proposed §56.204, which may have some attendant costs. These potential costs are discussed in this section below, concerning Changes Concerning Books and Records (§56.204). Additionally, any such costs are subsumed within the costs to secure the services of the qualified individual, described above. In accordance with Finance Code §156.301, a seller-finance lender becoming licensed as a mortgage company would be subject to examination by SML, which may have some attendant costs in order for the mortgage company to facilitate the examination. However, the requirement to submit to an examination is imposed by statute, not the proposed rules, and any such costs are therefore indirect costs. Additionally, a mortgage company that does not provide residential mortgage loan origination services (including a seller-finance lender securing the services of a third-party to provide residential mortgage loan origination services) would not have reportable origination activity and would not be subject to regular examinations, thereby reducing indirect costs to related to such examinations. Regardless, any such costs are subsumed within the costs to secure the services of the qualified individual, described above. SML incorporates by reference the Changes Concerning Books and Records (§56.204) section above as if fully set forth herein. The proposed rules related to Changes Concerning Books and Records (§56.204) establish requirements concerning the books and records a mortgage company must maintain. The maintenance of such records may have some attendant costs. However, the statutory requirements of Finance Code §156.301 direct a mortgage company to maintain records sufficient to facilitate an inspection by the SML, not the proposed rules. Moreover, the required records and information are already generated by the mortgage company in complying with other state and federal law or in the ordinary course of doing business. The proposed rules require that a mortgage company maintain certain activity logs (mortgage transaction log (§56.204(c)(1), loan processing and underwriting activity log (§56.204(d), and escheatment log (§56.204(j) and §56.304); however, the information reflected on such logs is generated by the mortgage company in the normal course of doing business and merely requires that the mortgage company transpose such information to the logs. Considering the foregoing, these potential costs are not attributable to the

proposed rules and are indirect costs. Moreover, any such costs are anticipated to be insignificant. SML incorporates by reference the Changes Concerning Reportable Incidents (§56.210) section above as if fully set forth herein. The proposed rules related to Changes Concerning Reportable Incidents (§56.210) establish requirements for a mortgage company to report certain information when it experiences a security event or a catastrophic event that materially affects its operations and may have some attendant costs; however, the information required to be reported is already generated by the mortgage company in complying with other state and federal law or in the ordinary course of doing business. Considering the foregoing, these potential costs are not attributable to the proposed rules and are indirect costs. Moreover, any such costs are anticipated to be insignificant.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions. The proposed rules related to Changes Concerning Licensing Requirements (§56.100) may result in additional persons seeking licensure, as described in such section; however, any potential growth in license population would be as a result of statutory requirements, not implementation of the proposed rules, and any potential growth is anticipated to be modest and can be absorbed by SML's existing staff (for purposes of this statement, SML estimates 300 additional persons seeking a mortgage company license); (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency. The proposed rules related to Changes Concerning Licensing Requirements (§56.100) may result in additional fees paid to SML to the extent additional persons seek licensure, as described in such section; however, licensing requirements are imposed by statute, not the proposed rules. The proposed rules related to Other Changes Concerning Licensing (Subchapter B) may result in additional fees paid to SML in connection with the insufficient funds fee for failed automated clearing house payments sent to SML, as discussed in such section; however, those fees may be avoided entirely and therefore an increase in fees is not required; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning General Provisions (Subchapter A), Other Changes Concerning Licensing (Subchapter B), Changes Concerning Books and Records (§56.204), Changes Concerning Reportable Incidents (§56.210), and Other Changes Concerning Duties and Responsibilities (Subchapter C) establish various rule requirements, as discussed in such sections; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Other Changes Concerning Duties and Responsibilities (Subchapter C) have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability. The proposed rules related to Changes Concerning Licensing Requirements (§56.100) clarify existing statutory licensing requirements which may encourage additional persons to seek licensure; however, the licensing requirements are imposed by statute, not the proposed rules; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules 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. However, SML includes in this proposal a note concerning the potential fiscal impact of indirect costs on small and micro-businesses and rural communities. SML incorporates by reference the Changes Concerning Licensing Requirements (§56.100) and Probable Economic Costs to Persons Required to Comply with the Proposed Rules sections above as if fully set forth herein (including in connection with the Economic Impact Statement and Regulatory Flexibility Analysis sections below).

Economic Impact Statement

With respect to small and micro-businesses, according to data from the Comptroller, of the 2,626 businesses operating in nondepository credit intermediation in Texas, 2,366 (90%) may constitute a small business for purposes of Government Code Chapter 2006. According to the U.S. Census Bureau, of the 1,640 businesses operating in nondepository credit intermediation in Texas, 1,247 (76%) may constitute a micro-business and 1,382 (84%) may constitute a small business for purposes of Government Code Chapter 2006. As such, SML assumes similar percentages of seller-finance lenders that may seek licensure as a result of the statutory clarification made in proposed §56.100 would be a small or micro-business for purposes of Government Code Chapter 2006. Applying the higher percentage (90%) to the Advanced Seller Data Services figures of approximately 308 - 367 seller-finance lenders in Texas doing more than the statutorily exempt number of transactions results in approximately 278 - 331 small or micro-businesses potentially seeking licensure as a result of the statutory clarification made in proposed §56.100. Moreover, seller-finance lenders that are land developers sometimes form separate legal entities for each such development project, making it more likely that such person would be a small or micro-business for purposes of Government Code Chapter 2006. Applying the percentage above (90%) to the indirect cost figures above results in the following cumulative impact on small and micro-businesses concerning licensing costs for the mortgage company license: using the TLDA figures, $8.6m - $17.3m over the first five years, or an average of $1.7m - $3.4m per year; using the Comptroller figure, $4.5m over the first five years, or an average of $909,909 per year; using the U.S. Census figures, $838,530 - $2.8m, or an average of $167,706 - $568,260 per year; and using the Advanced Seller Data Services figures, $533,610 - $635,827.50, or an av-

erage of $106,722 - $127,165.50 per year. Applying that same percentage to the potential indirect costs for the qualified individual's originator license results in the following cumulative impact on small and-micro businesses: using the TLDA figures, $3m - $6.1m, or $612,000 - $1.2m per year; using the Comptroller figure, $1.6m or $321,422.40 per year; using the U.S. Census figures, $296,208 - $1m, or $59,241.60 - $200,736 per year; using the Advanced Seller Data Services figures, $188,496 - $224,601, or $37,699.20 - $44,920.80 per year. Applying that same percentage to the potential indirect costs in terms of employment wages paid to a qualified individual who is a new W2 employee results in the following cumulative impact on small and micro-businesses: using the TLDA figures, $379m - $758m, or an average of $75.8m - $151.6m per year; using the Comptroller figure, $199m, or an average of $39.8m per year; using the Advanced Seller Data Services figures, $23.3m - $27.8m, or an average of $4.6m - $5.5m per year. As discussed in the Probable Economic Costs to Persons Required to Comply with the Proposed Rules section above, the remaining indirect costs are subsumed within the wages paid to the qualified individual who can reasonably be expected to fulfill the duties related to compliance. With respect to rural communities, the development of unimproved land by some seller-finance lenders tends to occur in unpopulated rural areas, or the periphery of population centers, where undeveloped, raw land is available, and restrictions on development are minimal. As a result, SML assumes that many seller-finance lenders that may seek licensure as a result of the statutory clarification made in proposed §56.100 are operating in rural communities and thus the potential indirect costs may be passed on to consumers in those rural communities purchasing land from a seller-financed mortgage lender that seeks licensure as a result of the statutory clarifications made in the proposed rules. Additionally, many rural communities for purposes of Government Code Chapter 2006 do not comport with traditional notions of what it means to be a rural community (e.g., Bellaire, Texas), further complicating this analysis. However, those potential costs only impact a rural community to the extent a business is impacted and therefore the impact on rural communities is indirect. Taking the foregoing into consideration, SML was not able to discern a rational basis for measuring the economic impact of the indirect costs at issue on any particular rural community in the state or how to compare the relative impact on one rural community versus another.

Regulatory Flexibility Analysis

SML considered alternative methods of achieving the objectives of proposed §56.100 while minimizing the indirect costs on small and micro-businesses. With respect to the licensing requirement generally, no alternative methods reasonably exist as the licensing requirements are mandated by statute, not the proposed rules. With respect to the indirect costs concerning license fees, SML considered varying the amount of the license fee depending on the size and complexity of the mortgage company and its operations, including potentially on the basis of whether the business is a small or micro-business. However, SML is required to use the NMLS system to administer the license, and that system does not allow for multiple fee amounts within a single license type. As a result, no alternative methods reasonably exist with respect to reducing licensing costs on small or micro-businesses. With respect to the indirect costs associated with the qualified individual, the requirement for a mortgage company to appoint a qualified individual is mandated by statute. As a result, no alternative methods reasonably exist to eliminate the requirement for the qualified individual for small and micro-businesses. However, as discussed above, in a related rulemaking action proposing new rules for originators in 7 TAC Chapter 55, published elsewhere in this issue of the *Texas Register*, that proposal includes a rule that has the potential to reduce the costs associated with the qualified individual for some small and micro-businesses. Specifically, proposed new 7 TAC §55.107 allows an originator to be sponsored by more than one entity, thereby allowing a seller-finance lender that may seek licensure as a result of the statutory clarification made in proposed §56.100 to continue its practice of securing the services of a third-party originator in a manner that includes potentially contracting with the qualified individual for the third-party originator such that the originator is both qualified individual for the seller-finance lender obtaining the license, and the third-party entity providing origination services. This dynamic is anticipated to reduce the potential indirect costs for a seller-finance lender becoming licensed to appoint a qualified individual for the mortgage company. With respect to potential indirect costs associated with filing mortgage call reports, the requirement to file such reports is mandated by statute. The NMLS system governs all aspects of the mortgage call report, including the frequency and deadlines by which the mortgage call report must be filed, and its content and form. Taking the foregoing into consideration, no alternative methods reasonably exist with respect to eliminating or reducing such reporting. However, as discussed above, to the extent a seller-finance lender becoming licensed continues to secure the services of a third-party originator, that origination data will appear on the third-party originator's call report, and the seller-finance lender securing the services of the third-party will merely report their inactivity, thereby limiting such indirect costs for small and micro-businesses. Similarly, a seller-finance lender becoming licensed that continues to secure the services of a third-party to provide origination services is unlikely to be regularly examined as it will not have sufficient loan production to justify doing so. Instead, the third-party originator providing the origination services would be subject to regular examination, and examination of the seller-finance lender would occur only as indicated by the examination of that third-party originator, or in connection with complaints made by consumers. Considering the foregoing, SML's examination processes already make accommodations for small and micro-businesses that either do not originate in volume, specialize in providing loan processing services to originating entities, or secure the services of a third-party to satisfy the functions of origination.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§56.1 - 56.6

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary

for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§56.1. Purpose and Applicability.

This chapter governs SML's administration and enforcement of Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act (other than Subchapters F and G), concerning the licensing, registration, and operations of mortgage companies, financial services companies, credit union subsidiary organizations, auxiliary mortgage loan activity companies, and independent contractor loan processor or underwriter companies (each a residential mortgage loan company). This chapter applies to persons licensed by SML as a residential mortgage loan company or those required to be licensed. Pursuant to Finance Code §156.2012(d) a person registered with SML as a financial services company is subject to the requirements of this chapter as if the company were licensed by SML as a residential mortgage loan company and the rules in this chapter must be construed accordingly.

§56.2. Definitions.

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 156 (other than Subchapters F and G), the following definitions apply, unless the contest clearly indicates otherwise:

(1) "Application," as used in Finance Code §156.002(14) and paragraphs (9) and (22) of this section means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, or the mortgage loan amount.

(2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

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

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

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

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

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

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

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

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

(7) "Engage in or conduct the business of a mortgage company" or "engage in or conduct the business of residential mortgage loan origination," or any similar derivative or variation of those terms, means to contract for (as provider), provide, or offer to contract for or provide, residential mortgage loan origination services for compensation or gain or with the expectation of compensation or gain.

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

(9) "Mortgage applicant" has the meaning assigned by Finance Code §156.002 and includes a person who contacts a mortgage company or its sponsored originator in response to a solicitation to obtain a residential mortgage loan, and a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(10) "Mortgage banker" has the meaning assigned by Finance Code §156.002.

(11) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as defined by Finance Code §156.002.

(12) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §156.002 in defining "Nationwide Mortgage Licensing System and Registry."

(13) "Offers or negotiates the terms of a residential mortgage loan," as used in Finance Code §156.002(14), means, among other things, when an individual:

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

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

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

(14) "Originator" has the meaning assigned by Finance Code §156.002 in defining "residential mortgage loan originator." Paragraphs (13) and (22) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Finance Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Finance Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Finance Code §180.051.

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

(16) "Qualified Individual" has the meaning assigned by Finance Code §156.002 in defining "qualifying individual."

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

(18) "Residential real estate" has the meaning assigned by Finance Code §156.002 and includes both improved or unimproved real estate or any portion of or interest in such real estate on which a dwelling is or will be constructed or situated.

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

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

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

(22) "Takes a residential mortgage loan application," as used in Finance Code §156.002(14) in defining "residential mortgage loan originator," means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.

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

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

(25) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(26) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

§56.3. Formatting Requirements for Notices.

Any notice or disclosure (notice) required by Finance Code Chapter 156, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 156, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice or disclosure must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

(1) Arial;

(2) Aptos;

(3) Calibri;

(4) Century Schoolbook;

(5) Garamond;

(6) Georgia;

(7) Lucinda Sans;

(8) Times New Roman;

(9) Trebuchet; and

(10) Verdana.

§56.4. Electronic Delivery and Signature of Notices.

Any notice or disclosure required by Finance Code Chapter 156, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

§56.5. Computation of Time.

The calculation of any time period measured in days by Finance Code Chapter 156, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

§56.6. Enforceability of Liens.

A violation of Finance Code Chapter 156, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

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

Filed with the Office of the Secretary of State on August 26, 2024.

TRD-202403930
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 475-1535

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SUBCHAPTER B. LICENSING

7 TAC §§56.100 - 56.108

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code

Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). §56.100 is also proposed under the authority of, and to implement, Finance Code §156.201 and §156.202. §56.101 and §56.102 are also proposed under the authority of, and to implement, Finance Code: §156.203 and §156.208. §56.103 is also proposed under the authority of, and to implement, Finance Code: §§156.208, 156.2081, and 156.210. §56.104 is also proposed under the authority of, and to implement, Finance Code §156.211. §56.105 is also proposed under the authority of, and to implement, Finance Code §156.210. §56.107 is also proposed under the authority of, and to implement, Finance Code: §156.201(c) and §156.211. §56.108 is also proposed under the authority of, and to implement, Finance Code: §156.201(c).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§56.100. Licensing Requirements.

(a) License Required. A person, unless exempt as provided by Finance Code §156.202, is required to be licensed as a mortgage company under Finance Code Chapter 156 if the person engages in or conducts the business of a mortgage company or advertises or holds that person out to the public as engaging in or conducting the business of residential mortgage loan origination concerning a loan or prospective loan secured or designed to be secured by residential real estate located in Texas, including, but not limited to:

(1) representing or holding that person out to the public through advertising or other means of communication as a mortgage company; and

(2) receiving compensation for engaging in or conducting the business of residential mortgage loan origination (a person must be licensed at the time it receives compensation even if the compensation relates to services provided when the person was licensed).

(b) Branch Office License Required. A mortgage company must apply for and obtain a branch office license for each office constituting a branch office of the mortgage company for purposes of §56.206 of this title (relating to Office Locations; Remote Work).

(c) Securing the Services of an Originator. A person making a residential mortgage loan (lender), other than a wrap lender making a wrap mortgage loan, or the maker of a secondary mortgage loan subject to the requirements of Finance Code Chapter 342, is not required to be licensed as a mortgage company if the lender secures the services of a licensed mortgage company or registered mortgage banker authorized to originate the loan and that mortgage company or mortgage banker, and not the lender, fulfills the functions of origination by actually providing residential mortgage loan origination services in connection with the loan. However, if the lender owns the residential real estate securing the loan and has exceeded the limit for exempt transactions as provided by Finance Code §156.202(a-1)(3), the lender must be licensed under Finance Code Chapter 156, regardless of whether the lender has secured the services of an originator as provided by this subsection.

§56.101. Applications for Licensure.

(a) NMLS. Applications for licensure must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation as deemed necessary or appropriate to determine that the licensing requirements of Finance Code Chapter 156 are met.

(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.

§56.102. Fees.

(a) License Fees. The license fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §156.203(b), exclusive of fees charged by NMLS, as described in subsection (b) of this section. The Commissioner may establish different fee amounts for a new license versus renewal of the license. The current fee is set in NMLS and posted on SML's website (sml.texas.gov). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The license fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges a fee to process the application. Such fee is determined by NMLS and must be paid by the applicant at the time it files the application. The current fee is set in NMLS and posted on the NMLS Resource Center website (nationwidelicensingsystem.org).

(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 (nationwidelicensingsystem.org).

(b) Responsibility for Originator's Actions. By sponsoring an originator, or otherwise allowing an individual to act on its behalf in the capacity of an originator, the mortgage company and the Qualified Individual for the mortgage company each assumes responsibility for the actions of such originator or individual acting in the capacity of an originator. As provided by Finance Code §156.201, all violations of law by an originator or individual acting in the capacity of an originator are deemed to be attributable and imputed to the mortgage company sponsoring the originator or for which the individual acting as an originator was allowed to act, and the Commissioner may seek disciplinary action against the mortgage company, the Qualified Individual for the mortgage company, and the originator simultaneously for the same conduct giving rise to the violation. As a result, a mortgage company and its Qualified Individual are both charged with knowledge of and must ensure compliance by their sponsored originators with the requirements of Finance Code Chapters 157 and 180, and of SML 's rules concerning originators in Chapter 55 of this title (relating to Residential Mortgage Loan Originators).

(c) Termination of Sponsorship. Sponsorship may be terminated by the mortgage company or the sponsored originator. If sponsorship is terminated, the party terminating the sponsorship must immediately notify SML of the termination by making a filing in NMLS to show the sponsorship as terminated in the system, as provided by Finance Code §156.211 and §157.019.

(d) Failure to Maintain Sponsored Originator; Inactive Status. If a mortgage company does not have sponsored originators that are licensed, the license will revert to an inactive status ("Approved - Inactive") until a new sponsorship becomes effective, during which time the mortgage company must not conduct regulated activities.

§56.108. Qualified Individual.

(a) Qualified Individual Required. A mortgage company must appoint at least one licensed originator to be the mortgage company's Qualified Individual. As provided by Finance Code §156.002, the Qualified Individual is a personal representative of the mortgage company and is deemed to have authority to bind the mortgage company concerning its operations in Texas. To serve as the Qualified Individual, the originator must hold his or her license in a status which enables him or her to engage in regulated activities with the license and must be sponsored by the mortgage company for which he or she serves as the Qualified Individual. The contact information for the Qualified Individual listed by the mortgage company in its license records (MU1 filing), in the "Qualifying Individuals" section, must match the principal address (main address) of the mortgage company listed in the "Identifying Information" section of the MU1 filing. A mortgage company may appoint more than one originator as Qualified Individual. If a mortgage company appoints more than one Qualified Individual, each Qualified Individual is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or other individuals acting on its behalf in the capacity of an originator.

(b) Consent Required. The appointment of the Qualified Individual must be consented to by the originator. The originator must acknowledge and confirm his or her consent by making a corresponding filing in NMLS to reflect such appointment, using the current form prescribed by NMLS.

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

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§56.200 - 56.206, 56.210

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). §56.200 is also proposed under the authority of, and to implement, Finance Code §156.004. §56.201 is also proposed under the authority of, and to implement, Finance Code §156.105. §§56.202, 56.203, and 56.210 are also proposed under the authority of, and to implement, Finance Code §156.303(a)(2) and (3). §56.204 is also proposed under the authority of, and to implement, Finance Code: §156.102(c) and §156.301. §56.205 is also proposed under the authority of, and to implement,

Finance Code §156.213. §56.206 is also proposed under the authority of, and to implement, Finance Code §156.212.

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§56.200. Required Disclosures.

(a) Purpose. This section clarifies and establishes requirements related to the disclosure a mortgage company is required to make under Finance Code §156.004.

(b) Specific Notice to Applicant. A mortgage company must send written notice to a mortgage applicant concerning SML's regulatory oversight. The notice must be sent at the time the mortgage company and its sponsored originator receives the initial application for a residential mortgage loan. The notice may be provided to the mortgage applicant by any means allowing for the mortgage company to capture and maintain records reflecting timely delivery, as required by §56.204(c)(2)(A)(iv) of this title (relating to Books and Records). The notice may be signed and dated by the mortgage applicant to evidence receipt. The notice must be in the form adopted by this subsection. However, the form may be modified by adding additional identifying information for the transaction (e.g., loan identification number, or the name and NMLS ID of the mortgage company or the investor); provided, any information added to the form is not misleading and does not contradict or frustrate the purpose of the disclosure:
Figure: 7 TAC §56.200(b)

(c) Posted Notice on Websites. A mortgage company must post a notice concerning SML's regulatory oversight on each website of the mortgage company, other than a social media site, that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business or from which the mortgage company advertises to solicit such business, as provided by §56.203 of this title (relating to Advertising). The notice must be in the current form prescribed by SML and posted on its website (sml.texas.gov). The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked webpage with the link to such webpage displayed on the initial or home page.

(d) Disclosures in Correspondence. All correspondence sent to a mortgage applicant must include:

(1) the mortgage company' s name and NMLS ID; and

(2) the mortgage company' s website address, if it has a website.

§56.201. Conditional Pre-Qualification and Conditional Approval Letters.

(a) Conditional Pre-Qualification Letter. Except as provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant, written confirmation of conditional pre-qualification (conditional pre-qualification letter) must include the information in Form A, Figure: 7 TAC §56.201(a). The information must be provided using Form A or an alternate form approved by the mortgage company that includes all of the information found on Form A. There is no requirement to issue a conditional pre-qualification letter. Form A or an alternate form may be modified by adding any of the following as needed:
Figure: 7 TAC §56.201(a)

(1) Any additional aspects of the loan as long as not misleading;

(2) Any additional items that the originator has reviewed in determining conditional qualifications; or

(3) Any additional terms, conditions, and requirements.

(b) Conditional Approval Letter. When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan approval on the basis of credit worthiness, but not on the basis of collateral (conditional approval letter), must include the information in Form B, Figure: 7 TAC §56.201(b). The information must be provided using Form B or an alternate form approved by the mortgage company that includes all of the information found on Form B. There is no requirement to issue a conditional approval letter. Form B or an alternate form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or a disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional approval letter must not be issued unless the mortgage company or its sponsored originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts. Verification may be conducted manually or by electronic means.
Figure: 7 TAC §56.201(b)

(c) Firm Offers of Credit. Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined by 15 U.S.C. §1681a(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 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

(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 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 record-keeping 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 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

(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 tile (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:

(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.

(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 spon-

sored 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 inquires by SML about the reportable incident.

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

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

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

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

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. Information reported under this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §156.301 and §56.302 of this title (relating to Confidentiality of Examination, Investigation, and Inspection Information).

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

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SUBCHAPTER D. SUPERVISION AND ENFORCEMENT

7 TAC §§56.300 - 56.304, 56.310, 56.311

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). §§56.300 - 56.304 are also proposed under the authority of, and to implement, Finance Code: §156.301 and §156.305. §56.310 is also proposed under the authority of, and to implement, Finance Code: §§156.209, 156.302, 156.303, and 156.406. §56.311 is also proposed under the authority of, and to implement, Finance Code §156.209.

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§56.300. Examinations.

(a) Purpose. This section clarifies and establishes requirements related to examinations of a mortgage company and its sponsored originators conducted by SML under Finance Code §156.301.

(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.

(c) Escheat to State. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts as provided by Property Code §72.101, or as provided by such other state law governing the unclaimed funds.

(d) Records Retention. Records required by this section must be retained for 10 years beginning on the date the obligation to pay the unclaimed funds arose.

§56.310. Appeals.

(a) Purpose. Finance Code Chapter 156 provides that certain decisions of the Commissioner adverse to a mortgage company or other person may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which a mortgage company or other person must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) License Denials. A license denial under Finance Code §156.209 must be appealed within 10 days after the date notice of the Commissioner's decision is received by the person seeking the license.

(2) Notice of Administrative Penalty for Violation of Final Cease and Desist Order. A notice of administrative penalty issued under Finance Code §156.303(e) must be appealed within 10 days after the date the notice is issued.

(3) Order of Suspension for Violation of Final Order. An order of suspension issued by the Commissioner under Finance Code §156.303(g) must be appealed within 15 days after the date the order is issued.

(4) Order of Suspension for Criminal Offense Involving Fraud, Theft, or Dishonesty. An order of suspension issued by the Commissioner under Finance Code §156.303(j) must be appealed within 15 days after the date the order is issued.

(5) Notice of Disciplinary Action. A notice of disciplinary action issued under Finance Code §§ 156.302(a), 156.303(a), or 156.303(a-1) must be appealed within 30 days after the date the notice is issued.

(6) Order for Disciplinary Action (Order to Take Affirmative Action or Order to Cease and Desist). An order of the Commissioner issued under Finance Code §156.303(b) or §156.406(c) must be appealed within 30 days after the date the order is issued. This deadline does not apply to an order for disciplinary action issued by the Commissioner under Finance Code §§ 156.302(a), 156.303(a), or 156.303(a-1) that was preceded by notice issued under paragraph (5) of this subsection.

(7) Other Deadlines. Any appeal not otherwise addressed by this section must be made within 30 days after the date notice or order is issued.

(c) Requests for Appeal. An appeal must be made in writing and received by SML on or before the appeal deadline. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (enforcement@sml.texas.gov).

(d) Effect of Not Appealing. A mortgage company or other person that does not timely appeal the Commissioner 's decision is deemed to have irrevocably waived any right it had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to it for purposes of judicial review of the Commissioner 's decision under Government Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner's decision means the Commissioner can issue a final, non-appealable order at any time without further notice or opportunity for a hearing to the mortgage company or other person.

§56.311. Hearings.

(a) Adjudicative hearings conducted under Finance Code Chapter 156 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.

(b) Hearing Costs for License Denials. Hearing costs assessed against a person under Finance Code §156.209(f) include:

(1) filing fees;

(2) the costs of a court reporter;

(3) the costs of the administrative law judge (ALJ) or hearings officer presiding over the hearing and any ancillary proceedings;

(4) the expense of SML's staff to prepare for and attend the hearing or any ancillary proceedings, and any related travel expenses;

(5) the cost of any outside counsel retained to represent SML; and

(6) the cost of any expert witness retained by SML.

(c) Determination of Hearing Costs for License Denials. Unless the ALJ makes more specific findings of fact or conclusions of law concerning the hearing costs described by subsection (b)(3) of this section, such costs are deemed to be $500. Hearing costs described by subsection (b)(4) of this section are measured based on the diversion of productivity of such staff away from their normal duties and toward the hearings process and are calculated by multiplying the number of hours spent by each staff member in furtherance of the hearings process (measured in increments of 1/10 of an hour) by their current hourly compensation rate. The Commissioner may rely on affidavit testimony of such staff members to make appropriate findings of fact and conclusions of law concerning the hearing costs described by subsection (b)(4) of this section.

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

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CHAPTER 57. MORTGAGE BANKERS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes new rules in 7 TAC Chapter 57: §§57.1 - 57.6, 57.100 - 57.104, 57.106, 57.107, 57.200 - 57.207, 57.210, 57.300 - 57.304, 57.310, and 57.311 (proposed rules).

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, affect mortgage bankers registered with SML and individual residential mortgage loan originators licensed by SML under Finance Code Chapter 157.

Changes Concerning the Reorganization (Relocation) of Mortgage Banker Rules from Chapter 81 to Chapter 57

SML has determined it should reorganize its rules concerning mortgage bankers by relocating the rules to Chapter 57, a vacant chapter, and devoting such chapter exclusively to rules affecting mortgage bankers. The proposed rules, if adopted, would effectuate these changes.

Changes Concerning General Provisions (Subchapter A)

The proposed rules: in §57.2, Definitions, adopt new definitions for "control person," "E-Sign Act," "making a residential mortgage loan," "person," "SML," "State Examination System," "trigger lead," "UETA," "wrap lender," and "wrap mortgage loan," while eliminating definitions for "Commissioner's designee," and "Department"; in §57.3, Formatting Requirements for Notices, adopt formatting requirements for the various disclosures a mortgage banker is required to make; in §57.4, Electronic Delivery and Signature of Notices, clarify that any notice or disclosure made by a mortgage banker may be delivered and signed electronically; and, in §57.5, Computation of Time, clarify how time periods measured in calendar days are computed.

Changes Concerning Registration (Subchapter B)

The proposed rules: in §57.100, Registration Requirements, clarify when a mortgage banker registration is required; in §57.101, Applications for Registration, establish requirements for making an application for a mortgage banker registration; in §57.102, Fees, clarify that the registration fee charged by SML is exclusive of fees charged by the Nationwide Multistate Licensing System (NMLS); in §57.103, Renewal of the Registration, clarify the requirements to renew the registration, clarify that a registration approved with a pending deficiency requires the mortgage banker to resolve the deficiency within 30 days after the date the registration is approved, and clarify that, if a registration is not renewed within the reinstatement period provided by Finance Code §157.0062, a person must apply for a new registration; in §57.104, NMLS Records; Notices Sent to the Mortgage Banker, establish requirements for the mortgage banker to update its registration records in NMLS and establish requirements concerning how SML will contact the mortgage banker using such records; in §57.106, Surrender of the Registration, clarify circumstances under which SML may not grant a request made by a mortgage banker to surrender its registration; and, in §57.107, Sponsorship of the Originator; Responsibility for Originator's Actions, establish requirements for which a mortgage banker is responsible for the actions of the individual residential mortgage loan originators it allows to act on its behalf and provide that a mortgage banker registration will revert to inactive status if the mortgage banker fails to maintain a sponsored individual residential mortgage loan originator.

Changes Concerning Books and Records (§57.204)

Pursuant to Finance Code §157.0022, SML "may request documentary and other evidence [from a mortgage banker] considered by [SML] as necessary to effectively evaluate [a consumer] complaint, including correspondence, loan documents, and disclosures . . . [and a] mortgage banker shall promptly provide any evidence requested by the commissioner." Meanwhile, with respect to originators sponsored by a mortgage banker, pursuant to Finance Code §157.021(a), the 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 proposed rules: in §57.200, Required Disclosures, remove the requirement that the disclosure to consumers required by Finance Code §157.0021(a) be signed by the individual residential mortgage loan originator and the mortgage applicant, remove the requirement that a mortgage banker make the disclosure on social media sites, and establish the requirement for a mortgage banker to disclose its website address on all correspondence sent to the mortgage applicant; in §57.201, Conditional Pre-Qualification and Conditional Approval Letters, establish the requirement for a conditional pre-qualification letter or conditional approval letter be issued by an individual residential mortgage loan originator acting on behalf of the mortgage banker; in §57.202, Fraudulent, Misleading, or Deceptive Practices and Improper Dealings, clarify that a mortgage banker commits a violation if the mortgage banker knowingly misrepresents the lien position of a residential mortgage loan, create requirements concerning the use of trigger leads, clarify that a mortgage banker commits a violation if the mortgage banker solicits a consumer on the federal do-not-call registry, clarify that a mortgage banker commits a violation if the mortgage banker issues a conditional pre-qualification letter or conditional approval letter that is inaccurate, erroneous, or negligently-issued, and clarify that a mortgage banker commits a violation if the mortgage banker engages in business when its registration is inactive; in §57.203, Advertising, establish the requirement for a mortgage banker to state its website address when making an advertisement, and establish requirements for the use of team names by a mortgage banker; in §57.205, Mortgage Call Reports, clarify the required components of the mortgage call report, and clarify that mortgage call reports must be complete and accurate when filed; and in §57.207, Periodic Statements, establish a requirement that the mortgage banker comply with the requirements of federal law under Regulation Z (12 C.F.R. §1026.41), governing periodic statements sent to the borrower.

Changes Concerning Supervision and Enforcement (Subchapter D)

The proposed rules: in §57.300, Examinations, provide that examinations are conducted using the State Examination System, and that SML may participate in, leverage, or accept an ex-

amination conducted by another state agency or regulatory authority; in §57.302, Confidentiality of Examination, Investigation, and Inspection Information, clarify the confidentiality of information arising from an examination, investigation, or inspection by SML; in §57.303, Corrective Action, clarify when SML may direct a mortgage banker to take corrective action, and creating requirements for refunds made to consumers; in §57.304, Unclaimed Funds, establish requirements concerning the mortgage banker's handling of unclaimed funds of the consumer, including requiring the maintenance of a log to track the handling of such funds; and, in §57.310, Appeals, establish various deadlines by which a mortgage banker or other person subject to an enforcement action must appeal.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing mortgage bankers to be easier to find by members of the public; and, to better protect members of the public who are consumers seeking a residential mortgage loan from a mortgage banker registered with SML.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). However, SML includes in this proposal a note concerning certain potential costs other than direct costs (indirect costs). SML incorporates by reference the Changes Concerning Books and Records (§57.204) section above as if fully set forth herein. The proposed rules related to Changes Concerning Books and Records (§57.204) establish requirements concerning the books and records a mortgage banker must maintain. The maintenance of such records may have some attendant costs; however, as stated above, the required records and information are already generated by the mortgage banker in complying with other state and federal law or in the ordinary course of doing business. As a result, these indirect costs are insignificant. SML incorporates by reference the Changes Concerning Reportable Incidents (§57.210) section above as if fully set forth herein. The proposed rules related to Changes Concerning Reportable Incidents (§57.210) establish requirements for a mortgage banker to report certain information when it experiences a security event or a catastrophic event that materially affects its operations, and may have some attendant costs; however, as stated above, the information required to be reported is already generated by the mortgage banker in complying with other state and federal law or in the ordinary course of doing business. As a result, these indirect costs are insignificant.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning General Provisions (Subchapter A), Changes Concerning Registration (Subchapter B), Changes Concerning Books and Records (§57.204), Changes Concerning Reportable Incidents (§57.210), and Other Changes Concerning Duties and Responsibilities (Subchapter C) establish various rule requirements, as discussed in such sections; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Other Changes Concerning Duties and Responsibilities (Subchapter C) have the effect of repealing existing rule requirements as discussed in such section. (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§57.1 - 57.6

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

§57.1. Purpose and Applicability.

This chapter governs SML's administration and enforcement of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, concerning the registration and operations of mortgage bankers. This chapter applies to persons registered with SML as a mortgage banker or those required to be registered.

§57.2. Definitions.

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 157 (other than Subchapter D), the following definitions apply, unless the context clearly indicates otherwise:

(1) "Application," as used in Finance Code §157.002(6) and paragraphs (8) and (20) of this section means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, or the mortgage loan amount.

(2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

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

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

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

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

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

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

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

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

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

(8) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a mortgage banker or originator in response to a solicitation) to obtain a residential mortgage loan, and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

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

(10) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as defined by Finance Code §157.002.

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

(12) "Offers or negotiates the terms of a residential mortgage loan," as used in Finance Code §157.002(6) means, among other things, when an individual:

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(24) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

§57.3. Formatting Requirements for Notices.

Any notice or disclosure (notice) required by Finance Code Chapter 157, or this chapter, must be easily readable. A notice is deemed to be easily readable if it is in at least 12-point font and uses a typeface specified by this section. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 157 or this chapter prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

(1) Arial;

(2) Aptos;

(3) Calibri;

(4) Century Schoolbook;

(5) Garamond;

(6) Georgia;

(7) Lucinda Sans;

(8) Times New Roman;

(9) Trebuchet; and

(10) Verdana.

§57.4. Electronic Delivery and Signature of Notices.

Any notice or disclosure required by Finance Code Chapter 157, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

§57.5. Computation of Time.

The calculation of any time period measured in days by Finance Code Chapter 157, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

§57.6. Enforceability of Liens.

A violation of Finance Code Chapter 157, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

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

Filed with the Office of the Secretary of State on August 26, 2024.

TRD-202403934
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 475-1535

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SUBCHAPTER B. REGISTRATION

7 TAC §§57.100 - 57.104, 57.106, 57.107

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter

157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). §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.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

§57.100. Registration Requirements.

(a) Registration Required. A person, unless exempt as provided by Finance Code §157.004, is required to be registered with SML as a mortgage banker under Finance Code Chapter 157 if the person engages in or conducts the business of a mortgage banker or advertises or holds that person out to the public as engaging in or conducting the business of a mortgage banker concerning a loan or prospective loan secured or designed to be secured by residential real estate located in Texas, including, but not limited to:

(1) representing or holding that person out to the public through advertising or other means of communication as a mortgage banker; and

(2) receiving compensation for engaging in or conducting the business of a mortgage banker (a person must be registered at the time it receives compensation even if the compensation relates to services provided when the person was registered).

(b) Branch Office Registration Required. A mortgage banker must register each office constituting a branch office of the mortgage banker for purposes of §57.206 of this title (relating to Office Locations; Remote Work).

§57.101. Applications for Registration.

(a) NMLS. Applications for registration must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation deemed necessary or appropriate to determine that the registration requirements of Finance Code Chapter 157 are met.

(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.

§57.102. Fees.

(a) Registration Fees. The registration fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §157.006, exclusive of fees charged by NMLS, as described in subsection (b) of this section. The Commissioner may establish different fee amounts for a new registration versus renewal of the registration versus reinstatement of the registration. The current fee is set in NMLS and posted on SML's website (sml.texas.gov). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The registration fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges a separate fee to process the application. Such fee is determined by NMLS and must be paid by the applicant at the time it files the application. The current fee is set in NMLS and posted on the NMLS website (nationwidelicensingsystem.org).

(c) All fees are nonrefundable and nontransferable.

§57.103. Renewal of the Registration.

(a) A registration may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees; and

(2) a determination by SML that the mortgage banker continues to meet the minimum requirements for registration, including the requirements of Finance Code §157.003(b).

(b) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in her or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the mortgage banker to continue conducting regulated activities while the mortgage banker works diligently to resolve the deficiencies. A renewal request approved by the Commissioner under this subsection will be assigned the NMLS license status "Approved - Deficient." Approval under this subsection does not relieve the mortgage banker of the obligation to resolve the deficiencies. A mortgage banker approved under this subsection must resolve the deficiencies within 30 days after the date the license is approved, unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the registration.

(c) Reinstatement. This section applies to a person seeking reinstatement of an expired registration (bearing the registration status "Terminated - Failed to Renew") described by Finance Code §157.0062 and must be construed accordingly. A mortgage banker registration cannot be renewed beyond the reinstatement period; instead, the person must apply for a new registration and comply with all current requirements and procedures governing issuance of a new registration.

§57.104. NMLS Records; Notices Sent to the Mortgage Banker.

(a) NMLS Registration Status. SML is required to assign a status to the registration in NMLS. The registration status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the registration status options available in NMLS. The NMLS Resource Center website (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 SML's rules in Chapter 55 of this title (relating to Residential Mortgage Loan Originators).

(c) Termination of Sponsorship. Sponsorship may be terminated by either the sponsoring mortgage banker or the sponsored originator. If sponsorship is terminated, the party terminating the sponsorship must immediately notify SML of the termination by making a filing in NMLS to terminate the sponsorship, as provided by Finance Code §157.019.

(d) Failure to Maintain Sponsored Originator; Inactive Status. If a mortgage banker does not have any licensed and sponsored originators, the license will be assigned the status "Approved - Inactive," during which time the mortgage banker must not conduct regulated activities.

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

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§57.200 - 57.207, 57.210

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). §57.200 is also proposed under the authority of, and to implement, Finance Code §157.0021. §57.201 is also proposed 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 proposed 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 proposed under the authority of, and to implement, Finance Code §157.020. §57.206 is also proposed under the authority of, and to implement, Finance Code §157.003(6).

This proposal affects the statutes in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

§57.200. Required Disclosures.

(a) Purpose. This section clarifies and establishes requirements related to the disclosures a mortgage banker is required to make under Finance Code §157.0021.

(b) Specific Notice to Applicant (Origination Notice). A mortgage banker must send written notice to a mortgage applicant concerning SML's regulatory oversight. The notice must be sent at the time the mortgage banker and its sponsored originator receives the initial application for a residential mortgage loan. The notice may be provided to the mortgage applicant by any means allowing for the mortgage banker to capture and maintain records reflecting timely delivery, as required by §57.204(c)(2)(A)(iv) of this title (relating to Books and Records). The notice may be signed and dated by the mortgage applicant to evidence receipt. The notice must be in the form adopted by this subsection. However, the form may be modified by adding other identifying information for the transaction (e.g., loan identification number, or the name and NMLS ID of the mortgage banker or the investor); provided, any information added to the form is not misleading and does not contradict or frustrate the purpose of the disclosure.
Figure: 7 TAC §57.200(b)

(c) Posted Notice on Websites. A mortgage banker must post a notice concerning SML's regulatory oversight on each website of the mortgage banker, other than a social media site, that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business or from which the mortgage banker advertises to solicit such business, as provided by §57.203 of this title (relating to Advertising). The notice must be in the current form prescribed by SML and posted on its website (sml.texas.gov). The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked webpage with the link to such webpage displayed on the initial or home page.

(d) Disclosures in Correspondence. All correspondence sent to a mortgage applicant or borrower must include:

(1) the mortgage banker's name and NMLS ID; and

(2) the mortgage banker's website address, if it has a website.

(e) Specific Notice to Borrower (Servicing Notice). A mortgage banker that acts as a residential mortgage loan servicer must send written notice to the borrower concerning SML's regulatory oversight within 30 days after the date it begins servicing a residential mortgage loan. The notice must be in the current form prescribed by the SML and posted on its website. The notice must be included in the first notice sent to the borrower that notifies the borrower of the mortgage banker's role in servicing the loan, including any notice required by Regulation X (12 C.F.R. §1024.33(b)). This subsection applies to the servicing of residential mortgage loans secured by real property located in Texas. Mortgage bankers servicing a residential mortgage loan not secured by real property located in Texas must not provide the notice described by this subsection.

§57.201. Conditional Pre-Qualification and Conditional Approval Letters.

(a) Conditional Pre-Qualification Letter. Except as provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant, written confirmation of conditional pre-qualification (conditional pre-qualification letter) must include the information in Form A, Figure: 7 TAC §57.201(a). The information must be provided using Form A or an alternate form approved by the mortgage banker that includes all of the information found on Form A. There is no requirement to issue a conditional pre-qualification letter. Form A or an alternate form may be modified by adding any of the following as needed:
Figure: 7 TAC §57.201(a)

(1) Any additional aspects of the loan as long as not misleading;

(2) Any additional items that the originator has reviewed in determining conditional qualifications; or

(3) Any additional terms, conditions, and requirements.

(b) Conditional Approval Letter. When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan approval on the basis of credit worthiness, but not on the basis of collateral (conditional approval letter), must include the information in Form B, Figure 7: TAC §57.201(b). The information can be provided using Form B or an alternate form approved by the mortgage banker that includes all of the information found on Form B. There is no requirement to issue a conditional approval letter. Form B or an alternate form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or a disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional approval letter must not be issued unless the mortgage banker or its sponsored originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts. Verification may be conducted manually or by electronic means.
Figure: 7 TAC §57.201(b)

(c) Firm Offers of Credit. Subsection (a) of this section does not apply to "firm offers of credit," as defined by 15 U.S.C. §1681a(l).

(d) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the mortgage banker's sponsored originator acting on behalf of the mortgage banker to originate the prospective residential mortgage loan.

§57.202. Fraudulent, Misleading, or Deceptive Practices and Improper Dealings.

(a) Fraudulent, Misleading, or Deceptive Practices. The following conduct by a mortgage banker or its sponsored originators constitutes fraudulent and dishonest dealings for purposes of Finance Code §157.009(d):

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

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

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

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

(5) knowingly participating in or permitting the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether to make or acquire a residential mortgage loan;

(6) as provided by Regulation X (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan for which the mortgage banker or sponsored originator receives compensation for services not actually performed or where the compensation received bears no reasonable relationship to the value of the services actually performed;

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

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

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

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

(i) the mortgage banker's name;

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

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

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

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

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

(10) engaging in any other practice which the Commissioner, by published interpretation, has determined is fraudulent, misleading, or deceptive.

(b) Improper or Unfair Dealings. The following conduct by a mortgage banker or its sponsored originators constitutes improper dealings for purposes of Finance Code §157.009(d):

(1) acting negligently in performing an act requiring a registration under Finance Code Chapter 157 or a license under Finance Code Chapters 157 and 180;

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

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

(B) Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.);

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

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

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

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

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

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

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

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

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

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

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

(A) the mortgage banker is making the residential mortgage loan (lender); or

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

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

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

(8) using the services of mortgage company or mortgage banker to provide loan processing services when the mortgage company or mortgage banker providing the services holds its license or registration in an inactive status.

(c) Related Transactions. A mortgage banker engages in fraudulent and dishonest dealings for purposes of Finance Code §157.009(d) when, in connection with the origination of a residential mortgage loan:

(1) The mortgage banker or sponsored originator:

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

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

(2) The mortgage banker or sponsored originator:

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

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

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

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

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage banker and its sponsored originators must not offer or agree to share or split any loan origination fees with a mortgage applicant, rebate all or a part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing residential mortgage loan origination services unless otherwise allowable under Regulation X (12 C.F.R. §1024.14) and Regulation Z (12 C.F.R. §1026.36(d)). A sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent licensed under Occupations Code Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the 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):

(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 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 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 tile (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 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 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 inquires by SML about the reportable incident.

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

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

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

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

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. Information reported under this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §157.021 and §57.302 of this title (relating to Confidentiality of Examination, Investigation, and Inspection Information).

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

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Iain A. Berry
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Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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SUBCHAPTER D. SUPERVISION AND ENFORCEMENT

7 TAC §§57.300 - 57.304, 57.310, 57.311

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). §§57.300 - 57.304 are also proposed under the authority of, and to implement, Finance Code: §§157.0022, 157.009(d), 157.021, and 157.0211. §57.310 is also proposed under the authority of, and to implement, Finance Code: §157.003(e) and §157.009.

This proposal affects the statutes in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act.

§57.300. Examinations.

(a) Purpose. This section clarifies and establishes requirements related to examinations of a mortgage banker's sponsored originators conducted by SML under Finance Code §157.021.

(b) State Examination System (SES). Examinations are conducted in SES. A mortgage banker must use SES to facilitate the examination.

(c) Examinations by Other State Agencies. SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority if that state agency's or regulatory authority's mortgage regulation program is accredited by the Conference of State Bank Supervisors.

(d) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person of the mortgage banker sponsoring the originator listed in NMLS or a person designated by the primary contact person advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which SML's examiners are scheduled to begin the examination. Failure to receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made available to facilitate the examination.

(e) Examination Scope. Examinations will be conducted to determine compliance with Finance Code Chapters 157 and 180, and this chapter, and will specifically address whether:

(1) all persons are properly licensed and sponsored;

(2) all office locations are properly registered, as provided by §57.206 of this title (relating to Office Locations; Remote Work);

(3) all required books and records are being maintained in accordance with §57.204 of this title (relating to Books and Records);

(4) legal and regulatory requirements applicable to the mortgage banker and its sponsored originators are being properly followed (including, but not limited to, the requirements described in §57.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings)); and

(5) other matters SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapters 157 and 180.

(f) Loan Sample. The examiners will review a sample of residential mortgage loan files identified by the examiners from the mortgage banker's mortgage transaction log required by §57.204(c)(1) of this title or the loan processing or underwriting log required by §57.204(d) 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 proposal and found it to be within the state agency's legal authority to adopt.

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Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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CHAPTER 58. RESIDENTIAL MORTGAGE LOAN SERVICERS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes new rules in 7 TAC Chapter 58: §§58.1 - 58.5, 58.100 - 58.104, 58.106, 58.107, 58.200, 58.207, 58.210, 58.301 - 58.304, 58.310 and 58.311 (proposed rules).

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 79, Residential Mortgage Loan Servicers, affect residential mortgage loan servicers (mortgage servicers) registered with SML under Finance Code Chapter 158, Residential Mortgage Loan Servicers.

Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Servicer Rules from Chapter 79 to Chapter 58

SML has determined it should reorganize its rules concerning mortgage servicers by relocating the rules to Chapter 58 (a vacant chapter). The proposed rules, if adopted, would effectuate this change.

Changes Concerning General Provisions (Subchapter A)

The proposed rules: in §58.2, Definitions, adopt new definitions for "control person," "dwelling," "E-Sign Act," "mortgage servicer," "mortgage servicer rights," "residential mortgage loan," "residential real estate," "SML," and "UETA," while eliminating definitions for "Commissioner's designee," "Department," and "the Act"; in §58.3, Formatting Requirements for Notices, adopt formatting requirements for the various disclosures a mortgage servicer is required to make; in §58.4, Electronic Delivery and Signature of Notices, clarify that any notice or disclosure made by a mortgage servicer may be delivered and signed electronically; and, in §58.5, Computation of Time, clarify how time periods measured in calendar days are computed.

Changes Concerning Registration (Subchapter B)

The proposed rules: in §58.100, Registration Requirements, clarify when a mortgage servicer registration is required (including as it relates to master servicers); in §58.102, Fees, clarify that the registration fee charged by SML is exclusive of fees charged by the Nationwide Multistate Licensing System (NMLS); in §58.103, Renewal of Registration, clarify that a registration approved with a pending deficiency requires the mortgage servicer to resolve the deficiency within 30 days after the date the registration is approved, and clarify that, if registration is not renewed prior to its expiration, the person must apply for a new registration; in §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 encryp-

tion and controlling access); regularly test or monitor the effectiveness of the safeguards; implement policies and procedures and internal controls to ensure personnel can execute the information security program; oversee service providers to ensure compliance with the information security program; continuously evaluate and adjust the information security program; establish a written incident response plan designed to promptly respond to, and recover from, any security event materially affecting the confidentiality, integrity, or availability of customer information; and, in the event of a breach involving the information of 500 or more consumers, report certain information to the FTC concerning the nature and extent of the breach. Meanwhile, pursuant to Business and Commerce Code §521.052, a mortgage servicer "shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business." Pursuant to Business and Commerce Code §521.053(i), for a breach involving the information of 250 or more Texas consumers, a mortgage servicer must report certain information to the attorney general. Considering the foregoing, the existing requirements of state and federal law already require a mortgage servicer to maintain the information required to be reported to SML under proposed §58.210 in the event of a security event. Moreover, a report made to the FTC or to the attorney general described above generally satisfies the requirements of the rule, other than the requirement to provide a "root cause analysis" concerning the "results or findings of an audit or investigation to determine the origin or root cause of security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event"; however, SML asserts that a root cause analysis is subsumed under the existing requirements of state and federal law related to security events, as described above, in order to meaningfully comply with such requirements.

Other Changes Concerning Duties and Responsibilities (Subchapter C)

The proposed rules: in §55.200, Required Disclosures, remove the requirement that the disclosure to consumers required by Finance Code §158.101 be included on all correspondence sent to the borrower, and instead, establish a requirement to make the disclosure on the first notice sent to the borrower that notifies the borrower of the mortgage servicer's role in servicing the loan; and establish a requirement to include the disclosure on the mortgage servicer's website; and in §58.207, Periodic Statements, establish a requirement that the mortgage servicer comply with the requirements of federal law under Regulation Z (12 C.F.R. §1026.41), governing periodic statements sent to the borrower.

Changes Concerning Supervision and Enforcement (Subchapter D)

The proposed rules: in §58.302, Confidentiality of Investigation Information, clarify the confidentiality of information arising from an investigation by SML; in §58.303, Corrective Action, clarify when SML may direct a mortgage servicer to take corrective action, and creating requirements for refunds made to consumers; in §58.304, Unclaimed Funds, establish requirements concerning the mortgage servicer's handling of unclaimed funds of the consumer, including requiring the maintenance of a log to track the handling of such funds; and, in §58.310, Appeals, establish various deadlines by which a mortgage servicer or other person subject to an enforcement action must file an appeal.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing mortgage servicers to be easier to find by members of the public; and, to better protect members of the public who are consumers with a mortgage loan serviced by a mortgage servicer registered with SML.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). However, SML includes in this proposal a note concerning certain potential costs other than direct costs (indirect costs). SML incorporates by reference the Changes Concerning Reportable Incidents (§58.210) section above as if fully set forth herein. The proposed rules related to Changes Concerning Reportable Incidents (§58.210) establish requirements for a mortgage servicer to report certain information when it experiences a security event or a catastrophic event that materially affects its operations, and may have some attendant costs; however, as stated above, the information required to be reported is already generated by the mortgage servicer in complying with other state and federal law or in the ordinary course of doing business. As a result, these indirect costs are insignificant.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning General Provisions (Subchapter A), Changes Concerning Registration (Subchapter B), Changes Concerning Reportable Incidents (§58.210), and Other Changes Concerning Duties and Responsibilities (Subchapter C) establish various rule requirements as discussed in such sections; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Other Changes Concerning Duties and Responsibilities (Subchapter C) have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

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

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Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 475-1535

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SUBCHAPTER B. REGISTRATION

7 TAC §§58.100 - 58.104, 58.106, 58.107

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158. §58.100 is also proposed under the authority of, and to implement, Finance Code §158.051. §58.101 and §58.102 are also proposed under the authority of, and to implement, Finance Code: §158.053 and §158.058. §58.103 is also proposed under the authority of, and to implement, Finance Code §158.058. §58.104 is also proposed under the authority of, and to implement, Finance Code §158.054. §58.107 is also proposed under the authority of, and to implement, Finance Code §158.055.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§58.100. Registration Requirements.

(a) Registration Required. A person, unless exempt as provided by Finance Code §158.052, is required to be registered with SML as a mortgage servicer under Finance Code Chapter 158 if the person:

(1) acts as a mortgage servicer or engages in or conducts the business of a mortgage servicer, concerning a residential mortgage loan secured by residential real estate in Texas; or

(2) advertises or holds that person out to the public as engaging in or conducting the business of a mortgage servicer in Texas.

(b) Wrap Mortgage Servicing. A "wrap lender," as defined by Finance Code §158.001, that holds the mortgage servicing rights for a wrap mortgage loan must be registered under Finance Code Chapter 158 and comply with the requirements of Finance Code Chapter 159, Subchapter F and Chapter 58 of this title (relating to Wrap Mortgage Loans).

(c) Master Servicers and Subservicers. With respect to a residential mortgage loan for which the mortgage servicing rights are held by a person who is not the owner of the note (a/k/a "master servicer"), the holder of the mortgage servicing rights must be registered under Finance Code Chapter 158 even if that person does not actually receive any payments from the borrower but, instead, contracts with another person to service the loan (a/k/a "subservicer").

§58.101. Applications for Registration.

(a) NMLS. Applications for registration must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which 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 proposal and found it to be within the state agency's legal authority to adopt.

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Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§58.200, 58.207, 58.210

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158. §58.200 is also proposed under the authority of Finance Code §158.101.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§58.200. Required Disclosures.

(a) Purpose. This section clarifies and establishes requirements related to the disclosure a mortgage servicer is required to make under Finance Code §158.101.

(b) Specific Notice to Borrower. A mortgage servicer must send written notice to the borrower concerning SML's regulatory oversight within 30 days after the date it begins servicing a residential mortgage loan. The notice must be in the current form prescribed by SML and posted on its website (sml.texas.gov). The notice must be included in the first notice sent to the borrower that notifies the borrower of the mortgage servicer's role in servicing the loan, including any notice required by Regulation X (12 C.F.R. §1024.33(b)). This subsection applies to the servicing of residential mortgage loans secured by real property located in Texas. Mortgage servicers servicing a residential mortgage loan not secured by real property located in Texas must not provide the notice described by this section.

(c) Posted Notice on Websites. A mortgage servicer must post the notice required by subsection (b) of this section on each website of the mortgage servicer, other than a social media site, that is accessible by a borrower. The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked page with the link to such page displayed on the initial or home page.

(d) Disclosures in Correspondence. All correspondence sent to the borrower must include:

(1) the mortgage servicer's name and NMLS ID; and

(2) the mortgage servicer's website address, if it has as 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 proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. SUPERVISION AND ENFORCEMENT

7 TAC §§58.301 - 58.304, 58.310, 58.311

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158. §§58.301 - 58.304 are also proposed under the authority of, and to implement, Finance Code §158.102 and §158.106. §58.310 is also proposed under the authority of, and to implement, Finance Code: §§158.058 - 158.060, 158.103, 158.105, and 158.106.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§58.301. Investigations.

(a) Purpose. This section clarifies and establishes requirements related to investigations of a mortgage servicer conducted by SML under Finance Code §158.102.

(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has

no reason to believe is other than credible indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate an action taken by SML to address a violation found during the course of an investigation.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. Such investigation may include:

(1) review of documentary evidence;

(2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;

(3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;

(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and

(5) other lawful investigative methods as SML deems necessary or appropriate.

(d) Investigation Fee. The Commissioner may collect a fee for conducting an investigation on a mortgage servicer. The amount of the fee is determined by the Commissioner not to exceed $975 per complaint. The investigation fee, if any, is assessed at the time SML closes the complaint. The investigation fee, if any, will be invoiced in NMLS and must be paid in NMLS.

§58.302. Confidentiality of Investigation Information.

(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an investigation, as provided by Finance Code §158.102.

(b) Confidential Information. All information obtained by SML during an investigation is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §158.102 (list is not exhaustive):

(1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or generated during an investigation;

(2) information that is derived from or is the product of the confidential information described by 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 proposal and found it to be within the state agency's legal authority to adopt.

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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) proposes new rules in 7 TAC Chapter 59: §§59.1 - 59.5, 59.100 - 59.102, 59.200, 59.201, 59.300 - 59.303, 59.400 - 59.403 (proposed rules).

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 78, Wrap Mortgage Loans, affect wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan under Finance Code Chapter 159, Wrap Mortgage Loan Financing.

Changes Concerning the Reorganization (Relocation) of Wrap Mortgage Loan Rules from Chapter 78 to Chapter 59

SML has determined it should reorganize its rules wrap mortgage loans by relocating the rules to Chapter 59, a vacant chapter. The proposed rules, if adopted, would effectuate this change.

Changes Concerning General Provisions (Subchapter A)

The proposed rules: in §59.2, Definitions, adopt a new definitions for "SML," while eliminating a definition for "Department"; in §59.3, Formatting Requirements for Notices, adopt formatting requirements for the various disclosures required under Finance Code Chapter 159; in §59.4, Electronic Delivery and Signature of Notices, clarify that any notice or disclosure made by an originator may be delivered and signed electronically; and, in §59.5, Computation of Time, clarify how time periods measured in calendar days are computed.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing wrap mortgage loans to be easier to find by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning General Provisions (Subchapter A) establish various rule requirements as discussed in such section; (6) the proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§59.1 - 59.5

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§59.1. Purpose and Applicability.

This chapter governs the Commissioner's administration and enforcement of Finance Code Chapter 159, governing wrap mortgage loans concerning residential real estate located in Texas. This chapter applies to wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan.

§59.2. Definitions.

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 159, the following definitions apply, unless the context clearly indicates otherwise:

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

(2) "Attorney" has the meaning assigned by Insurance Code §2501.003.

(3) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

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

(5) "Inspection" includes examination.

(6) "Legal holiday" means the federal legal public holidays specified in 5 U.S.C. §6103(a).

(7) "Make a wrap mortgage loan," means when a person determines the credit decision to provide the wrap mortgage loan, or the act of funding the wrap mortgage loan or transferring money to the wrap borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the wrap mortgage loan.

(8) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §180.002 in defining "Nationwide Mortgage Licensing System and Registry."

(9) "Residential mortgage loan" has the meaning assigned by Finance Code §159.001. The term does not include a loan secured by structure that is suitable for occupancy as a dwelling but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(10) "Residential mortgage loan originator" has the meaning assigned by Finance Code §180.002.

(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.

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

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Iain A. Berry
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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;

(2) conforms to the formatting requirements of §59.3 of this title (relating to Formatting Requirements for Notices); and

(3) otherwise fulfills the requirements of Finance Code §159.101(a).

Figure: 7 TAC §59.101(b)(3)

(c) Effective Date. The disclosure is deemed to be provided by the wrap lender and received by the wrap borrower for purposes of Finance Code §159.101 on the date the disclosure is dated and signed by the wrap borrower, as provided by Finance Code §159.101(b).

(d) Foreign Language Requirement. The wrap borrower must be provided an English-language version of the disclosure in addition to and contemporaneously with the foreign-language version required by Finance Code §159.102, if applicable. A wrap lender may provide the English-language and foreign-language disclosure in a single, combined disclosure. A wrap borrower receiving a foreign-language version of the disclosure may, but is not required to, date and sign the foreign-language disclosure. A wrap borrower receiving a foreign-language version of the disclosure must date and sign the English-language version of the disclosure, which determines the effective date the disclosure is received by the wrap borrower, as provided by subsection (c) of this section. A Spanish-language version of the model disclosure form is available on SML's website (sml.texas.gov) and is deemed to satisfy the substantive requirements of Finance Code §159.101(a) and §159.102, with respect to negotiations with a wrap borrower conducted primarily in Spanish.

(e) Computation of Time. Computation of the time period for a wrap lender to provide the disclosure required by Finance Code §159.101(a) is made using calendar days, irrespective of any Saturdays, Sundays, or legal holidays.

§59.102. Closing Requirements.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement that a wrap mortgage loan be closed by an attorney or title company, as provided by Finance Code §159.105.

(b) Closing by Title Company. For purposes of Finance Code §159.105, a wrap mortgage loan may only be closed by a title company issuing an owner's title insurance policy to the wrap borrower for the residential real estate secured or designed to be secured by the wrap mortgage loan.

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

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SUBCHAPTER C. BORROWER'S RIGHTS AND RESPONSIBILITIES

7 TAC §59.200, §59.201

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the 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.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§59.200. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to a wrap borrower's rights under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter E.

§59.201. Right to Deduct; Notice of Deduction.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to a wrap borrower's right to make deductions from the amounts the wrap borrower owes to the wrap lender under the terms of a wrap mortgage loan, as provided by Finance Code §159.202.

(b) Notice of Deduction. To the extent the wrap borrower seeks to exercise its right to deduct amounts owed to the wrap lender pursuant to Finance Code §159.202, the wrap borrower must, at the time the wrap borrower makes the deduction, provide the wrap lender or its third-party servicer notice of the amounts deducted including:

(1) an itemized list of the deductions made, describing in detail the amounts paid by the wrap borrower on behalf of the wrap lender;

(2) the dates on which such payments were made; and

(3) supporting documentation evidencing paragraphs (1) and (2) of this subsection.

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SUBCHAPTER D. WRAP LENDER AND SERVICER REQUIREMENTS

7 TAC §§59.300 - 59.303

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159. §59.301 and §59.303 are also proposed under the authority of, and to implement, Finance Code §159.152. §59.302 is also proposed under the authority of, and to implement, Finance Code §159.151.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§59.300. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements applicable to persons who collect or receive a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter D. The rules in this subchapter apply to a wrap lender or any other person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including a third-party servicer servicing a wrap mortgage loan.

§59.301. Fiduciary Duties; Required Accounting.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code §159.152.

(b) Non-Delegation of Duties. A wrap lender or other person collecting or receiving a payment from a wrap borrower under the terms of a wrap mortgage loan may not delegate or assign its fiduciary duties owed under Finance Code §159.152 to another person except as a result of the wrap lender selling, assigning, transferring, or conveying the wrap mortgage loan. Any sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan is deemed to include an assignment of the fiduciary duties owed by the wrap lender to the wrap borrower under Finance Code §159.152. A sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan does not extinguish the assigning wrap lender's fiduciary duties to the wrap borrower in connection with amounts collected or received by the wrap lender from the wrap borrower prior to the effective date of the sale, assignment, transfer, or conveyance of the wrap mortgage loan.

(c) Required Accounting. The wrap lender must, either directly, or through use of a third-party servicer it has contracted with, maintain, on a current basis, separate written accountings for each wrap mortgage loan made by the wrap lender sufficient to account for, track, and retrospectively trace all payments received from the wrap borrower under the terms of the wrap mortgage loan, and all disbursements, transfers, or assignments of such funds, including, but not limited to, disbursements made to a superior lienholder, taxing authority, or insurance company in connection with the residential real estate secured by the wrap mortgage loan. The accounting required by this subsection must be maintained by the wrap lender or its successor-in-interest until the limitations period for the wrap borrower to bring any cause of action against the wrap lender arising from a violation of law in connection with the wrap mortgage loan transaction has lapsed. To the extent the wrap lender uses the services of a third-party servicer, a wrap lender must establish and maintain policies and procedures that are reasonably designed to acquire from the third-party servicer any information or supporting documentation necessary or prudent to ensure the wrap lender satisfies the accounting required by this subsection. The accounting required by this subsection may be accomplished through administration of and the retention of records in connection with a trust account as provided by §59.302 of this title (relating to Trust Account; Maintenance of Funds Held in Trust).

§59.302. Trust Account; Maintenance of Funds Held in Trust.

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement of a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan to hold such funds in trust, as provided by Finance Code §159.151.

(b) Definitions. The following terms in this section have the following meanings, unless the context clearly indicates otherwise:

(1) "Financial institution" has the meaning assigned by Finance Code §201.101(1).

(2) "Trust account" means a custodial, trust, or escrow account managed by one person for the benefit of another person.

(3) "Trust funds" means the funds collected or received from a wrap borrower under the terms of a wrap mortgage loan.

(4) "Receiver" means a wrap lender or other person collecting or receiving trust funds.

(c) Trust Account Required. Unless otherwise agreed to in writing by the wrap borrower and wrap lender in connection with the wrap mortgage loan, trust funds must be placed in a trust account meeting the requirements of this section, and maintained or disbursed in accordance with this section.

(d) Trust Account Requirements.

(1) The trust account must be clearly identified as such at the financial institution.

(2) The receiver may, but is not required to, maintain separate trust accounts for each wrap mortgage loan or wrap borrower. To the extent the receiver maintains separate trust accounts for each wrap mortgage loan or wrap borrower, the same trust account may also be used for purposes of administering an escrow account for the wrap mortgage loan or wrap borrower.

(3) Funds in the trust account must be capable of being disbursed by the receiver on-demand or in an amount of time sufficient to timely effect disbursements reasonably anticipated from the trust account.

(4) A receiver, in addition to depositing trust funds, may deposit and maintain a limited amount of money in the trust account necessary to avoid or cover potential fees imposed by the financial institution in connection with the trust account including account maintenance fees or fees charged for insufficient funds.

(e) A receiver may not:

(1) commingle trust funds with non-trust funds;

(2) deposit or maintain trust funds in a personal account or any form of business account; or

(3) pay operating expenses or otherwise make withdrawals or disbursements from a trust account for any purpose other than the proper disbursement of trust funds.

(f) Disbursement of Trust Funds.

(1) A receiver may only disburse money from a trust account in accordance with the terms of the wrap mortgage loan or such other agreement as may be entered into with the wrap borrower to govern the disbursement of trust funds.

(2) If a receiver is unable to reasonably determine to which party or parties trust funds should be disbursed, the receiver may tender trust funds into the registry of a court of competent jurisdiction and interplead the relevant party or parties.

§59.303. Use of a Third-Party Servicer.

(a) Purpose. The purpose of this section is to clarify and establish requirements concerning a wrap lender's use of a third party to act as a residential mortgage loan servicer of wrap mortgage loan.

(b) Use of a Third-Party Servicer. A wrap lender is authorized to use the services of a third party to act as the residential mortgage loan servicer of a wrap mortgage loan (also known as a "subservicer").

(c) Handling of Payments and Disbursements. To the extent a wrap lender uses the services of a third-party servicer, the handling of payments and disbursement of funds received by the third-party servicer is governed by the agreement between the wrap lender and third-party servicer, including:

(1) whether or not and on what terms the third-party servicer makes disbursements to the superior lienholder;

(2) disbursements made to the wrap lender; and

(3) how payments by the wrap borrower in excess of the current amount due under the terms of the wrap mortgage loan are handled, applied, or disbursed.

(d) No Limitation on Liability. As provided by Finance Code §159.107, any agreement between a wrap lender and a third-party servicer may not seek to waive or limit the wrap lender's or third-party servicer's liability to the wrap borrower arising from the fiduciary duties owed to the wrap borrower pursuant to Finance Code §159.152. However, an agreement between a wrap lender and third-party servicer may contain an indemnification agreement concerning potential liability arising from the fiduciary duties owed to the wrap borrower under Finance Code §159.152.

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

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SUBCHAPTER E. SUPERVISION AND ENFORCEMENT

7 TAC §§59.400 - 59.403

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159. §§59.401 - 59.403 are also proposed under the authority of, and to implement, Finance Code §159.252.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§59.400. Purpose and Applicability.

The purpose of this subchapter is to clarify and establish requirements related to the Commissioner's authority to conduct inspections of, and investigations on, a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 (wrap mortgage registrant), as provided by Finance Code Chapter 159, Subchapter F. This subchapter further clarifies and establishes requirements concerning the Commissioner's authority to seek enforcement action against a wrap mortgage registrant under Finance Code Chapter 159, Subchapter G.

§59.401. Required Books and Records by a Wrap Lender Registrant.

(a) Purpose. This section clarifies and establishes requirements related to the wrap lender's requirement to maintain information and records necessary to facilitate the Commissioner's inspection of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252(d)(1). The requirements of this section are in addition to and supplement the requirements a wrap lender registrant or other person is required to maintain as a licensee or registrant under Finance Code Chapters 156, 157, 158, or 342, as applicable.

(b) Maintenance of Records, Generally. Each wrap lender registrant must maintain records with respect to each wrap mortgage loan under Finance Code Chapter 159 and make those records available for examination under Finance Code §159.252. The records required by this section may be maintained using a paper, manual, electronic, or digitally-imaged recordkeeping system, or a combination thereof, unless otherwise specified by other applicable law. The records must be accurate, complete, current, legible, and readily accessible and sortable. If the requirements of other applicable law governing recordkeeping by the wrap loan registrant differ from the requirements of this section, such other applicable law prevails only to extent this section conflicts with the requirements of this section.

(c) Required Records. A wrap lender registrant must maintain the following items:

(1) Wrap Mortgage Servicing Log. A wrap mortgage servicing log for each wrap mortgage loan serviced by a wrap lender registrant, maintained on a current basis (which means that all entries must be made within seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the loan or account number, or other unique identifier assigned by the wrap lender registrant to the wrap mortgage loan;

(B) the name and contact information of each wrap borrower; and

(C) the date the wrap mortgage loan was entered into by the wrap lender and wrap borrower.

(2) Wrap Borrower Index. The current alphabetical index or a report of outstanding wrap mortgage loans of the wrap lender registrant, regardless of whether or not it services the wrap mortgage loan, reflecting the name of each wrap borrower and the loan or account number, or other unique identifier assigned by the wrap lender to the wrap mortgage loan. A wrap lender registrant may maintain the wrap borrower index as a part of other records maintained by the wrap lender registrant; provided, the wrap lender registrant is able to sort, generate, and print, as a separate record, the wrap borrower index in strict alphabetical order.

(3) Wrap Mortgage Transaction File. A wrap lender registrant must maintain a wrap mortgage transaction file for each wrap mortgage loan or be able to produce the same information within a reasonable time upon request. The wrap mortgage transaction file must contain documents demonstrating the wrap lender registrant's compliance with applicable law, including Finance Code Chapter 159, and any applicable state and federal statutes, rules, or regulations. The wrap mortgage loan transaction file must include the following records or documents:

(A) for all wrap mortgage loan transactions:

(i) the promissory note, loan agreement, or repayment agreement, signed by the wrap borrowers;

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

(iii) the title insurance policy or abstract of title;

(iv) the initial and final mortgage application (including any attachments, supplements, or addenda thereto), signed and dated by the mortgage applicant and the residential mortgage loan originator, and any 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 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;

(D) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to disbursements made in connection with wrap mortgage loans by the wrap lender registrant;

(E) complete records (including invoices and supporting documentation) for all expenses and fees paid in connection with the wrap mortgage loan, including the date and amount of all such payments;

(F) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(G) copies of all contractual agreements or understandings with third parties in any way relating to a wrap mortgage loan transaction;

(H) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(I) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed;

(5) Record of the wrap borrower's account (payment and collection history). A separate record must be maintained for the servicing account of each wrap borrower and the record must contain at least the following information on each wrap mortgage loan serviced by the wrap lender registrant:

(A) loan identification number;

(B) loan repayment schedule and terms, itemized to reflect:

(i) the date of the loan;

(ii) the number of installments;

(iii) the due date of installments;

(iv) the amount of each installment; and

(v) the maturity date;

(C) name, address, and phone number of the wrap borrower(s);

(D) legal description of the residential real estate;

(E) principal amount;

(F) total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(G) amount of official fees for recording or releasing a security interest that are collected at the time the loan is made;

(H) individual payment entries, itemized to show:

(i) the date payment was received (dual postings are acceptable if the date of posting is other than the date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(I) individual entries for disbursements of funds from a wrap borrower under the terms of wrap mortgage loan to superior lienholders, taxing authorities, insurance companies, or other payees, itemized to show:

(i) the actual date of disbursement; and

(ii) the actual amounts disbursed;

(J) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to the wrap borrower(s), with refund amounts itemized to show interest charges refunded, including the refund of any unearned points; and

(K) collection contact history, including a record of each contact made by a wrap lender registrant with the wrap borrower or any other person and each contact made by the wrap borrower with the wrap lender registrant, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(d) A wrap lender registrant must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws, rules, and regulations, including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(e) A wrap lender registrant must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(f) Production of Records. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request.

(g) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state or federal laws, rules, and regulations.

(h) Records Retention After Dissolution. Within ten days of termination of operations, a wrap lender registrant must provide SML with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another wrap lender registrant, the transferee must provide SML with written notice within ten days after receiving such records.

§59.402. Examination of Wrap Lender Registrants.

(a) Purpose. This section clarifies and establishes requirements related to SML's authority to make inspections of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252.

(b) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person of the wrap lender registrant listed in NMLS, or a person designated by the primary contact person, advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which SML's examiners are scheduled to begin the examination. Failure to receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made available to facilitate the examination.

(c) Examination Scope. Examinations will be conducted to determine compliance with Finance Code Chapter 159, and this chapter, and will specifically address whether:

(1) all required books and records are being maintained in accordance with §59.401 of this title (relating to Required Books and Records by a Wrap Lender Registrant);

(2) all legal and regulatory requirements applicable to the wrap lender registrant are being properly followed; and

(3) other matters SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapter 159.

(d) Loan Sample. The examiners will review a sample of wrap mortgage loan files identified by the examiners from the wrap lender registrant's wrap mortgage servicing log required by §59.401(c)(1) of this title. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners may require a wrap lender registrant, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.

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

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Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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CHAPTER 78. WRAP MORTGAGE LOANS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes to repeal all existing rules in 7 TAC Chapter 78: §§78.1 - 78.3, 78.100 - 78.102, 78.200, 78.201, 78.300 - 78.303, and 78.400 - 78.403 (proposed rules).

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 78, Wrap Mortgage Loans, affect wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan under Finance Code Chapter 159, Wrap Mortgage Loan Financing.

Changes Concerning the Reorganization (Relocation) of Wrap Mortgage Loan Rules from Chapter 78 to Chapter 59

SML has determined it should reorganize its rules concerning wrap mortgage loans by relocating the rules to Chapter 59 (a vacant chapter). The proposed rules, if adopted, would repeal all existing rules in Chapter 78. In a related proposal published elsewhere in this issue of the *Texas Register,* SML proposes new rules in Chapter 59 affecting wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan. The new rules are patterned after the existing rules in Chapter 78.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing wrap mortgage loans to be easier to find by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning the Reorganization (Relocation) of Wrap Mortgage Loan Rules from Chapter 78 to Chapter 59 have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of indi-

viduals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days after publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§78.1 - 78.3

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.1. Purpose and Applicability.

§78.2. Definitions.

§78.3. Computation of Time.

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

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Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
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SUBCHAPTER B. LENDER REQUIREMENTS AND RESPONSIBILITIES

7 TAC §§78.100 - 78.102

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.100. Purpose and Applicability.

§78.101. Required Disclosures.

§78.102. Closing Requirements.

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

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SUBCHAPTER C. BORROWER'S RIGHTS AND RESPONSIBILITIES

7 TAC §78.200, §78.201

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.200. Purpose and Applicability.

§78.201. Right to Deduct; Notice of Deduction.

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

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SUBCHAPTER D. WRAP LENDER AND SERVICER REQUIREMENTS

7 TAC §§78.300 - 78.303

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.300. Purpose and Applicability.

§78.301. Fiduciary Duties; Required Accounting.

§78.302. Trust Account; Maintenance of Funds Held in Trust.

§78.303. Use of a Third-Party Servicer.

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

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SUBCHAPTER E. COMPLIANCE AND ENFORCEMENT

7 TAC §§78.400 - 78.403

Statutory Authority

This proposal is made under the authority of Finance Code §159.108, authorizing the commission to adopt and enforce rules for the intent of or to ensure compliance with Finance Code Chapter 159.

This proposal affects the statutes in Finance Code Chapter 159, Wrap Mortgage Loan Financing.

§78.400. Purpose and Applicability.

§78.401. Required Books and Records by a Wrap Lender Registrant.

§78.402. Examination of Wrap Lender Registrants.

§78.403. Investigation of Wrap Lender Registrants.

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

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CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER A. REGISTRATION

7 TAC §§79.1 - 79.5

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes to repeal all existing rules in 7 TAC Chapter 79: §§79.1 - 79.5, 79.20, 79.30, 79.40, and 79.50 (proposed rules).

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 79, Residential Mortgage Loan Servicers, affect residential mortgage loan servicers (mortgage servicers) registered with SML under Finance Code Chapter 158, Residential Mortgage Loan Servicers.

Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Servicer Rules from Chapter 79 to Chapter 58

SML has determined it should reorganize its rules concerning mortgage servicers by relocating the rules to Chapter 58 (a vacant chapter). The proposed rules, if adopted, would repeal all existing rules in Chapter 79. In a related proposal published elsewhere in this issue of the *Texas Register,* SML proposes new rules in Chapter 59 affecting mortgage servicers that are patterned after the existing rules in Chapter 79.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing mortgage servicers to be easier to find by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are

directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Servicer Rules from Chapter 79 to Chapter 58 have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§79.1. Definitions.

§79.2. Required Disclosure.

§79.3. Registration - General.

§79.4. Bond Requirement.

§79.5. Renewal of Registration.

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

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Iain A. Berry
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Department of Savings and Mortgage Lending
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SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

7 TAC §79.20

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§79.20. Investigations.

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

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SUBCHAPTER C. HEARINGS AND APPEALS

7 TAC §79.30

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§79.30. Hearings and Appeals.

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

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SUBCHAPTER D. INTERPRETATIONS

7 TAC §79.40

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§79.40. Interpretations.

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

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SUBCHAPTER E. SAVINGS CLAUSE

7 TAC §79.50

Statutory Authority

This proposal is made under the authority of Finance Code §158.003, authorizing the commission to adopt rules necessary for the purposes of or to ensure compliance with Finance Code Chapter 158.

This proposal affects the statutes in Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act.

§79.50. Savings Clause.

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

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For further information, please call: (512) 475-1535

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CHAPTER 80. RESIDENTIAL MORTGAGE LOAN COMPANIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML) proposes to repeal all existing rules in 7 TAC Chapter 80: §§80.1 - 80.5, 81.100 - 80.102, 80.105 - 80.107, 80.200 - 80.206, and 80.300 - 80.302 (proposed rules).

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80, Residential Mortgage Loan Companies, affect residential mortgage loan companies (mortgage companies) licensed by SML under Finance Code Chapter 156.

Changes Concerning the Reorganization (Relocation) of Mortgage Company Rules from Chapter 80 to Chapter 56

SML has determined it should reorganize its rules concerning mortgage companies by relocating the rules to Chapter 56 (a vacant chapter). The proposed rules, if adopted, would repeal all existing rules in Chapter 80. In a related proposal published elsewhere in this issue of the *Texas Register,* SML proposes new rules in Chapter 56 affecting mortgage companies that are patterned after the existing rules in Chapter 80.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing originators and mortgage bankers to be easier to find by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning the Reorganization (Relocation) of Mortgage Company Rules from Chapter 80 to Chapter 56 have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§80.1 - 80.5

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.1. Scope.

§80.2. Definitions.

§80.3. Interpretations.

§80.4. Enforceability of Liens.

§80.5. Savings Clause.

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

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

7 TAC §§80.100 - 80.102, 80.105 - 80.107

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§80.100. Licensing - General.

§80.101. Sponsorship of Originator; Responsibility for Originator's Actions.

§80.102. Qualified Individual.

§80.105. Fees.

§80.106. Renewals.

§80.107. NMLS Records; Notice to Licensee.

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

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.200 - 80.206

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.200. Required Disclosures.

§80.201. Loan Status Forms.

§80.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

§80.203. Advertising.

§80.204. Books and Records.

§80.205. Mortgage Call Reports.

§80.206. Office Locations; Remote Work.

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

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Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §§80.300 - 80.302

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, authorizing the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act).

This proposal affects the statutes in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.300. Examinations.

§80.301. Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions.

§80.302. Hearings and Appeals.

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

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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) proposes to repeal all existing rules in 7 TAC Chapter 81: §§81.1 - 81.5, 81.100 - 81.111, 81.200 - 81.206, and 81.300 - 81.302 (proposed rules).

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, affect mortgage bankers registered with SML and individual residential mortgage loan originators (originators) licensed by SML under Finance Code Chapter 157.

Changes Concerning the Reorganization (Relocation) of Mortgage Banker Rules from Chapter 81 to Chapter 57

SML has determined it should reorganize its rules concerning mortgage bankers by relocating the rules to Chapter 57 (a vacant chapter) and devoting such chapter exclusively to rules affecting mortgage bankers. The proposed rules, if adopted, would repeal all existing rules in Chapter 81 concerning mortgage bankers. In a related proposal published elsewhere in this issue of the *Texas Register,* SML proposes new rules in Chapter 57 affecting mortgage bankers that are patterned after the existing rules in Chapter 81.

Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Originator Rules from Chapter 81 to Chapter 55

SML has determined it should reorganize its rules concerning originators by relocating the rules to Chapter 55 (a vacant chapter) and devoting such chapter exclusively to rules affecting originators. The proposed rules, if adopted, would repeal all existing rules in Chapter 81 concerning originators. In a related proposal published elsewhere in this issue of the *Texas Register,* SML proposes new rules in Chapter 55 affecting originators that are patterned after the existing rules in Chapter 81.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for SML, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to SML because SML is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because SML does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for SML, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be: for SML's rules governing originators and mortgage bankers to be easier to find by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, SML is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, SML has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning the Reorganization (Relocation) of Mortgage Banker Rules from Chapter 81 to Chapter 57 and Changes Concerning the Reorganization (Relocation) of Residential Mortgage Loan Originator Rules from Chapter 81 to Chapter 55 have the effect of repealing existing rule requirements as discussed in such sections; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§81.1 - 81.5

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§81.1. Scope.
§81.2. Definitions.
§81.3. Interpretations.
§81.4. Enforceability of Liens.
§81.5. Savings Clause.

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

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SUBCHAPTER B. LICENSING OF INDIVIDUAL ORIGINATORS

7 TAC §§81.100 - 81.111

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§81.100. Licensing - General.

§81.101. Sponsorship of Originator.

§81.102. Temporary Authority.

§81.103. Licensing of Military Service Members, Military Veterans, and Military Spouses.

§81.104. Required Education.

§81.105. Fees.

§81.106. Renewals.

§81.107. NMLS Records; Notice to Licensee.

§81.108. Background Checks.

§81.109. Procedures for Review of Background Checks.

§81.110. Criminal Conviction Guidelines.

§81.111. Request for Criminal History Eligibility Determination.

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§81.200 - 81.206

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§81.200. Required Disclosures.

§81.201. Loan Status Forms.

§81.202. Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings.

§81.203. Advertising.

§81.204. Books and Records.

§81.205. Mortgage Call Reports.

§81.206. Office Locations; Remote Work.

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §§81.300 - 81.302

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §5101 et seq.; federal SAFE Act). This proposal is also made under the authority of Finance Code §180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act.

This proposal affects the statutes in Finance Code: Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act; and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§81.300. Examinations.

§81.301. Investigations.

§81.302. Hearings and Appeals.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING OPEN EDUCATION RESOURCE INSTRUCTIONAL MATERIALS

19 TAC §67.1315

The Texas Education Agency (TEA) proposes new §67.1315, concerning open education resource (OER) instructional materials. The proposed new rule would implement House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, by providing clarification on the requirements for a school district's OER transition plan.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised Texas Education Code (TEC), Chapter 31, which addresses instructional materials in public education. Specifically, the bill added TEC, §31.0751, to require school districts to adopt an OER instructional materials transition plan to qualify for additional state aid under TEC, §48.308. School districts participating in an OER instructional material support program are not required to adopt a transition plan.

Proposed new §67.1315 would provide clarification on the requirements for a school district's OER transition plan, including when a plan must be submitted and what it must contain. The proposed new rule would also specify that the commissioner may request and review OER instructional material transition plans at any time and reject a plan subsequent to review.

FISCAL IMPACT: Todd Davis, associate commissioner for instructional strategy, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation regarding requirements for a school district's OER transition plan to implement HB 1605, 88th Texas Legislature, Regular Session, 2023. The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Davis has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing school districts with clarifications regarding requirements for a school district's OER transition plan. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposed new rule would have a data and reporting impact. The new rule would require a school district or an open-enrollment charter school ordering OER materials to indicate, if applicable, that the district or charter school has an approved OER transition plan in the state's instructional materials ordering system, EMAT.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins September 6, 2024, and ends October 7, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 6, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The new section is proposed under TEC, §31.003(b), as added by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the commissioner of education to adopt rules consistent with TEC, Chapter 31, as necessary to implement a provision of the chapter that the commissioner or the agency is responsible for implementing; and TEC, §31.0751, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts to adopt an open education resource instructional material transition plan, unless otherwise exempt.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §31.003(b) and §31.0751, as added by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

§67.1315. Open Education Resource Instructional Material Transition Plan.

(a) The open education resource (OER) instructional material transition plan shall be submitted, when required by this section, in a format determined by the commissioner of education.

(b) A school district or an open-enrollment charter school is required to have a locally maintained OER transition plan that complies with this section to access funding allotted under Texas Education Code (TEC), §48.308.

(c) A school district or an open-enrollment charter school is required to submit an OER instructional material transition plan only when:

(1) first adopting a State Board of Education (SBOE)-approved OER product for a grade level or subject/course; or

(2) expanding implementation of an SBOE-approved OER product to additional campuses and/or grade levels.

(d) The OER instructional material transition plan adopted by the local board of trustees or the governing body of an open-enrollment charter school shall include the plan of the district or charter school to ensure the following:

(1) clear communication and stakeholder change management plans and timelines;

(2) timely access to print materials and related manipulatives through OER procurement and distribution;

(3) sufficient planning and instructional time evidenced by instructional calendars and master schedules aligned to the requirements of the materials;

(4) clear expectations for the implementation of:

(A) instructional materials;

(B) internalization and student work analysis protocols; and

(C) curriculum-embedded assessments;

(5) processes for stakeholder communication and public posting, as outlined in TEC, §26.006, if materials have been modified by the school district or open-enrollment charter school;

(6) the maintenance of instructional flexibility through clear guidance for acceptable teacher modifications to instructional pacing, sequencing, and lesson content to address the needs of each student; and

(7) sufficient professional learning and development for school leaders, instructional coaches, and teachers, including:

(A) pre-service product onboarding and orientation; and

(B) ongoing, job-embedded, curriculum-based professional learning, including cycles of observation and feedback.

(e) The commissioner may request and review OER instructional material transition plans at any time and reject a plan subsequent to review.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1213

The Texas Education Agency (TEA) proposes new §103.1213, concerning safe schools. The proposed new rule would require school safety and security-related reporting through Sentinel in accordance with Texas Education Code (TEC), §37.1083. Sentinel is a comprehensive system designed to enhance the safety and security of students, faculty, and staff in school buildings across Texas.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with TEC, §37.1083, each school district and open-enrollment charter school must submit information requested by TEA in their efforts to monitor the implementation and operation of school district safety and security requirements. The statute allows TEA to review school district records as necessary to ensure compliance.

Proposed new §103.1213(a) would outline school safety reporting requirements for school districts and open-enrollment charter schools under TEC, §37.1083.

Proposed new subsection (b) would provide the terms and definitions applicable to the proposed new section.

Proposed new subsection (c) would delineate Sentinel as a repository for all safety and security-related data submitted to TEA by school districts, open-enrollment charter schools, campuses, and other entities.

Proposed new subsection (d) would affirm the confidentiality of documents or information collected, identified, developed, or produced relating to the monitoring of school district safety and security requirements.

Proposed new subsection (e) would require school systems to report through Sentinel information related to Behavioral Threat Assessments, District Vulnerability Assessments (DVAs), emergency management, and Intruder Detection Audits (IDAs).

FISCAL IMPACT: James Finley, deputy chief of school safety and security, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking

would be in effect, it would create a new regulation to establish Sentinel as the repository for all safety and security related data submitted to TEA by school districts, open-enrollment charter schools, campuses, and other entities.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Finley has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts with a comprehensive system designed to enhance the safety and security of students, faculty, and staff in school buildings across Texas. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have a data and reporting impact to implement the requirements of TEC, §37.1083. School districts and open-enrollment charter schools will be required to submit information throughout the year based on the schedule for IDAs and DVAs, or as needed for safety concerns. Initial information would be imported from AskTED. Districts and charter schools would be required to verify that the information is correct, update it as necessary, and provide facility-level information that may differ from what is available. TEA would work with AskTED to streamline future processes. In accordance with TEC, §37.1083, any document or information collected, identified, developed, or produced relating to the monitoring of district safety and security requirements under new §103.1213 would be confidential and not subject to disclosure under Texas Government Code, Chapter 552.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins September 6, 2024, and ends October 7, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 6, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §37.1083, which requires school districts and open-enrollment charter schools to submit information requested by the Texas Education Agency in their efforts to monitor the implementation and operation of school district safety and security requirements.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §37.1083.

§103.1213. Required Reporting through Sentinel.

(a) In accordance with Texas Education Code (TEC), §37.1083, each school district and open-enrollment charter school shall submit information requested by the Texas Education Agency (TEA) in their efforts to monitor the implementation and operation of school district safety and security requirements. TEA may review school district records as necessary to ensure compliance with this section.

(b) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Discipline record--a student's cumulative record of formal disciplinary actions reported through the Public Education Information Management System from the date that the student was first enrolled in a public school and that the local education agency has retained in accordance with the records retention policy.

(2) School system--a term that has the meaning assigned by §61.1031(a)(6) of this title (relating to School Safety Requirements).

(3) Sentinel--TEA's formal school safety system designed to collect, process, store, and distribute school safety and security information.

(c) Sentinel serves as a repository for all safety and security-related data submitted to TEA by school districts, open-enrollment charter schools, campuses, and other entities.

(d) Any document or information collected, identified, developed, or produced relating to the monitoring of school district safety and security requirements under this section is confidential under Texas Government Code, §418.177 and §418.181, and not subject to disclosure under Texas Government Code, Chapter 552.

(e) Each school system shall report the following information through Sentinel.

(1) Behavioral Threat Assessments (BTAs).

(A) When conducting a BTA under TEC, §37.115, members of a threat assessment team shall utilize the threat assessment instrument, manual, and field guide in Sentinel, which are consistent with the model policies published by the Texas School Safety Center (TxSSC).

(B) A school district shall utilize Sentinel to securely transfer under TEC, §26.036, any disciplinary record or threat assessment conducted on a student to a receiving school system when a student transfers to a new school district. All BTAs for a student are subject to the transfer requirement. Any BTAs conducted prior to August 1, 2025, shall be uploaded into Sentinel in a manner determined by TEA.

(2) District Vulnerability Assessments (DVAs).

(A) In accordance with TEC, §37.1083, the TEA Office of School Safety and Security will monitor the implementation of requirements related to school safety and security, to include conducting detailed vulnerability assessments.

(B) Any documentation requested by TEA for a DVA must be uploaded to Sentinel.

(3) Emergency management.

(A) On or before June 30th of each year, all school systems shall input their upcoming school year calendar into Sentinel. Any changes to the school year calendar shall be updated in Sentinel within three business days after approval by district leadership.

(B) On or before June 30th of each year, school systems must verify that all district facilities listed in Sentinel reflect the correct address and campus emergency contact information.

(C) If a school system closes for a localized emergency, closure information must be immediately recorded in Sentinel.

(D) All school systems shall submit information related to events requiring an emergency response, including the discovery of a firearm on a campus, in the Sentinel portal. This is inclusive of notifications regarding a bomb threat or terroristic threat, as outlined in TEC, §37.113. Submission of information in the Sentinel portal does not substitute the requirement for local law enforcement notification of certain activities in TEC, §37.015.

(E) Upon completed review of a school system's multi-hazard emergency operations plan, the TxSSC may upload a copy of that plan, including all required appendices, to the Sentinel portal.

(F) Subsequent to a school system superintendent change, the direct contact information of the superintendent (or person acting in that capacity) must be updated in Sentinel within three business days of a corresponding board meeting.

(4) Intruder Detection Audits (IDAs).

(A) In accordance with TEC, §37.1084, the TEA Office of School Safety and Security will establish a school safety review team in each region served by a regional education service center. Teams shall annually conduct on-site general intruder detection audits of school district campuses in the team's region.

(B) Any documentation requested by TEA for an IDA must be uploaded to Sentinel.

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

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Cristina De La Fuente-Valadez
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Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.24, Complaint Processing.

The proposed amendments to §153.24 clarifies the preliminary investigative review process and corrects references within the rule to another section and another rule.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments are in effect the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation; and

-increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.24. Complaint Processing.

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the individual named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff shall:

(1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the Complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the Act, Board rules, or USPAP that:

(1) evidence serious deficiencies, including:

(A) Fraud;

(B) Identity theft;

(C) Unlicensed activity;

(D) Ethical violations;

(E) Failure to properly supervise an appraiser trainee; or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

(2) were done:

(A) with knowledge;

(B) deliberately;

(C) willfully; or

(D) with gross negligence.

(c) The Board or the Executive Director may delegate to staff the duty to dismiss complaints. The complaint shall be dismissed with no further processing if the staff determines at any time that:

(1) the complaint is not within the Board's jurisdiction;

(2) no violation exists; or

(3) an allegation or formal complaint is inappropriate or without merit.

(d) A determination that an allegation or complaint is inappropriate or without merit includes a determination that the allegation or complaint:

(1) was made in bad faith;

(2) filed for the purpose of harassment;

(3) to gain a competitive or economic advantage; or

(4) lacks sufficient basis in fact or evidence.

(e) Staff shall conduct a preliminary inquiry to determine if dismissal is required under subsection (d) of this section.

(f) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

(1) may be investigated covertly; and

(2) shall be referred to the appropriate prosecutorial authorities.

(g) Staff may request additional information from any person, if necessary, to determine how to proceed with the complaint.

(h) If the TALCB Division requires additional information from a Respondent during the [~~As part of a~~] preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation shall be included in the request, [~~sent to the Respondent~~] unless the complaint qualifies for covert investigation and the TALCB Division deems covert investigation appropriate.

(i) The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(j) The Respondent shall submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response shall include the following:

(1) a copy of the appraisal report that is the subject of the complaint;

(2) a copy of the Respondent's work file associated with the appraisal(s) listed in the complaint, with the following signed statement attached to the work file(s): I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE.(SIGNATURE OF RESPONDENT);

(3) a narrative response to the complaint, addressing each and every item in the complaint;

(4) a list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) any documentation that supports Respondent's position that was not in the work file, as long as it is conspicuously labeled as non-work file documentation and kept separate from the work file. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(k) Staff will evaluate the complaint within three months after receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the Act, Board rules, or the USPAP exists to pursue investigation and possible formal disciplinary action. If the staff determines that there is no jurisdiction, no violation exists, there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under §153.241 of this title (relating to Sanctions Guidelines) [~~subsection (m) of this section~~], the complaint shall be dismissed with no further processing.

(l) A formal complaint will be opened and investigated by a staff investigator or peer investigative committee, as appropriate, if:

(1) the informal complaint is not dismissed under subsection (k) [~~(i)~~] of this section; or

(2) staff opens a formal complaint on its own motion.

(m) Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(n) The staff investigator assigned to investigate a formal complaint shall prepare a report detailing its findings on a form approved by the Board.

(o) The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.

(p) Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1103.458 or §1103.459 must be signed by:

(1) the Board Chair or if the Board Chair is unavailable or must recuse him or herself, the Board Chair's designee, whom shall be (in priority order) the Board Vice Chair, the Board Secretary, or another Board member;

(2) Respondent;

(3) a representative of the TALCB Division; and

(4) the Executive Director or his or her designee.

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

Filed with the Office of the Secretary of State on August 23, 2024.

TRD-202403901
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 936-3088

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CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §§157.9 - 157.11

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §§157.9, Notice of Hearing; 157.10, Right to Counsel; Right to Participate; and 157.11, Contested Cases; Entry of Appearance; Continuance. The proposed amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The proposed amendments to §157.9 simplify the language and make the section more readable.

The proposed amendments to §157.10 provide more detail to the section title and clarify the applicability of SOAH rules related to translations.

The proposed amendments to §157.11 more consistently utilizes abbreviations used through the chapter.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation; and

-increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules.

The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code 1103.151, Rules Relating to Certificates and Licenses, §1103.154, which authorizes TALCB to adopt rules related to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

The statutes affected by these amendments are Chapter 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.9. Notice of Hearing.

(a) The notice of hearing must comply with Chapter 2001, Texas Government Code and the rules of SOAH.

(b) The notice of hearing shall be served not later than the 30th day before the hearing date.

(c) The Board shall serve notice [~~Service of notice of hearing must be made in the manner prescribed by Chapter 2001, Texas Government Code, and the rules of the State Office of Administrative Hearings. Notice to a person who is a current license holder or applicant of the Board is complete and effective if sent~~] by certified mail, return receipt requested, to the respondent [~~respondent's~~] or applicant's mailing address and [~~sent~~] by:

(1) electronic mail to the address [~~as~~] shown in the Board's records; or

(2) first class mail.

(d) The notice must include the following language in capital letters in boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE AND A DEFAULT JUDGMENT BEING TAKEN AGAINST YOU.

§157.10. Right to Counsel; Right to Participate; Transcript Cost; Interpreters and Translators.

(a) All parties, at their own expense, may be represented by counsel. This right may be expressly waived. Parties are entitled to respond and present evidence and argument on all issues involved, and to conduct cross examinations for full and true disclosure of the facts.

(b) Costs of a transcript of a SOAH proceeding ordered by a party shall be paid by that party. Costs of a transcript of a SOAH proceeding ordered by the judge shall be split equally between the parties.

(c) A party or witness who needs and interpreter or translator is responsible for making the request under SOAH rules.

§157.11. Contested Cases; Entry of Appearance; Continuance.

(a) When a contested case has been instituted, the respondent or the representative of the respondent shall enter an appearance not later than 20 days after the date of receipt of notice of hearing.

(b) For purposes of this section, a contested case shall mean any action that is referred by the Board to SOAH [~~the State Office of Administrative Hearings~~].

(c) For purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading with SOAH [~~the State Office of Administrative Hearings~~].

(d) The filing of an untimely appearance by a party, or entering an appearance at the contested case hearing entitles the Board to a continuance of the hearing in the contested case at the Board's discretion for such a reasonable period of time as determined by the administrative law judge, but not for a period of less than 20 days. For purposes of this section, an untimely appearance is an appearance not entered within 20 days of the date the respondent has received notice.

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

Filed with the Office of the Secretary of State on August 23, 2024.

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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 936-3088

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SUBCHAPTER C. POST HEARING

22 TAC §157.17, §157.18

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.17, Final Decisions and Orders, and §157.18, Motions for Rehearing. The proposed amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The proposed amendments to §157.17 simplify the language. The proposed amendments to §157.18 add a reference a specific section in 1103, for clarity and consistency.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation; and

-increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

The statute affected by these amendments are Chapter 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.17. Final Decisions and Orders.

(a) After a proposal for decision has been issued by an administrative law judge, the Board will render the final decision in the con-

tested case or remand the proceeding for further consideration by the administrative law judge.

(b) The Board is responsible for imposing disciplinary action and/or assessing administrative penalties, if any, against a respondent who is found to have violated any of the Board's statutes or rules. The Board welcomes recommendations from an administrative law judge as to the sanctions to be imposed, but the Board is not required to give presumptively binding effect to the judge's recommendations and is not bound by such recommendations.

(c) If the Board remands the case to the administrative law judge, the Board may direct that further consideration be accomplished with or without reopening the hearing and may limit the issues to be considered. If, on remand, additional evidence is admitted that results in a substantial revision of the proposal for decision, or the underlying facts, the administrative law judge shall prepare an amended or supplemental proposal for decision and this subchapter applies [~~shall be prepared by the administrative law judge and the provisions of this subchapter shall apply~~]. Exceptions and replies shall be limited to items contained in the amended or supplemental proposal for decision.

(d) The proposal for decision may be acted upon by the Board after the expiration of the applicable time periods for filing exceptions and replies to exceptions, and after the administrative law judge has ruled on any exceptions and replies.

(e) Any party may request oral arguments before the Board prior to the final disposition of the contested case. If the Board grants oral argument, oral argument will be conducted in accordance with this subsection.

(1) The chairperson or the Board member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) Oral arguments on the proposal for decision shall be limited to the record established at the contested case hearing. New evidence may not be presented on the substance of the case unless the party submitting the evidence establishes [~~can establish~~] that the new evidence was not reasonably available at the time of the contested case hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the contested case hearing.

(3) In presenting oral arguments, the party bearing the burden of proof shall open and close. The party responding may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Board may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the record and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Board, and any discussion by the member of the Board, the presiding member shall call for a motion regarding disposition of the contested case. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) Final orders on contested cases shall be in writing and signed by the presiding officer of the Board. Final orders shall include findings of fact and conclusions of law separately stated from disciplinary actions imposed and administrative penalties assessed. Parties shall be notified as provided in Chapter 2001, Texas Government Code. On written request, a copy of the decision or order shall be delivered or mailed to any party and to the respondent's attorney of record.

(g) The Board may change a finding of fact or conclusion of law in a proposal for decision when the Board determines that:

(1) the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) a technical error in a finding of fact should be changed.

(h) If the Board modifies, amends, or changes a finding of fact or conclusion of law in a proposal for decision, the order shall reflect the Board's changes and state the specific reason and legal basis for the changes.

(i) If the Board does not follow the recommended disciplinary action and/or administrative penalty in a proposal for decision, the order shall explain why the Board chose not to follow the recommendation.

(j) Imminent Peril. If the Board finds that an imminent peril to the public health, safety, or welfare requires immediate effect on a final decision or order in a contested case, it shall recite the factual and legal basis for its finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered, and no motion for rehearing is required as a prerequisite for appeal.

(k) Conflict of Interest. A Board member shall recuse himself or herself from all deliberations and votes regarding any matter:

(1) the Board member reviewed as a member of a Peer Investigative Committee;

(2) involving persons or transactions about which the Board member has a conflict of interest;

(3) involving persons or transactions related to the Board member such that it creates the appearance of a conflict of interest; or

(4) in which the Board member participated in the negotiation of a consent order.

§157.18. Motions for Rehearing.

(a) Motions for rehearing in proceedings under Chapter 1103, Texas Occupations Code, are governed by §1103.519, Texas Occupations Code, §§2001.144 - 2001.147, Texas Government Code, and this section.

(b) Motions for rehearing in proceedings under Chapter 1104, Texas Occupations Code, are governed by §1104.216, Texas Occupations Code, §§2001.144 - 2001.147, Texas Government Code, and this section.

(c) A timely-filed motion for rehearing is a prerequisite to appeal, except as provided in §157.17 of this subchapter. The motion must be filed with the Board by:

(1) delivering the motion in-person to the Board's headquarters;

(2) sending the motion via email to general.counsel@talcb.texas.gov; or

(3) sending the motion via fax to (512) 936-3788, ATTN: TALCB General Counsel.

(d) Replies to a motion for rehearing may be filed as provided in Chapter 2001, Texas Government Code.

(e) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Board will take no action, and the motion will be overruled by operation of law.

(f) Any party may request oral arguments before the Board prior to the final disposition of the motion for rehearing. If the Board grants a request for oral argument, oral arguments will be conducted in accordance with this subsection.

(1) The chairperson or the Board member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) Oral arguments on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence such as excerpts of the record before the presiding officer may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the contested case hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the contested case hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Board may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Board, and any discussion by the member of the Board, the presiding member shall call for a vote on the motion. A member of the Board need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(g) A decision is final and appealable on the date rendered if:

(1) the Board finds that an imminent peril to the public health, safety or welfare requires immediate effect; and

(2) the Board's decision or order recites this finding and the fact that the decision is final and effective on the date rendered.

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

Filed with the Office of the Secretary of State on August 23, 2024.

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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3088

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SUBCHAPTER D. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

22 TAC §157.25

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.25, Temporary Suspension. The proposed amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The proposed amendments utilize an abbreviated term for consistency in the chapter.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation; and

-increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §§1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee; §1103.154, which authorizes TALCB to adopt rules relating to professional conduct; and 1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statutes affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.25. Temporary Suspension.

(a) The purpose of a temporary suspension proceeding is to determine whether the continued practice by a person licensed, certified or registered by the Board would constitute a continuing threat to the public welfare. A temporary suspension proceeding is ancillary to a disciplinary proceeding regarding alleged violations of the Act or Board rules and is not dispositive concerning any such violations.

(b) Board staff may request the Board to grant a temporary suspension if:

(1) the Board has opened a complaint investigation against a license holder; and

(2) the following criteria are met:

(A) credible evidence shows:

(i) a license holder may continue to engage in conduct that may violate the Act, Board rules, or USPAP;

(ii) the license holder's conduct involves recent or current appraisal practice; and

(B) sufficient evidence is available to proceed with a contested case hearing within 45 days of a temporary suspension proceeding.

(c) The three Board members of the Enforcement Committee appointed by the chair of the Board shall serve as the disciplinary panel ("Panel") under Texas Occupations Code, §1103.5511 and §1104.211. The chair of the Board shall also appoint a Board member to act as an alternate member of the Panel in the event a member of the Panel is recused or unable to attend a temporary suspension proceeding.

(d) Board staff must request a temporary suspension proceeding in writing by filing a motion for temporary suspension with the Board's general counsel.

(e) The Panel may make a determination regarding a temporary suspension without notice or hearing pursuant to Texas Occupations Code, §1103.5511(c)(1) or §1104.211(c)(1), or may, if appropriate in the judgment of the chair of the Panel, provide the license holder or registrant with three days' notice of a temporary suspension hearing.

(f) The requirement under Texas Occupations Code, §1103.5511(c)(1) or §1104.211(c)(1) that "institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension" shall be satisfied if, on the same day the motion for temporary suspension is filed with the Board's general counsel, the licensed, certified or registered person that is the subject of the temporary suspension motion, and SOAH [~~the State Office of Administrative Hearings~~], as applicable, is sent one of the following documents that alleges facts that precipitated the need for a temporary suspension:

(1) Notice of Alleged Violation;

(2) Original Statement of Charges; or

(3) Amended Statement of Charges.

(g) The Panel shall post notice of the temporary suspension proceeding pursuant to §551.045 of the Texas Government Code and Texas Occupations Code, §1103.5511(e) or §1104.211(e) and hold the temporary suspension proceeding as soon as possible.

(h) The determination whether the continued practice by a person licensed, certified or registered by the Board would constitute a continuing threat to the public welfare shall be made from information presented to the Panel. The Panel may receive information and testimony in oral or written form. Documentary evidence must be submitted to the Board's general counsel in electronic format at least 24 hours in advance of the time posted for the temporary suspension hearing in all cases where the Panel will be meeting via teleconference. If a hearing is held following notice to a license holder or registrant, Board staff will have the burden of proof and shall open and close. The party responding to the motion for temporary suspension may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the chair of the Panel. The chair of the Panel may set reasonable time limits for any oral arguments and evidence to be presented by the parties. The Panel may question witnesses and attorneys at the members' discretion. Information and testimony that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered.

(i) The determination of the Panel may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

(j) If the Panel suspends a license or certificate, it shall do so by order and the suspension shall remain in effect for the period of time stated in the order, not to exceed the date a final order is issued by the Board in the underlying contested case proceeding. The Panel order must recite the factual and legal basis for imminent peril warranting temporary suspension.

(k) A temporary suspension under Texas Occupations Code §1103.5511 or §1104.211 shall not automatically expire after 45 days if the Board has scheduled a hearing on the contested case to take place within that time and the hearing is continued beyond the 45th day for any reason other than at the request of the Board.

(l) If credible and verifiable information that was not presented to the Panel at a temporary suspension hearing, which contradicts information that influenced the decision of the Panel to order a temporary suspension, is subsequently presented to the Panel with a motion for rehearing on the suspension, the chair of the Panel will schedule a rehearing on the matter. The chair of the Panel will determine, in the chair's sole discretion, whether the new information meets the standard set out in this subsection. A rehearing on a temporary suspension will be limited to presentation and rebuttal of the new information. The chair of the Panel may set reasonable time limits for any oral arguments and evidence to be presented by the parties. Panel members may question witnesses and attorneys. Information and testimony that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered. Any temporary suspension previously ordered will remain in effect, unless the Panel holds a rehearing on the matter and issues a new order rescinding the temporary suspension.

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

Filed with the Office of the Secretary of State on August 23, 2024.

TRD-202403903
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 936-3088

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SUBCHAPTER E. ALTERNATIVE DISPUTE RESOLUTION

22 TAC §157.31

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.31, Investigative Conference. The proposed amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The proposed amendments to §157.31 clarify the timing of when an acknowledgement form may be submitted to the Board.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation; and

-increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.31. Investigative Conference.

(a) The Board may request an applicant or respondent to schedule an investigative conference to discuss a pending license application or the allegations of a pending complaint.

(b) The applicant or respondent may choose to have the investigative conference:

(1) in person at the Board's office in Austin, Texas;

(2) by telephone;

(3) by video conference; or

(4) in writing.

(c) An applicant or respondent may, but is not required to, have an attorney or other advocate present at an investigative conference.

(d) An applicant or respondent will be provided with a Statement of Investigative Conference Procedures and Rights (IC Form) not later than three days before the date of the investigative conference. The applicant or respondent and the applicant's or respondent's attorney, if any, must acknowledge receipt of the IC Form by signing it and delivering it to the Board prior to [~~at the beginning of~~] the investigative conference.

(e) The Board will provide a copy of the investigative report to the applicant or respondent and the applicant's or respondent's representative(s), if any, not later than three days before the date of the investigative conference if the applicant or respondent and the applicant's or respondent's representative(s):

(1) Submit a written request for a copy of the investigative report not later than five days before the date of the investigative conference; and

(2) Sign the Board's confidentiality agreement prohibiting the re-release of the investigative report, without written permission of the Board or a court order, to anyone other than the:

(A) applicant;

(B) respondent;

(C) applicant's or respondent's supervisory appraiser, if any;

(D) applicant's or respondent's legal representative(s); or

(E) an expert witness for the applicant or respondent.

(f) Participation in an investigative conference is not mandatory and may be terminated at any time by any person.

(g) Recording Investigative Conferences. Any person may record an investigative conference by providing the notice required in this section.

(1) Notice Required.

(A) A person choosing to record an investigative conference must provide written notice to the other person(s) participating in the investigative conference three days before the date of the conference.

(B) The notice must state how the person intends to record the investigative conference.

(C) For purposes of this section, the term "written notice" includes a letter or e-mail.

(2) Audio Recordings. A person who chooses to make an audio recording of an investigative conference must provide:

(A) the recording equipment; and

(B) if requested by another person during or after the investigative conference, a copy of the audio recording at the recording person's expense within seven days after the date of the request.

(3) Recording by Court Reporter. A person who chooses to have a court reporter record an investigative conference does so at the person's own expense and must:

(A) allow any person who participates in the investigative conference to make corrections to the court reporter's transcript; and

(B) provide an electronic copy of the final transcript to all persons who participate in the investigative conference at the recording person's expense within seven days after the transcript is final.

(h) At the conclusion of the investigative conference, the Board staff may propose a settlement offer that can include administrative penalties and any other disciplinary action authorized by the Act or recommend that the complaint be dismissed.

(i) The respondent may accept, reject, or make a counter offer to the proposed settlement not later than ten (10) days following the date of the investigative conference.

(j) If the parties cannot reach a settlement not later than ten (10) days following the date of the investigative conference, the matter will be referred to the Director of TALCB or his or her designee to pursue appropriate action.

(k) In this section, the term "person" includes:

(1) an applicant for a license or registration;

(2) a respondent to a complaint; and

(3) the Board.

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

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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3088

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 343. CONTESTED CASE PROCEDURE

The Texas Board of Physical Therapy Examiners (board) proposes amending Chapter 343. Contested Case Procedures, Occupations Code. Specifically, the Board proposes amendments to §343.1. Definitions, §343.23. Hearings, §343.24. Payment of Costs for a Contested Case Hearing Resulting in the Discipline of a Licensee or the Denial of an Application for License, §343.26. Commutation of Time, §343.27. Probation, §343.28. Records Retention Schedule, §343.29. Failure To Appear at Informal Settlement Conference or Hearing, §343.35. Complaint Investigation and Disposition, §343.48. Dismissal of Complaint, §343.50. Application for Reinstatement of License, §343.51. Evaluation for Reinstatement, §343.52. Procedure upon Request for Reinstatement, §343.53. Board Action Possible upon Reinstatement of Revoked License, §343.55. Failure To Appear, and §343.56. Monitoring of Licensees. And proposes the repeal of §343.25. Continuance.

The amendments are proposed in order to provide clarity to the procedures for contested cases, to correct inaccurate and outdated references, and to conform the rules in Chapter 343 with the physical therapy provisions in Chapter 453, Occupations Code, with the administrative procedures in Chapter 2001, Government Code, and with Title 1 Texas Administrative Code. The repeal is proposed as the procedure is covered under the State Office of Administrative Hearings (SOAH) rules for hearings.

Section-by-Section Summary

Section 343.1. Definitions is amended to provide more accurate descriptions and references; to add definitions of Informal Settlement Conference (ISC), Investigation Committee, and Voluntary Surrender; and to reformat accordingly.

Section 343.23. Hearings is amended to correct references and eliminate redundancy of the sited sections of the Texas Government Code and the Texas Administrative Code.

Section 343.24. Payment of Costs for a Contested Case Hearing Resulting in the Discipline of a Licensee or the Denial of an Application for License is amended to correct the title to reflect that penalties not costs are assessed and that administrative penalties may be assessed if a licensee is found in violation of the Act and are payable in accordance with the final order.

Section 343.25. Continuance is repealed as the procedure is covered under SOAH administrative rules for hearings.

Section 343.26. Commutation of Time is amended to correct the title as the section deals with computation of time.

Section 343.27. Probation is amended to correct grammatical errors.

Section 343.28. Records Retention Schedule is amended to align terminology with the current agency records retention schedule.

Section 343.29. Failure To Appear at Hearing is amended to add the procedure for failure to appear at an Informal Settlement Conference and clarify that failure to appear at a State Office of Administrative Hearings (SOAH) shall result in a default judgment against the respondent.

Section 343.35. Complaint Investigation and Disposition is amended to align terminology (a) with Definitions in §343.1. (1) and correct terminology in (b)(2).

Section 343.48. Dismissal of Complaint is amended to replace "respondent has left the state" with "unable to locate" as a reason for complaint dismissal and to correct grammatical errors.

Section 343.50. Application for Reinstatement of License is amended to replace "application" with "request" and to designate the Investigations Committee for consideration of a request for reinstatement.

Section 343.51. Evaluation for Reinstatement is amended to include licenses that have been voluntarily surrendered and to eliminate the requirement for a sworn notarized statement as attestation degree of rehabilitation attained.

Section 343.52. Procedure upon Request for Reinstatement to designate the Investigations Committee for appearance by requestor for reinstatement.

Section 343.53. Board Action Possible upon Reinstatement of Revoked License is amended to include licenses that have been voluntarily surrendered and to include completion of a pending Agreed Order as a requirement for reinstatement.

Section 343.55. Failure To Appear is amended to include licenses that have been voluntarily surrendered.

Section 343.56. Monitoring of Licensees is amended to designate the agency for monitoring of licensees to ensure compliance to board orders.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period the amendments and repeal are in effect there would be no loss of revenue, and there would be no fiscal implication to units of local government as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has determined that for the first five-year period these amendments and repeal are in effect, the public benefit will be providing increased clarity of the procedures for a contested case. Additionally, there will be no cost to the public.

Local Employment Economic Impact Statement

The amendments and repeal are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities as a result of the amendments and repeal; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

During the first five-year period these amendments and repeal are in effect, the impact on government growth is as follows:

(1) The proposed rule amendments and repeal will neither create nor eliminate a government program.

(2) The proposed rule amendments and repeal will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendments and repeal will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendments and repeal will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed rule amendments and repeal revise the language to existing regulation but does not create a new regulation.

(6) The proposed rule amendments and repeal will neither repeal nor limit an existing regulation.

(7) The proposed rule amendments and repeal will neither increase nor decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule amendment and repeal will neither positively nor adversely affect this state's economy.

Takings Impact Assessment The proposed rule amendments and repeal will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments and repeal will not increase costs to regulated persons.

Public Comment

Comments on the proposed amendments and repeal may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 1801 Congress Ave, Suite 10.900, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

22 TAC §§343.1, 343.23, 343.24, 343.26 - 343.29, 343.35, 343.48, 343.50 - 343.53, 343.55, 343.56

Statutory Authority

The amendments are proposed under Texas Occupation Code §453.102, which authorizes the board to adopt rules necessary to implement chapter 453.

Cross-reference to Statute

The proposed amendments implement provisions in Chapter 453, Subchapter H, Occupations Code that pertains to disciplinary action and procedure. No other statutes, articles, or codes are affected by the proposed amendments.

§343.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Physical Therapy Practice Act, Occupations Code, Chapter 453 [~~Texas Civil Statutes, Article~~ 4512e].

(2) Agency--The Executive Council of Physical Therapy & Occupational Therapy Examiners [~~Board of Physical Therapy Examiners~~].

[(3) APTRA--The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 625213a].

(3) [(4)] Applicant--A qualified individual who presents application for licensure as a physical therapist or physical therapist assistant or for reinstatement of a previously suspended or revoked license.

(4) [(5)] Board--The Texas Board of Physical Therapy Examiners whose members [of the Board of Physical Therapy Examiners who] are appointed pursuant to Occupations Code, Chapter 453.051 [Texas Civil Statutes, Article 4512e].

(5) [(6)] Board order--A final decision of the board issued in a contested or uncontested proceeding [or in lieu of such proceeding], which may include findings of fact and conclusions of law, separately stated.

(6) [(7)] Complaint--A written statement of allegations filed with the board which includes a statement of the matters asserted, including any supporting documentation available, the filing of which may initiate a contested case proceeding.

(7) [(8)] Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the board [agency] after an opportunity for adjudicative hearing.

(8) [(9)] Disciplinary action--Imposition of a sanction by the board which may include reprimand, suspension, probation, or revocation of a license, or other appropriate requirements.

(9) [(10)] Executive director--The chief officer [executive director] of the Executive Council of Physical Therapy & Occupational Therapy Examiners [Board of Physical Therapy Examiners].

(10) Informal Settlement Conference (ISC)--A conference designed to resolve contested cases by informally disposing of matters by agreement and voluntary settlement without the need for a formal hearing at the State Office of Administrative Hearings (SOAH).

(11) Investigation Committee--A standing committee of the board that reviews complaint investigations with recommendation of appropriate action made to the board.

(12) [(11)] Licensee--A person who holds a license either permanent or temporary under the [Physical Therapy Practice] Act.

[(12) Moral turpitude--Baseness, vileness, or dishonesty of a high degree.]

(13) (No change.)

(14) Party--A [Each] person or a state agency named or admitted as a party in [with a sufficient legal, economic, or other interest to be named or admitted as such by the agency to] a contested case proceeding [before the agency].

(15) Probation--A period of time when a license is subject to conditions or limitations. [Each person whose license is suspended is placed on probation for the length of the suspension.]

(16) Reinstatement--To reactivate a license that was previously revoked or voluntarily surrendered. [The individual with a revoked license must demonstrate or supply evidence to the board of his or her rehabilitation or current fitness to hold a license. Reinstatement petitions shall be considered no sooner than 180 days after the revocation order becomes final and enforceable.]

(17) (No change.)

(18) Respondent--A person who has been made the subject of a formal or informal complaint alleging violation of the [Texas Physical Therapy Practice] Act, [or] rules, other laws or regulations, or orders of the board [Board of Physical Therapy Examiners].

(19) Revocation--The withdrawal or repeal of a license. [Revocation is established for minimum period of one year.]

(20) Staff--The investigative staff of the board [Board of Physical Therapy Examiners].

(21) (No change.)

(22) Voluntary surrender--The act of relinquishing a license at the will of the licensee in lieu of disciplinary action.

§343.23. Hearings.

[(a)] The State Office of Administrative Hearings (SOAH) shall conduct all administrative hearings of [in] contested cases [under the Administrative Procedure Act (APA)] that are before the board in accordance with Texas Government Code 2001 and Title 1 Texas Administrative Code.

[(b) Transcription of hearing. Each hearing will be recorded by a court reporter.]

[(1) The cost of the transcription shall be borne by the person making the request.]

[(2) A party who appeals a final decision of the board shall pay all of the cost of preparation of the original and any certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.]

§343.24. Payment of Penalties after [Costs for] a Contested Case Hearing Resulting in the Discipline of a Licensee or the Denial of an Application for License.

(a) (No change.)

(b) A person whose application for a license has been denied by the staff or a licensee who has been found in violation of the Act or rules as a result of a contested case hearing may [will] be required to pay administrative penalties [submit a fee for costs] to the board. Payment of penalties are due to the Board in accordance with the final order. [The costs will be those fees billed by SOAH to the board for conducting the hearing and rendering the proposal for final decision.]

§343.26. Computation [Commutation] of Time.

(a) (No change.)

(b) Extension. Unless otherwise provided by statute, the time for filing any pleading, motion, or request may be extended by order of the executive director or designee, upon written motion filed prior to the expiration of the applicable period of time for the filing of the same, showing that the need for extension is not caused by the neglect, indifference, or lack of diligence of the requesting party.

§343.27. Probation.

If [In] placing a person on probation whose license has been suspended, the board may impose such additional terms and conditions as it deems appropriate for the period of probation. The board shall specify the exact duration of the probationary period. Upon finding that a person placed on probation has failed to comply with the terms and condition of the board's order, the board may take [such] additional disciplinary action as it deems appropriate, following notice and hearing.

§343.28. Records Retention Schedule.

All investigations files [records] shall be maintained in accordance with the approved records retention schedule on file with the Texas State Library and Archives Commission.

§343.29. Failure To Appear at Informal Settlement Conference or Hearing.

(a) Informal Settlement Conference. Failure to respond to the allegations, either by personal appearance at the informal settlement conference or in writing, may result in the allegations being confirmed at the informal settlement conference and the highest proposed sanction being recommended to the board. The notice of the informal settlement conference shall be served by delivering a copy to the respondent or licensee in accordance with Texas Government Code §2001.054(c)(1), to the licensee's last known address of record as shown by agency records, not less than 10 days prior to the date of the conference. [~~Even though some or all of the parties or their duly authorized representatives should fail to appear, the board may consider fully the matter pending if notice has been given in accordance with this chapter. Such consideration shall be on the basis of any evidence admitted at the hearings and all pleadings, exhibits, briefs, and other materials presented in connection therewith.~~]

(b) State Office of Administrative Hearings (SOAH) - If a respondent fails to appear in person or by attorney on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the judge shall, upon adequate proof that proper notice under the Texas Government Code chapter 2001 and Title 1 Texas Administrative Code Part 7 was served upon the defaulting party, enter a default judgment in the matter adverse to the respondent. [~~Absence of counsel shall not be good cause for a continuance or postponement of a cause when called for hearing, except that it be allowed in the discretion of the hearings examiner or board, upon cause shown or upon matters within the knowledge or information of the hearings examiner or board to be stated on the record.~~]

§343.35. Complaint Investigation and Disposition.

(a) Complaints shall be assigned a priority status in the following categories:

(1) those indicating that credible evidence exists showing a violation of the [~~Physical Therapy Practice~~] Act involving actual deception, fraud or injury to clients or the public or a high probability of immediate deception, fraud, or injury to clients or the public;

(2) those indicating that credible evidence exists showing a violation of the [~~Physical Therapy Practice~~] Act involving a high probability of potential deception, fraud, or injury to clients or the public;

(3) those indicating that credible evidence exists showing a violation of the [~~Physical Therapy Practice~~] Act involving a potential for deception, fraud, or injury to clients or the public;

(4) all other complaints.

(b) Not later than the 30th day after a complaint is received, the staff shall place a timeline for completion, not to exceed one year, in the investigative file and notify all parties to the complaint. Any change in the timeline must be noted in the file and all parties notified of the change not later than seven days after the change was made. For purposes of this rule, completion of an investigation in a disciplinary matter occurs when:

(1) (No change.)

(2) staff determines there is sufficient evidence to demonstrate a violation of the act, board rules, or board order and drafts proposed board order [~~formal charges~~].

(c) - (e) (No change.)

§343.48. Dismissal of Complaint.

(a) Complaints may be dismissed for the following reasons:

(1) (No change.)

(2) unable to locate [~~respondent has left the state~~];

(3) (No change.)

(4) other reasons which the Investigation Committee believe justify dismissal [~~are justification for dismission~~].

(b) Upon the decision of the Investigation Committee to dismiss a complaint, the person who filed the complaint is provided with a letter explaining why the complaint has been dismissed.

(c) (No change.)

§343.50. Request [~~Application~~] for Reinstatement of License.

(a) At the expiration of 180 days from the date of revocation, the Investigation Committee [~~board~~] may consider a request for reinstatement by the former licensee [~~(applicant)~~].

(b) The request for reinstatement must be submitted to the agency [~~board office~~] in writing and should include a short and plain statement of the reasons why the requestor [~~applicant~~] believes the license should be reinstated.

(c) Upon denial of any request [~~application~~] for reinstatement, the board may not consider a subsequent request [~~application~~] until the expiration of one year from the date of denial of the prior request [~~application~~].

(d) (No change.)

§343.51. Evaluation for Reinstatement.

In considering reinstatement of a revoked or voluntarily surrendered [~~suspended~~] license, the board will evaluate:

(1) the severity of the act which resulted in revocation or voluntary surrender of the license;

(2) the conduct of the applicant subsequent to the revocation or voluntary surrender of license;

(3) the lapse of time since revocation or voluntary surrender;

(4) (No change.)

(5) the degree of rehabilitation attained by the applicant as evidenced by [~~sworn notarized~~] statements sent directly to the board from qualified people who have personal and professional knowledge of the applicant; and

(6) (No change.)

§343.52. Procedure upon Request for Reinstatement.

(a) An applicant for reinstatement of a revoked license must personally appear before the Investigation Committee [~~board~~] at a scheduled date and time to show why the license should be reinstated.

(b) The [~~Upon submission of proof of past revocation of the applicant's license, the~~] applicant has the burden of proof to show present fitness and/or rehabilitation to practice physical therapy.

(c) Where the applicant's license has been revoked or voluntarily surrendered based on a finding, admission, or allegation that the applicant was unfit to practice physical therapy by reasons of intemperate use of alcohol or drugs, misappropriation of controlled substances, an adjudication of mental incompetence, or the existence of any mental disorder, the applicant must submit a written psychiatric or psychological evaluation or [~~and~~] written medical evaluation. Said evaluations shall be obtained solely at the applicant's expense and forwarded directly to the agency by the examiner. The psychiatric or psychological

evaluation must be prepared by a licensed psychiatrist or psychologist and the medical evaluation must be prepared by a licensed physician. Said reports shall include such information as the agency may specifically require with notice to the applicant.

(d) Upon receipt of a written request for reinstatement and all information required by subsection (c) of this section, the applicant will be notified of the [~~a~~] date and time of an appearance before the Investigation Committee [~~board~~].

§343.53. Board Action [~~Possible~~] upon Reinstatement of Revoked or Voluntarily Surrendered License.

After evaluation, the board may:

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

(3) require the satisfactory completion of a pending Agreed Order, or a specific program or remedial education approved by the board [~~agency~~]; and

(4) (No change.)

§343.55. Failure To Appear.

An applicant for reinstatement of a revoked or voluntarily surrendered license who makes a commitment to appear before the board, and fails to appear at a hearing set with notice by the agency, shall not be authorized to appear before the board before the expiration of six months. For good cause shown, the executive director may authorize an exception to this rule.

§343.56. Monitoring of Licensees.

A licensee who is ordered by the board to perform certain acts will be monitored by the agency [~~board~~] to ensure that the required acts are completed per the order of the board.

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

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Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 305-6900

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22 TAC §343.25

Statutory Authority

The repeal is proposed under Texas Occupation Code §453.102, which authorizes the board to adopt rules necessary to implement chapter 453.

Cross-reference to Statute

The proposed repeal is in accordance to provisions in Chapter 453, Subchapter H, Occupations Code that pertains to disciplinary action and procedure. No other statutes, articles, or codes are affected by the proposed repeal.

§343.25. Continuance.

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

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Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.22, 537.28, 537.30 - 537.32, 537.37, 537.39, 537.46, 537.47, 537.67

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-16, Unimproved Property Contract; §537.22, Standard Contract Form TREC No. 11-7, Addendum for "Back-Up" Contract; §537.28, Standard Contract Form TREC No. 20-17, One to Four Family Residential Contract (Resale); §537.30, Standard Contract Form TREC No. 23-18, New Home Contract (Incomplete Construction); §537.31, Standard Contract Form TREC No. 24-18, New Home Contract (Completed Construction); §537.32, Standard Contract Form TREC No. 25-15, Farm and Ranch Contract; §537.37, Standard Contract Form TREC No. 30-16, Residential Condominium Contract (Resale); §537.39, Standard Contract Form TREC No. 32-4, Condominium Resale Certificate; §537.46, Standard Contract Form TREC No. 39-9, Amendment to Contract; §537.47, Standard Contract Form TREC No. 40-10, Third Party Financing Addendum; and new rule §537.67, Standard Contract Form TREC No. 60-0, Addendum for Section 1031 Exchange in Chapter 537, Professional Agreements and Standard Contracts.

Each of the rules correspond to contract forms adopted by reference. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property. These forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the proposed amendments and new rule. The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale).*

Paragraph 4 is amended to add the term "geothermal" to the definition of Natural Resource Leases as a result of a 2023 law change that stipulates property owners own the geothermal energy below the surface of their land and can drill or produce that energy and associated resources.

To be consistent with a recently updated Texas Department of Insurance procedural rule, Paragraph 6C(1) is amended to include the option of providing the T-47.1 Declaration (which does not need to be notarized)-in lieu of the T-47 Affidavit-when the

Seller furnishes the Buyer an existing survey. In lieu of providing a "no survey required" option, Paragraph 6C(2) is amended to read "Buyer may obtain a new survey" instead of "Buyer shall obtain a new survey", and adds that if the Buyer ultimately fails to obtain the survey, the Buyer does not have the right to terminate the contract under Paragraph 2B of the Third Party Financing Addendum because the survey was not obtained.

Because Texas law requires a seller to provide a buyer a copy of any mold remediation certificate issued during the five years preceding the sale of the property, new Paragraph 6E(11) is added to provide information regarding this requirement (except in the Unimproved Property Contract).

Paragraph 6E(12) is modified to add specific examples of the types of notices that should be listed in the paragraph and to add a caution that Seller's failure to provide required notices may provide Buyer with certain remedies, like the ability to terminate the contract. For consistency with that paragraph and with applicable statutory requirements, Paragraphs 6E(4), (7), and (9) are amended to remove references to a separate related addendum

Paragraph 8B is changed to add a statement that brokers' fees are not set by law and are negotiable.

In light of recent discussions surrounding broker compensation, Paragraph 12A(1)(a) and 12A(2) adds that each party pays the brokerage fees that they each have agreed to pay. Paragraph 12A(1)(b) is amended to allow for a specific seller contribution to the buyer's brokerage fees. A new Paragraph 12A(1)(c) has been added to separately address other seller contributions (that was previously in Paragraph 12A(1)(b)) and the prior language that specified the order in which any contribution was to be paid, as well as a limitation on the type of fee that could be paid, is removed. Conforming changes are also made in the Amendment to Contract.

The title of Paragraph 20 is changed to "Federal Requirements" from "Federal Tax Requirements." In new Paragraph 20B of the Farm and Ranch contract, information regarding the obligations related to the federal Agriculture Foreign Investment Disclosure Act has been added.

The compensation disclosure in the Broker Information section of the contracts (except for the Farm and Ranch Contract) has been modified to remove the parenthetical referencing the MLS and to add checkboxes to allow for the fee to be reflected either as a percentage or a dollar amount.

In the Third Party Financing Addendum, to ensure the buyer is terminating appropriately, Paragraph 2A, Buyer Approval, has been changed to require both a notice of termination and a copy of a written statement of the lender's determination like in Paragraph 2B, Property Approval. The language in Paragraph 2B is modified because the language related to notice of termination timing was different than in other contract provisions and was causing confusing. "Requirements" in Paragraph 4 is made singular and a conforming change is made to a paragraph citation.

The Condominium Resale Certificate is amended to conform the language in Paragraphs K and L with section 82.157, Texas Property Code.

In the Unimproved Property contract, Paragraph 3D is amended to include the same sales price adjustment language as in the Farm and Ranch contract. A dollar sign is also added to Paragraph 3D in the Farm and Ranch contract.

Out of concern about confusion and improper use of Paragraph 11, Special Provisions, by license holders, the Addendum for "Back-Up" Contract is modified to provide more clarity on the timing and payment of the earnest money and option fee by incorporating similar language from Paragraph 5 of the contract and by addressing timing and payment of additional fees.

The committee drafted a new Addendum for Section 1031 Exchange that allows the seller or buyer to disclose an intent to use the subject property as a 1031 exchange and includes a statement that the parties will reasonably cooperate with one another. Providing this as an addendum, rather than in the contract, allows the parties to use it when applicable without causing unnecessary confusion. A reference to the new Addendum for Section 1031 Exchange is also added to Paragraph 22 of the contract.

Abby Lee, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lee also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of adopting the sections as proposed will be improved clarity and greater transparency for members of the public and license holders who use these contract forms.

For each year of the first five years the proposed amendments and new rules are in effect, the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules, to Abby Lee, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments and rules are also adopted

under Texas Occupations Code, §1101.155, which authorizes the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the Commission.

The statute affected by these amendments and new rules is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments and new rules.

§537.20. Standard Contract Form TREC No. 9-17 [~~9-16~~], Unimproved Property Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 9-17 [~~9-16~~] approved by the Commission in 2024 [~~2022~~] for mandatory use in the sale of unimproved property where the intended use is for one to four family residences.

§537.22. Standard Contract Form TREC No. 11-8 [~~11-7~~], Addendum for "Back-Up" Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 11-8 [~~11-7~~] approved by the Commission in 2024 [~~2012~~] for mandatory use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts.

§537.28. Standard Contract Form TREC No. 20-18 [~~20-17~~], One to Four Family Residential Contract (Resale).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 20-18 [~~20-17~~] approved by the Commission in 2024 [~~2022~~] for mandatory use in the resale of residential real estate.

§537.30. Standard Contract Form TREC No. 23-19 [~~23-18~~], New Home Contract (Incomplete Construction).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 23-19 [~~23-18~~] approved by the Commission in 2024 [~~2022~~] for mandatory use in the sale of a new home where construction is incomplete.

§537.31. Standard Contract Form TREC No. 24-19 [~~24-18~~], New Home Contract (Completed Construction).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 24-19 [~~24-18~~] approved by the Commission in 2024 [~~2022~~] for mandatory use in the sale of a new home where construction is completed.

§537.32. Standard Contract Form TREC No. 25-16 [~~25-15~~], Farm and Ranch Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 25-16 [~~25-15~~] approved by the Commission in 2024 [~~2022~~] for mandatory use in the sale of a farm or ranch.

§537.37. Standard Contract Form TREC No. 30-17 [~~30-16~~], Residential Condominium Contract (Resale).

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 30-17 [~~30-16~~] approved by the Commission in 2024 [~~2022~~] for mandatory use in the resale of a residential condominium unit.

§537.39. Standard Contract Form TREC No. 32-5 [~~32-4~~], Condominium Resale Certificate.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 32-5 [~~32-4~~] approved by the Commission in 2024 [~~2015~~] for voluntary use as a condominium resale certificate.

§537.46. Standard Contract Form TREC No. 39-10 [~~39-9~~], Amendment to Contract.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 39-10 [~~39-9~~] approved by the Commission in 2024 [~~2022~~] for mandatory use as an amendment to promulgated forms of contracts.

§537.47. Standard Contract Form TREC No. 40-11 [~~40-10~~], Third Party Financing Addendum.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form, TREC No. 40-11 [~~40-10~~] approved by the Commission in 2024 [~~2022~~] for mandatory use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing.

§537.67. Standard Contract Form TREC No. 60-0, Addendum for Section 1031 Exchange.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 60-0 approved by the Commission in 2024 for mandatory use as an addendum to be attached to promulgated contract forms where either party intends to use the property to accomplish a Section 1031 Exchange.

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

Filed with the Office of the Secretary of State on August 23, 2024.

TRD-202403895
Abby Lee
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 936-3057

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 517. FINANCIAL ASSISTANCE

SUBCHAPTER A. CONSERVATION ASSISTANCE

31 TAC §517.3

The Texas State Soil and Water Conservation District Board proposes an amendment to the existing rule Title 31, Part 17, Chapter 517, Subchapter A, §517.3, which outlines that conservation assistance funds can be used to support districts in administering conservation programs, including covering some travel expenses, within specified limits.

Fiscal Note

Kenny Zajicek, Fiscal Officer, has determined that for each year of the first five years that the proposed amended rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments due to enforcing or administering the rule.

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years that the proposed amended rule is in

effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years the proposed amended rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice.

Local Employment Impact Statement

Kenny Zajicek, Fiscal Officer, has determined that the proposed amended rule will not impact local employment or economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Kenny Zajicek, Fiscal Officer, has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities because of the proposed amended rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Kenny Zajicek, Fiscal Officer, has determined that no private real property interests are affected by the proposed amended rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Public Benefit/Cost Note.

Kenny Zajicek, Fiscal Officer, has determined, under Government Code §2001.024(a)(5), that for the first five-year period, the proposed amended rules are in effect, the public benefit will be an efficient use of state resources. He further has determined there will be no probable economic cost to persons required to comply with the proposed amendedrule.

Government Growth Impact Statement

For the first five years that the proposed amended rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Environmental Rule Analysis

The proposed amended rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

Request for Public Comments

The Texas State Soil and Water Conservation Board invites comments on the proposed amended rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Heather Bounds, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504, or by e-mail to hbounds@TSSWCB.Texas.Gov Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after the publication of this proposal to be considered.

Statutory Authority

The amendment is proposed under Texas Agriculture Code, Title 7, Chapter 201, Subchapter B, State Soil and Water Conservation Board, §201.020, which provides the State Board with the authority to adopt rules as necessary for the performance of its functions under Chapter 201, Texas Agriculture Code.

No other code, article or statutes are affected by this amendment.

§517.3. Use of Funds.

Funds appropriated from the general revenue fund and other sources for conservation assistance may be used by the state board to provide funds to districts on a matching basis, to assist them with expenses incurred through the administration and implementation of conservation programs and activities. Indirect administration expenses are an allowable use of conservation assistance funds for reimbursement of certain travel expenses required to conduct official district business at meetings or events sponsored by the State Board or a local soil and water conservation district. Use of conservation assistance funds for indirect administration is limited to reimbursement of mileage and actual expenses incurred for lodging, not to exceed the maximum allowable rates as established in the General Appropriations Act for state travel.

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

Filed with the Office of the Secretary of State on August 26, 2024.

TRD-202403918
Heather Bounds
Government Affairs Specialist
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: October 6, 2024
For further information, please call: (254) 773-8225

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31 TAC §517.10

The Texas State Soil and Water Conservation District Board proposes an amendment to the existing rule Title 31, Part 17, Chapter 517, Subchapter A, §517.10, broadly identifying that the State Board will establish deadlines and removing the previous deadlines of May 15th and August 31st as well as the requirement to claim 2/3 of the original allocation of funds. The amendment will specify that exceptions can only be made by the board or executive director with permission from the board.

Fiscal Note

Kenny Zajicek, Fiscal Officer, has determined that for each year of the first five years that the proposed amended rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments due to enforcing or administering the rule.

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years that the proposed amended rule is in

effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years the proposed amended rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice.

Local Employment Impact Statement

Kenny Zajicek, Fiscal Officer, has determined that the proposed amended rule will not impact local employment or economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Kenny Zajicek, Fiscal Officer, has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities because of the proposed amended rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Kenny Zajicek, Fiscal Officer, has determined that no private real property interests are affected by the proposed amended rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Public Benefit/Cost Note.

Kenny Zajicek, Fiscal Officer, has determined, under Government Code §2001.024(a)(5), that for the first five-year period, the proposed amended rule are in effect, the public benefit will be an efficient use of state resources. He further has determined there will be no probable economic cost to persons required to comply with the rule.

Government Growth Impact Statement

For the first five years that the proposed amended rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Environmental Rule Analysis

The proposed amended rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

Request for Public Comments

The Texas State Soil and Water Conservation Board invites comments on the proposed new rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Heather Bounds, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504, or by e-mail to hbounds@TSSWCB.Texas.Gov Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after the publication of this proposal to be considered.

Statutory Authority

The amendment is proposed under Texas Agriculture Code, Title 7, Chapter 201, Subchapter B, State Soil and Water Conservation Board, §201.020, which provides the State Board with the authority to adopt rules as necessary for the performance of its functions under Chapter 201, Texas Agriculture Code.

No other code, article or statutes are affected by this amendment.

§517.10. Deadlines.

[~~(a)~~] The state board will hereby establish [~~establishes the following~~] deadlines for all claims for conservation assistance funds.

[~~(1) By May 15, districts must have claimed 2/3 of their original annual allocation of conservation funds.~~]

[~~(2) By August 31, districts must have all claims for conservation assistance funds in the state office at Temple.~~]

[~~(b)~~] Exceptions to these deadlines can only be made by the state board or the executive director with permission of the state board on a case-by-case basis.

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

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Heather Bounds
Government Affairs Specialist
Texas State Soil and Water Conservation Board
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER HH. MIXED BEVERAGE TAXES

34 TAC §3.1001

The Comptroller of Public Accounts proposes amendments to §3.1001, concerning mixed beverage gross receipts tax. The comptroller amends this section to reflect the changes in Alcoholic Beverage Code, §§28.1001 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.01 (Authorized Activities), 32.15 (Removal of Beverages from Premises), 32.155 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.17 (Cancellation of Suspension of Permit; Grounds), and 57.01 (Authorized Activities),

made by House Bill 1024, 87th Legislature, 2021, effective May 12, 2021. The comptroller also amends the section throughout to implement House Bill 1545, 86th Legislature, 2019, effective September 1, 2021, which updated the definition of "permittee" in Tax Code, §183.001 (Definitions) and eliminated the distinction between ale, beer, or malt liquor which are now referred to as a malt beverage. This change is made throughout the section. The comptroller further amends this section throughout to add statutory citations.

The comptroller amends subsection (a)(2) by adding clarification language to define a bad debt as uncollectible. In addition, the comptroller moves language related to the requirements for claiming a bad debt to subsection (n) to be consistent with Tax Code, §183.027 (Credits and Refunds for Bad Debts). The comptroller amends subsection (a)(3) to delete language related to acceptable payment methods to purchase alcoholic beverages. Only distributors, manufactures, and retailers have restrictions under the Alcoholic Beverage Code related to acceptable types of payments. The comptroller also amends subsection (a)(8) to update the definition of the term "permittee." House Bill 1545 consolidated, repealed, and created certain licenses and permits to streamline the permitting process. In addition, the comptroller amends language to be consistent with the definition of Permittee and Licensee as defined in the Alcoholic Beverage Code §1.04 (11) and (16) (Definitions).

The comptroller deletes subsection (b)(4), a graphic related to separate tax disclosure statements, as it is available on the comptroller's website.

The comptroller deletes subsection (c)(1)(I), to delete language related to temporary permits, as only one temporary permit exists within the definition of permittee based on changes made from House Bill 1545. The comptroller renumbers all subsequent paragraphs accordingly.

The comptroller amends subsection (e) to delete redundant language for a holder of a temporary permit to report and remit mixed beverage gross receipts tax as they are included in the definition of "permittee" provided by subsection (a)(8).

The comptroller amends subsection (f) to add new paragraph (8) to include alcoholic beverages sold by a permittee for off-premises consumption in the list of items excluded from mixed beverage gross receipts tax. House Bill 1024 amended the Alcoholic Beverages Code to allow permittees to sell alcoholic beverages for off-premise consumption. Only alcoholic beverages sold for on-premises consumption by a permittee are taxed under Tax Code, §183.021 (Tax imposed on Gross Receipts of Permittee from Mixed Beverages). Because these beverages are for off-premises consumption, the comptroller interprets this to mean these sales are not subject to the mixed beverage gross receipts tax. The comptroller renumbers all subsequent paragraphs accordingly.

The comptroller amends subsection (n)(1) to add new subparagraphs (A) through (C) with language moved from subsection (a)(2). The new subparagraphs are consistent with Tax Code, §183.027.

The comptroller amends subsection (o)(3), to add average pour figures the comptroller may accept for malt beverages and wine in the absence of records or evidence made available for audit. These presumptions are recognized and accepted in the depletion-analysis methodology by the comptroller for auditing mixed beverage taxpayers. *See e.g.*, Comptroller Decision No. 117,284 (2021).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to current statute and improving readability. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant anticipated economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Tax Code, §183.021 (Tax Imposed on Gross Receipts of Permittee from Mixed Beverages) and Alcoholic Beverage Code, §§28.1001 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.01 (Authorized Activities), 32.15 (Removal of Beverages from Premises), 32.17 (Cancellation of Suspension of Permit; Grounds), 32.155 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 57.01 (Authorized Activities).

§3.1001. Mixed Beverage Gross Receipts Tax.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Alcoholic beverage--Alcohol, or any beverage containing more than 0.5% of alcohol by volume, which is capable of use for beverage purposes, either alone or diluted.

(2) Bad debts--The unpaid portion of the gross receipts on sales or services of mixed beverages that are uncollectible by the permittee. [~~that have been charged off the books as a bad debt and that are deducted for federal tax purposes during the same or subsequent reporting period.~~]

(3) Cash or ticket bar--A bar at a special function at which guests can purchase alcoholic beverages. [~~Payments for the alcoholic beverages can be made by using cash, credit cards, or debit cards, or by redeeming tickets that are purchased by guests.~~]

(4) Complimentary alcoholic beverage--An alcoholic beverage served without any consideration paid to the permittee.

(5) Mandatory gratuity charge--Any amount required by the permittee in excess of the charge for the sale of alcoholic beverages.

(6) Mixed beverage--A serving of a beverage composed in whole or in part of an alcoholic beverage in a sealed or unsealed con-

tainer of any legal size for consumption on the premises where served or sold by a permittee.

(7) Open bar--A bar at a special function at which alcoholic beverages have been paid for by the host or are prepaid through an admission fee. This differs from the provision of complimentary alcoholic beverages in that the alcoholic beverages are purchased by the host or donated to the host for the purpose of being served for free at the special function.

(8) Permittee--A person who holds any of the following permits issued by the Texas Alcoholic Beverage Commission: a mixed beverage permit, private club registration permit, private club exemption certificate permit, private club registration permit with a retailer late hours certificate, nonprofit entity temporary event permit, private club registration permit with a food and beverage certificate, mixed beverage permit with a late hours certificate, mixed beverage permit with a food and beverage certificate, or distiller's and rectifier's permit. The term includes an agent, servant, or employee of that person. [~~A person, agent, or the officer, director, manager, or managing general partner of an entity that is the holder of a mixed beverage permit, a mixed beverage late hours permit, a mixed beverage permit holding a food and beverage certificate, a daily temporary mixed beverage permit, a private club registration permit, a private club exemption certificate permit, a private club late hours permit, a daily temporary private club permit, a private club registration permit holding a food and beverage certificate, a caterer's permit, or a rectifier's and distiller's permit issued by the Texas Alcoholic Beverage Commission.~~]

(9) Qualified employees--Employees who customarily and regularly provide the service upon which a gratuity is based, including, but not limited to, waiters, waitresses, busboys, service bartenders, wine stewards, and maîtres d'hôtel. The term does not include janitorial help, chefs, cashiers, or dishwashers.

(10) Reasonable mandatory gratuity charge--A mandatory gratuity charge that does not exceed 20%.

(11) Source record--A dated customer service check or ticket; a dated cash register receipt, if coded to reflect all information required by subsection (k) of this section; or the equivalent of a dated customer service check or a dated cash register receipt, subject to approval by the comptroller.

(12) Temporary membership card--A card printed and sold to a private club by the Texas Alcoholic Beverage Commission to be sold by the private club to an individual that entitles the individual to all the privileges of membership in the private club for a period not to exceed three days. The card also entitles the holder to bring not more than three persons into the private club as the holder's guests.

(13) Voluntary gratuity--An amount added to the bill by the purchaser or money given freely by the purchaser over and above the price charged for the sale or service of alcoholic beverages.

(14) Walked checks or tabs--An industry term that refers to the instance of a customer that on a particular business day consumes alcoholic beverages and leaves the permittee's premises without paying or providing the appropriate consideration for the alcoholic beverages. These differ from bad debts in that no agreement exists to extend credit to the customer; and these differ from complimentary alcoholic beverages in that the intent is to sell the alcoholic beverages and not be given away as complimentary alcoholic beverages.

(b) Mixed beverage gross receipts tax. Effective January 1, 2014, the rate of the tax is reduced from 14% to 6.7%. The tax is imposed on the gross receipts of a permittee received from the sale, preparation, or service of alcoholic beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee. The mixed beverage gross receipts tax is imposed in addition to the mixed beverage sales tax imposed under Tax Code, Chapter 183, Subchapter B-1 (Mixed Beverage Sales Tax).

(1) Gross receipts tax imposed on permittee, not customer. The mixed beverage gross receipts tax is a tax on gross receipts. The tax may not be separately charged to or paid by the customer and cannot be considered included in the gross receipts amount. A receipt, bill, or other invoice for the sale or service of alcoholic beverages may not include a charge labeled a "Tax Reimbursement."

(2) Monthly mixed beverage gross receipts tax reports. Each permittee must file a monthly mixed beverage gross receipts tax report on or before the 20th day of the following month even if no sales or services of alcoholic beverages were made during the month. The Texas Mixed Beverage Gross Receipts Tax report is due in addition to the Texas Mixed Beverage Sales Tax report required to be filed under Tax Code, Chapter 183, Subchapter B-1, and the Texas Sales and Use Tax report required to be filed under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax).

(3) Separate tax disclosure statement. For informational purposes only, a permittee may add a separate statement on a customer's invoice, bill, or other receipt that is not shown as part of the charges to the customer and that clearly discloses:

(A) the amount of mixed beverage gross receipts tax to be paid by the permittee to the comptroller on that sale; or

(B) the total amount of mixed beverage gross receipts tax to be paid by the permittee to the comptroller combined with the amount of mixed beverage sales tax collected by the permittee to be remitted to the comptroller on that sale.

[~~(4) Examples of separate tax disclosure statements.~~] [~~Figure 34 TAC §3.1001(b)(4)~~]

(c) Taxable mixed beverage gross receipts.

(1) The mixed beverage gross receipts tax base includes, but is not limited to, receipts for the following items:

(A) receipts from the sale or service of alcoholic beverages;

(B) receipts from the sale or service of nonalcoholic beverages that are mixed and consumed with alcoholic beverages on the permittee's premises;

(C) receipts from cover charges, door charges, entry fees, or admission fees when the Texas Alcoholic Beverage Commission has determined that the collection of the cover charge, door charge, entry fee, or admission fee is in violation of the Texas Alcoholic Beverage Commission rules or regulations. In this instance the tax base is the entire receipts from the cover charge, door charge, entry fee, or admission fee plus the reduced sales or service prices received for the alcoholic beverages;

(D) the normal selling price of alcoholic beverages served with meals with no separate charge. If the specific alcoholic beverage is being sold or served at a reduced price at the same time as the meal, the tax base for the alcoholic beverage is the reduced price;

(E) any portion of a reasonable mandatory gratuity charge that is not disbursed to qualified employees;

(F) the entire mandatory gratuity charge when in excess of 20%, regardless of how the gratuity is disbursed;

(G) miscellaneous charges in conjunction with the sale or service of alcoholic beverages such as bar set-up fees, bartender fees, corkage fees, maîtres d'hôtel charges, etc.;

(H) all sales or services of alcoholic beverages by caterers; and

[~~(I) all sales or services of alcoholic beverages sold or served by the holder of a temporary permit listed in subsection (a)(8) of this section or by the holder of a beer and wine only temporary permit issued to a mixed beverage permittee; and~~]

(I) [~~(J)~~] all sales of coupons, tokens, tickets, etc., that are redeemed or used in any manner to purchase or pay for the sale or service of an alcoholic beverage.

(2) Thefts of money or legal tender received from the sale or service of alcoholic beverages are not deductible from the mixed beverage gross receipts tax base.

(d) Private clubs, special events, and functions. The gross receipts from alcoholic beverages served at special events or functions, such as golf or tennis tournaments at private clubs when a lump-sum charge entitles the member or guest to various items such as green fees, food, alcoholic beverages, golf cart rentals, etc., shall be computed by one of the following methods.

(1) The club shall maintain documentation that shows the normal cost to a member or guest for each of the items provided for the lump-sum charge. The permittee may then compute the percentage of the total of all the charges attributable to the sale or service of the alcoholic beverages. This percentage is then applied to the actual lump-sum amount paid by the member or guest to determine the amount of gross receipts subject to the mixed beverage gross receipts tax. For example, if the total of all the items would normally cost $300 and the permittee estimates that the portion attributable to the sale or service of alcoholic beverages is $30, then 10% of the actual lump-sum amount would be reported as subject to the mixed beverage gross receipts tax. If the lump-sum amount paid by the member or guest is $200, then the mixed beverage gross receipts tax base would be $20. The documentation used by the permittee is subject to review by the comptroller's personnel and any amounts determined to be inaccurate or unreasonable may be adjusted.

(2) The permittee may choose to use the normal sales or service prices of the alcoholic beverages as the tax base for the mixed beverage gross receipts tax.

(e) Nonprofit organizations holding fundraising and other special events where 100% of the net profit of the event goes to the nonprofit organization. Nonprofit organizations with an IRS Section 501(c)(3), (4), (8), (10), or (19) status who are permittees, [~~including organizations who have been issued a temporary permit,~~] are responsible for paying the mixed beverage gross receipts tax as follows:

(1) if tickets are sold to an event with an open bar, the nonprofit organization owes mixed beverage gross receipts tax on the cost to the organization of any alcoholic beverages purchased for the event;

(2) if tickets are sold to an event with an open bar and the alcoholic beverages are donated to the nonprofit organization, the nonprofit organization does not owe mixed beverage gross receipts tax or use tax as provided by Tax Code, Chapter 151, on the donated alcoholic beverages, but owes mixed beverage gross receipts tax on the cost of any alcoholic beverages purchased for the event;

(3) if an event is one with a cash or ticket bar (with or without an entry fee), the nonprofit organization owes mixed beverage gross receipts tax on the total receipts from the sale and service of alcoholic beverages;

(4) if an event is one with no entry fee and an open bar, the nonprofit organization does not owe mixed beverage gross receipts tax, but owes use tax as provided by Tax Code, Chapter 151, on the cost of any alcoholic beverages purchased by the organization for the event.

(f) Items excluded from the mixed beverage gross receipts tax base. The mixed beverage gross receipts tax does not apply to receipts for the items described in this subsection.

(1) Complimentary alcoholic beverages. Use tax as provided by Tax Code, Chapter 151, is due on the taxable ingredients of the complimentary alcoholic beverages. A serving of an alcoholic beverage shall not be a complimentary alcoholic beverage if any consideration is paid to the permittee, which may include, but is not limited to, the following: the alcoholic beverage is served in connection with food or any other thing sold to the recipient or an entertainment or entry fee is charged that includes one or more drink coupons or tickets. Any alcoholic beverage served under the identified or similar conditions is subject to the gross receipts tax, computed on the basis of the normal charge for the sale or service of such alcoholic beverage.

(2) Complimentary alcoholic beverages served during promotional periods such as happy hours at hotels or motels. If, however, there is an increase in guest room rates attributable to the promotional periods, the comptroller will have the option to tax either the increase in the room rate under Tax Code, Chapter 156 (Hotel Occupancy Tax), or assess use tax on the taxable ingredients of the complimentary drinks. The comptroller will have the authority to use information such as the room rates at comparable hotels and motels in the area to determine if an increased rate is attributable to the promotional period of alcoholic beverages.

(3) Complimentary alcoholic beverages served to holders of free drink cards or free drink tokens, for which no consideration was paid to the permittee.

(4) Voluntary gratuities.

(5) Reasonable mandatory gratuity charges, subject to the requirements of subsection (i)(1) of this section.

(6) Walked checks or tabs.

(7) Receipts from cover charges, door charges, entry fees, or admission fees that are for entertainment, food specials, and other purposes, and receipts from the sale of temporary membership cards. Sales tax as provided by §3.298 of this title (relating to Amusement Services) is due on these receipts.

(8) Alcoholic beverages sold by a permittee for off-premises consumption.

(9) [~~(8)~~] Bad debts. For more information on bad debt refunds or credits, refer to subsection (n) of this section.

(10) [~~(9)~~] Mixed beverage sales taxes. Mixed beverage sales taxes are not part of the mixed beverage gross receipts tax base. A permittee who sells mixed drinks with mixed beverage sales tax included in the sales price should deduct the mixed beverage sales tax before calculating the mixed beverage gross receipts tax base.

(g) Alcohol loss. No mixed beverage gross receipts tax is due on alcoholic beverages destroyed due to spillage or breakage.

(h) Inventory for cooking. No mixed beverage gross receipts tax is due on alcoholic beverages used in cooking.

(1) Purchases. Purchases of alcoholic beverages used in cooking must be documented either:

(A) by purchase invoices that have such beverages clearly denoted by either the seller or purchaser; or

(B) by separate purchase invoice.

(2) Storage. Alcoholic beverages used in cooking may be stored with regular bar stock or in a separate storage area.

(3) Use. The withdrawal from inventory of alcoholic beverages used in cooking must be recorded at the time of withdrawal on a service check or other permanent source record. Use tax as provided by Tax Code, Chapter 151, is not due on alcoholic beverages used in cooking.

(i) Mandatory gratuity charges.

(1) Reasonable mandatory gratuity charges are excluded from the mixed beverage gross receipts tax base if they are:

(A) separated from the sales price of the alcoholic beverage served;

(B) identified as a tip or gratuity by any reasonable means, including such terms as service fee or service charge; and

(C) disbursed to qualified employees. Any portion of a reasonable mandatory gratuity charge that is retained by the employer is included in the mixed beverage gross receipts tax base.

(2) Mandatory gratuity charges in excess of 20%. If a mandatory gratuity charge exceeds 20% then the entire mandatory gratuity charge is included in the mixed beverage gross receipts tax base regardless of how the gratuity is disbursed.

(j) Record requirement. Records required by the comptroller for mixed beverage permittees must be kept for a minimum of four years and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller, or in which an administrative hearing or judicial proceeding is pending. Records must be made available upon request within a reasonable time for examination by the comptroller or authorized agents or employees. The records, in general, must be contemporaneous and must reflect the total gross receipts from the sale or service of alcoholic beverages and those associated services that are subject to the gross receipts tax, as provided by subsections (c), (d) and (e) of this section. Records may be written documents or their electronic equivalents. Permittees must contact the Texas Alcoholic Beverage Commission for information concerning Texas Alcoholic Beverage Commission record keeping requirements.

(k) Source records.

(1) The information described in this subsection is required to be printed on a source record in a manner that makes such information clearly evident or by a system of symbols (codes) if such symbols and their meaning are printed on the source record or maintained on the licensed premises.

(A) Each individual serving of an alcoholic beverage and the price charged. When using service checks, it is permissible to make one entry on a service check for more than one individual serving if all of the servings are of the same type (e.g., 3 Scotch & Water @ $2.00 = $6.00). If all of the servings are not of the same type, a separate entry must be made on the service check for each type of service (e.g., 3 Scotch & Water @ $2.00 = $6.00, 2 Rum & Coke @ $2.00 = $4.00). When using a cash register only, regardless of the type of service, each individual serving must be rung up separately. When using a combination of service checks and a cash register, it is not necessary to itemize each serving on the cash register tape if all the required information is shown on the service check.

(B) For an alcoholic beverage not served as an individual separate serving, the unit of the serving used and the price charged. When using service checks, units of servings that are more than an individual separate serving shall be recorded as such (e.g., 2 pitchers of a malt beverage [~~beer~~] @ $3.25 = $6.50, 1 pitcher of daiquiri @ $6.00 = $6.00). When using a cash register only, each unit of serving which is more than an individual separate serving must be rung up separately, with the price list identifying the unit of serving. When using a combination of service checks and a cash register, it is not necessary to itemize each serving on the cash register tape if all the required information is shown on the service check.

(C) Each separate serving or other unit shall be clearly identified as to the kind of drink (e.g., daiquiri, tequila sunrise) or class of beverage (e.g., malt beverage [~~beer~~], wine, whiskey). If a cash register does not have sufficient keys for the classification, the price list used for identifying the units of servings must also identify the kinds of servings.

(D) The date of the transaction. For this purpose the "date" begins as of 3:00 a.m. one day and continues until 3:00 a.m. the next day.

(E) Complimentary alcoholic beverages, which shall be recorded on service checks only. A check must be prepared for each individual or party served. The check should be prepared as if the service of the complimentary alcoholic beverage was a normal sale and then clearly marked as being complimentary. The service checks should be grouped daily and filed with the daily summary showing the information on the summary as required by subsection (l) of this section.

(F) Mandatory gratuity charges that exceed 20% of the charge for alcoholic beverages must be recorded and identifiable on a source record. A reasonable mandatory gratuity charge must be recorded and identifiable on the source record only if the gratuity is disbursed to recipients other than qualified employees, including, for example, owners, club managers with no direct involvement in the particular event, janitorial help, chefs, cashiers, and dishwashers. Voluntary gratuities are not to be recorded on a source record.

(2) Source records shall be maintained in sequence by date.

(l) Daily Summaries. Each permittee must maintain a daily summary that includes the following information:

(1) all information required to be recorded on source records;

(2) complimentary alcoholic beverages dispensed, showing the number of services, type of service, kind of drink, and normal selling price;

(3) alcoholic beverages that were lost through theft, showing the number of containers lost by size, brand, and class. The theft must be reported to the proper police department and must be substantiated by the report of such police department;

(4) alcoholic beverages that were lost through a disaster, showing the number of containers lost by size, brand, and class. The disaster must be reported to the comptroller;

(5) alcoholic beverages that were lost through breakage or spillage, showing the number of containers lost by size, brand, and class or type of drink and size. A written report must be prepared at the time of the loss;

(6) alcoholic beverages that were lost through the cleaning, servicing, or repair of dispensing equipment lines, showing the amount lost by class or type of drink and supported by:

(A) reports prepared by the permittee at the time of the malfunction; or

(B) repair/service invoices prepared by the repair/service company;

(7) alcoholic beverages taken from inventory for use in cooking;

(8) cover charges, door charges, entry fees, or admission fees. Cover charges, door charges, entry fees, and admission fees are subject to sales tax as provided by §3.298 of this title, unless the Texas Alcoholic Beverage Commission determines that the cover charges, door charges, entry fees, or admission fees collected are in violation of the Texas Alcoholic Beverage Commission rules or regulations; and

(9) information pertaining to changes made during the month concerning prices, glass sizes, bulk machine (e.g., margarita machine) recipes, ounces per serving, parties, or promotions.

(m) Purchase invoices.

(1) A record of all alcohol and alcoholic beverages purchased or received showing the date, the name and address of the person from whom purchased or received, the location from where shipped, the location received, the quantity and kind of beverage (brand and class) received, and the total price paid for each brand and class received.

(2) Alcoholic beverages used in mixing drinks as the secondary ingredient (e.g., vermouth, triple sec) must be supported by purchase invoices which have such beverages clearly denoted by the purchaser.

(n) Bad debts refund or credit.

(1) A permittee may take a credit against taxes to be paid to the comptroller or claim a refund on taxes paid to the comptroller for bad debt on sales if the permittee:[.]

(A) determines that the unpaid portion will be uncollectible;

(B) enters the unpaid portion of the sales gross receipts on their books as a bad debt; and

(C) claims the bad debt as a deduction for federal tax purposes during the same or subsequent reporting period.

(2) To establish bad debt credit or refund, a permittee's records must show:

(A) date of sale or service;

(B) name and address of purchaser;

(C) source records of sale or service;

(D) evidence that the gross receipts tax was paid to the comptroller;

(E) all payments or credits applied to the account of the purchaser;

(F) a designation that the account is a bad debt; and

(G) evidence that the account has been or will be claimed as a bad debt deduction for federal income tax purposes.

(3) To determine the amount of bad debt allowance for tax, all payments or credits in reduction of a customer's account must be applied ratably between alcoholic beverages and other goods sold to that customer.

(4) If all or part of the amount claimed as a bad debt is later collected, the amount collected must be reported as a taxable receipt in the reporting period in which the collection was made.

(5) Accounts may not be labeled as a bad debt for the purpose of delaying the payment of the mixed beverage gross receipts tax.

(o) Audit and examination of tax account.

(1) Determination of tax liability. In examining the tax account of any permittee, the comptroller may compute and determine the amount of gross receipts tax liability based on reports filed with the comptroller, records or information obtained from the permittee, records or information obtained from any seller who furnished alcoholic beverages to the permittee, or such other information as may come to the attention of the comptroller. The comptroller presumes that the disposition of all alcoholic beverages purchased by the permittee is taxable until established otherwise.

(2) Access to all information. The comptroller may examine all books, records, papers, documents, supplies, and equipment of a permittee. Additional records that may be required to be presented include, but are not limited to, the following:

(A) all procedure and operation manuals;

(B) all financial ledgers, journals, and registers;

(C) all financial statements prepared internally or by an outside bookkeeper, accountant, or certified public accountant;

(D) all bank statements;

(E) all federal income tax returns; and

(F) all state and federal employment tax returns and supporting documents.

(3) Failure to maintain or make records available for audit. In examining the tax account of each permittee, if the comptroller finds that the permittee has failed to maintain or make available the records required by any regulation of the comptroller, the comptroller may compute and determine the amount of the gross receipts tax liability from any available source or records, and estimates of the tax liability may be made by use of any available records for any period for which the permittee has failed to maintain records or file a report with the comptroller. In the event records are not made available, the comptroller will presume all alcohol purchased was sold. In the absence of records or evidence to the contrary, the comptroller may use [~~accept~~] an average pour size [~~figure~~] of 1.25 ounces for [~~per serving of~~] liquor; 16 ounces for a malt beverage; and 6 ounces for wine.

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

Filed with the Office of the Secretary of State on August 23, 2024.

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Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 475-2220

♦ ♦ ♦

34 TAC §3.1002

The Comptroller of Public Accounts proposes amendments to §3.1002, concerning mixed beverage sales tax. The comptroller amends the section to reflect the changes in Alcoholic Beverage Code, §§28.1001 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.01 (Authorized Activities), 32.15 (Removal of Beverages from Premises), 32.155 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.17 (Cancellation of Suspension of Permit; Grounds),

and 57.01 (Authorized Activities), made by House Bill 1024, 87th Legislature, 2021, effective May 12, 2021.

The comptroller amends subsection (a) to delete references to definitions defined in other statutes and rules and adds those definitions from those references to enhance readability. The comptroller amends paragraph (1) to add the definition of an alcoholic beverage as defined in Alcoholic Beverage Code, §1.04(1) (Definitions). The comptroller amends paragraph (2) to add the definition of complimentary alcoholic beverage as defined in §3.1001 (Mixed Beverage Gross Receipts). The comptroller amends paragraph (3) to add the definition of a governmental entity as defined in Tax Code, §151.309. The comptroller amends paragraph (5) to define the term permittee as defined in Tax Code, §183.001(b)(1) (Definitions).

The comptroller amends subsection (b) to replace the reference to §3.1001(f)(7) (Mixed Beverage Gross Receipts Tax) with §3.1001(f)(8). This implements House Bill 1024, which relates to alcoholic beverages sold by a permittee for off-premises consumption. These types of beverages are not subject to mixed beverage taxes as they are not consumed on premises as required by Tax Code, §183.041 (Tax Imposed on Sales of Mixed Beverages and Related Items). The change is consistent with proposed amendments to §3.1001 of this title.

The comptroller rearranges subsection (c)(5) related to bad debts for readability.

The comptroller deletes subsection (d)(4), a graphic related to examples of disclosure of tax statements, as it is available on the comptroller's website.

The comptroller amends subsection (f)(6) by deleting reference to obsolete mixed beverage permits and adding general language of permit, license, or certificate.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to current statutes and improving readability. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Alcoholic Beverage Code, §§28.1001 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.01 (Authorized Activities), 32.15 (Removal of Beverages from Premises), 32.155 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.17 (Cancellation of Suspension of Permit; Grounds), and 57.01 (Authorized Activities).

§3.1002. Mixed Beverage Sales Tax.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Alcoholic beverage--Alcohol, or any beverage containing more than 0.5% of alcohol by volume, which is capable of use for beverage purposes, either alone or diluted. [~~This term has the same meaning as assigned by §3.1001 of this title (relating to Mixed Beverage Gross Receipts Tax).~~]

(2) Complimentary alcoholic beverage--An alcoholic beverage served without any consideration paid to the permittee. [~~This term has the same meaning as assigned by §3.1001 of this title.~~]

(3) Governmental entity--The United States; an unincorporated instrumentality of the United States; a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States; the state of Texas; a county, city, special district, or other political subdivision of Texas; or other state or governmental unit boarding Texas but only to the extent those units exempt or do not impose tax on similar sales of items to Texas or a political subdivision of Texas. [~~An organization that is exempted from sales and use tax otherwise imposed on their purchases under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Taxes), by operation of Tax Code, §151.309 (Governmental Entities).~~]

(4) Nonprofit organization--An organization that is exempted from the sales and use tax imposed under Tax Code, Chapter 151, by operation of Tax Code, §151.310(a) (Religious, Educational, and Public Service Organizations).

(5) Permittee--A person who holds any of the following permits issued by the Texas Alcoholic Beverage Commission: a mixed beverage permit, private club registration permit, private club exemption certificate permit, private club registration permit with a retailer late hours certificate, nonprofit entity temporary event permit, private club registration permit with a food and beverage certificate, mixed beverage permit with a late hours certificate, mixed beverage permit with a food and beverage certificate, or distiller's and rectifier's permit. The term includes an agent, servant, or employee of that person. [~~This term has the same meaning as assigned by §3.1001 of this title.~~]

(b) Mixed beverage sales tax. A tax at a rate of 8.25% is imposed on each alcoholic beverage sold, prepared, or served by a permittee, and on ice and each nonalcoholic beverage sold, prepared, or served by a permittee to be mixed with alcohol and consumed on the permittee's premises. The sales price of each item on which mixed beverage sales tax is imposed includes, but is not limited to, those items identified in §3.1001(c) of this title. Those items identified in §3.1001(f)(1) - (8) [~~(7)~~] of this title are excluded from the sales price of items on which mixed beverage sales tax is imposed. Mixed beverage sales tax is imposed in addition to the mixed beverage gross receipts tax imposed under Tax Code, Chapter 183, Subchapter B.

(c) Administration, collection, and enforcement of mixed beverage sales tax.

(1) Except as otherwise provided in this paragraph, mixed beverage sales tax is administered, collected, and enforced in the same

manner as sales and use tax is administered, collected, and enforced in Tax Code, Chapter 151, except:

(A) a permittee may not deduct or withhold any amount of taxes collected as reimbursement for the cost of collecting the tax, pursuant to Tax Code, §151.423 (Reimbursement to Taxpayer for Tax Collection); [~~and~~]

(B) a permittee may not receive a discount for prepaying the tax, pursuant to Tax Code, §151.424 (Discount for Prepayments); and[~~.~~]

(C) any record, report or other instrument required to be filed by a permittee is not confidential under Tax Code, §151.027(a) (Confidentiality of Tax Information).

(2) Tax due is debt of the purchaser. Mixed beverage sales tax is a debt of the purchaser to the permittee until collected.

(3) Tax-included sales price. The total amount shown on a customer's sales invoice, billing, service check, ticket, or other receipt for sales that are subject to mixed beverage sales tax is presumed to be the sales price, without tax included. Contracts, bills, invoices, or other receipts that merely state that "all taxes" are included are not sufficient to relieve either the customer or the permittee of their tax responsibilities on the transaction. The permittee may overcome the presumption by using the permittee's records to show that tax was included in the sales price.

(4) Record-keeping requirements. Permittees are responsible for creating and maintaining records of purchases and sales as required by §3.1001(j) - (m) and (o) of this title.

(5) Bad debts. [~~The exclusion of bad debts from the mixed beverage gross receipts tax base, as established in §3.1001(n) of this title, does not apply to mixed beverage sales tax.~~] Bad debt deductions from mixed beverage sales tax are treated in the same manner as bad debt deductions from sales tax. For more information on bad debt deductions from sales tax, refer to §3.302 of this title (relating to Accounting Methods, Credit Sales, Bad Debt Deductions, Repossession, Interest on Sales Tax, and Trade-Ins). The exclusion of bad debts from the mixed beverage gross receipts tax base, as established in §3.1001(n) of this title, does not apply to mixed beverage sales tax.

(d) Separate tax disclosure statement.

(1) A permittee may include on a customer's sales invoice, billing, service check, ticket, or other receipt that includes an item subject to mixed beverage sales tax:

(A) a statement that mixed beverage sales tax is included in the sales price;

(B) a separate statement of the amount of mixed beverage gross receipts tax to be paid by the permittee on that sale;

(C) a separate statement of the amount of mixed beverage sales tax imposed on that item;

(D) a statement of the combined amount of mixed beverage gross receipts tax and mixed beverage sales tax to be paid on that item; or

(E) a statement of the combined amount of mixed beverage sales tax and sales and use tax imposed under Tax Code, Chapter 151, to be paid on all items listed on that sales invoice, billing, service check, ticket, or other receipt.

(2) Mixed beverage gross receipts tax cannot be charged to or paid by the customer. A receipt with a statement of the combined amount of mixed beverage gross receipts tax and mixed beverage sales tax provided in paragraph (1)(D) of this subsection must clearly show that the customer is not being charged mixed beverage gross receipts tax.

(3) For each receipt with a statement of the combined amount of mixed beverage sales tax and sales and use tax, as provided in paragraph (1)(E) of this subsection, the permittee's books and records must clearly show the amount of mixed beverage sales tax and sales and use tax on each sale of alcohol.

[~~(4) Examples of disclosure of tax statements.~~]
[~~Figure: 34 TAC §3.1002(d)(4)~~]

(e) Complimentary beverages. A permittee owes sales and use tax, as imposed by Tax Code, Chapter 151, on the purchase of alcoholic beverages, ice, and nonalcoholic beverages that are ingredients of a complimentary alcoholic beverage or that are served or provided by the permittee, without any consideration from the customer, to be mixed with a complimentary alcoholic beverage and consumed on the permittee's premises. The permittee also owes sales and use tax on taxable items that are furnished with a complimentary alcoholic beverage, such as napkins and straws.

(f) Exemptions; governmental entities; nonprofit organizations; university and student organizations; volunteer fire departments; temporary permit.

(1) Governmental entity exempt on purchase of alcohol. A governmental entity can claim an exemption from mixed beverage sales tax on the purchase of alcohol in the same manner as a governmental entity can claim exemption from the payment of sales and use tax on the purchase of alcohol under Tax Code, §151.309.

(2) Purchase of alcohol by nonprofit organization not exempt. A nonprofit organization cannot claim an exemption from the mixed beverage sales tax on the purchase of alcohol. In addition, except as provided in this subsection, a nonprofit organization is responsible for collecting mixed beverage sales tax on the sale, preparation, or service of alcoholic beverages to the same extent that the organization is responsible for paying mixed beverage gross receipts tax on such beverages. For more information, refer to §3.1001(e) of this title.

(3) Nonprofit organizations; fundraising events.

(A) The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a nonprofit organization that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(1) or (2) during a qualifying fundraising sale or auction authorized by Tax Code, §151.310(c).

(B) Except as provided in subparagraph (A) of this paragraph, the sale, preparation, or service of alcohol by a nonprofit organization that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(1) or (2) is computed in the same manner as mixed beverage gross receipts tax is computed in §3.1001(e) of this title.

(4) University and college student organizations. The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a university or college student organization that is certified as an affiliated organization by a university or college as defined in Education Code, §61.003 (Definitions) during a sale authorized by Tax Code, §151.321 (University and College Student Organizations).

(5) Volunteer fire departments; fundraising events. The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a volunteer fire department that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(4) during a qualifying fundraising sale or auction authorized by Tax Code, §151.310(c-1). This exemption is effective May 28, 2015. A previous exemption from mixed beverage sales tax on the sale, preparation, or

service of alcohol when sold by volunteer fire departments at fundraising events expired on September 1, 2014.

(6) Temporary mixed beverage permit required. Nonprofit organizations, university or college student organizations, and volunteer fire departments must hold a permit, license or certificate [~~daily temporary mixed beverage permit or daily temporary private club permit~~], issued by the Texas Alcoholic Beverage Commission, in order to sell alcoholic beverages and claim an exemption from mixed beverage sales tax on those sales pursuant to paragraphs (3) - (5) of this subsection.

(7) Governmental entities and nonprofit organizations owe mixed beverage gross receipts tax. A governmental entity or nonprofit organization is not exempt from the payment of mixed beverage gross receipts tax on receipts from the sale, service, or preparation of alcoholic beverages. This includes sales of alcohol during any fundraising sale or auction. For more information, refer to §3.1001(e) of this title.

(g) Lump-sum charges that include alcoholic beverages and additional items together for a single price.

(1) Permittees shall compute mixed beverage sales tax on alcoholic beverages that are served together with meals for a single charge in the same manner as mixed beverage gross receipts tax is computed in §3.1001(c)(1)(D) of this title.

(2) Permittees shall compute mixed beverage sales tax on alcoholic beverages that are served at private clubs, special events, or functions in the same manner as mixed beverage gross receipts tax is computed in §3.1001(d) of this title.

(h) Inventory used in cooking. Alcoholic beverages used in cooking are exempt from both mixed beverage sales tax under Tax Code, Chapter 183, and sales and use tax under Tax Code, Chapter 151, provided that the permittee follows the record-keeping requirements set out in §3.1001(h) and (l) of this title.

(i) Monthly mixed beverage sales tax reports. Each permittee must file a monthly mixed beverage sales tax report on or before the 20th day of the following month even if no sales or services of alcoholic beverages were made during the month. Reports and payments due on a Saturday, Sunday, or legal holiday may be submitted on the next business day. The Texas Mixed Beverage Sales Tax report is due in addition to the Texas Mixed Beverage Gross Receipts Tax report to be filed under Tax Code, Chapter 183, Subchapter B, and the Texas Sales and Use Tax report required to be filed under Tax Code, Chapter 151.

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

Filed with the Office of the Secretary of State on August 23, 2024.

TRD-202403898
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55, §150.56

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 150, Subchapter A §150.55 and §150.56, concerning memorandum of understanding and board policy statements. The amendments are proposed for addressing grammatical changes and sentence structure for uniformity and consistency throughout the rules.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to provide accurate rule titles and consistency in terminology throughout the rules. There will be no effect on small businesses, micro-businesses, or rural areas. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie L. Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Texas Government Code, Title 5. Open Government, Subtitle B, Ethics, Chapter 572 and Section 508.0441. Subtitle B, Ethics, Chapter 572, is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the Board to implement a policy under which a Board member or Parole Commissioner should disqualify himself or herself on parole or mandatory supervision decisions. Section 508.035, Government Code, designates the presiding officer to establish policies and procedures to further the efficient administration of the business of the board.

No other statutes, articles, or codes are affected by these amendments.

§150.55. Conflict of Interest Policy.

(a) Section 1--Policy.

(1) It is the policy of the Board that no Board Member or Parole Commissioner shall have any interest, financial or otherwise, direct or indirect; or engage in any business transaction or professional activity or incur any obligations of any nature that [~~which~~] is in substantial conflict with the proper discharge of their [~~his~~] duties in the public interest. In implementing this policy, they are provided the following standards of conduct, disclosure, and disqualification to be observed in the performance of their official duties.

(2) A Board Member or Parole Commissioner shall respect and comply with the law and not allow their [~~his~~] family, social, or other relationships to influence their [~~his~~] conduct, decisions, or judgment.

(b) Section 2--Disclosure.

(1) A Board Member or Parole Commissioner shall submit generally, and on a case-by-case [~~ease by ease~~] basis, written notice to the Presiding Officer (Chair) of any substantial interest held by the Board Member or Parole Commissioner in a business entity doing business with the Board of Criminal Justice, TDCJ, or [~~and~~] the Board.

(2) A Board Member or Parole Commissioner having a personal or private interest in any measure, proposal, or decision pending before the Board (including parole and discretionary mandatory supervision) release decisions) shall immediately notify the Chair in writing of such interest. The Chair shall publicly disclose the Board Member's or Parole Commissioner's interest to the Board in a meeting of the Board. The Board Member or Parole Commissioner shall not vote or otherwise participate in the decision. The disclosure shall be entered into the minutes or official record of the meeting.

(3) A Board Member or Parole Commissioner shall consider the possibility that they have [~~he is involved in~~] a conflict of interest before making any decision or vote.

(4) If a Board Member or Parole Commissioner is uncertain whether any part of the conflict-of-interest [~~conflict of interest~~] policy applies to them [~~him~~] in a specific matter, they [~~he~~] shall request the General Counsel of the Board to determine whether a disqualifying conflict of interest exists.

(c) Section 3--Standards of Conduct.

(1) No Board Member or Parole Commissioner shall accept or solicit any gift, favor, or service that may [~~might~~] reasonably tend to influence them [~~him~~] in the discharge of their [~~his~~] official duties or that they [~~he~~] know [~~knows~~] or should know is being offered with the intent to influence their [~~his~~] official conduct.

(2) No Board Member or Parole Commissioner shall accept employment or engage in any business or professional activity which they [~~he~~] might reasonably expect would require or induce them [~~him~~] to disclose confidential information acquired by reason of their official duties.

(3) No Board Member or Parole Commissioner shall accept other employment or compensation that could [~~which would~~] reasonably be expected to impair their [~~his~~] independence of judgment in the performance of their [~~his~~] official duties.

(4) No Board Member or Parole Commissioner shall make personal investments that could reasonably be expected to create a substantial conflict between their [~~his~~] private interest and the public interest.

(5) No Board Member or Parole Commissioner shall intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised their [~~his~~] official powers or performed their [~~his~~] official duties in favor of another.

(d) Section 4--Disqualification.

(1) Disqualification. A Board Member shall recuse themself [~~himself or herself~~] from voting on all clemency matters, [~~matters;~~] and a Board Member or Parole Commissioner shall recuse themself [~~themselves~~] from voting on all decisions to release on parole or mandatory supervision [~~decisions~~], and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) they know that individually or as a fiduciary, they have an interest in the subject matter before them; or

(B) the Board Member or Parole Commissioner or their [~~his/her~~] spouse is related by affinity or consanguinity within the third degree to a person who is the subject of the decision before them.

(2) Recusal. A Board Member shall disqualify themself [~~himself or herself~~] from voting on all clemency matters, [~~matters;~~] and a Board Member or Parole Commissioner shall disqualify themself [~~themselves~~] from voting on all decisions to release on parole or mandatory supervision [~~decisions~~], and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) their impartiality might reasonably be questioned;

(B) they have a personal bias or prejudice concerning the subject matter or person in the decision before them; or

(C) they were [~~the Board Member or Parole Commissioner was~~] a complainant, a material witness, or [~~has~~] served as counsel for the state or the defense in the prosecution of the subject of the parole decision or revocation decision before them.

(e) Section 5--Documentation.

(1) A Board Member or Parole Commissioner shall notify the Chair and General Counsel in writing when they disqualify or recuse themself [~~themselves~~] from voting;

(2) A Board Member or Parole Commissioner shall provide the specific reason for disqualification or recusal;

(3) A Board Member or Parole Commissioner shall document the recusal or disqualification on the minute sheet of the offender's file; and

(4) A Board Member or Parole Commissioner shall place the written notification in the offender's file.

§150.56. Policies Pertaining to the Administration of the Agency.

(a) The Board has overall managerial responsibility for developing, promulgating, and investigating policies on parole and mandatory supervision.

(b) The Presiding Officer of the Board or the Presiding Officer's designee acts as the agency's liaison to the legislature. The Board shall have final approval over all proposed legislation before being submitted to the legislature.

(c) The Presiding Officer of the Board or the Presiding Officer's designee shall serve as the agency's [~~agency~~] spokesperson on all matters pertaining to Board policy.

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

Filed with the Office of the Secretary of State on August 22, 2024.

TRD-202403870

Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: October 6, 2024
For further information, please call: (512) 406-5452

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CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION
SUBCHAPTER A. MISSION AND ADMISSIONS

37 TAC §152.1

The Texas Board of Criminal Justice (board) proposes amendments to §152.1, concerning Correctional Institutions Division. The proposed amendments revise "offender" to "inmate" throughout and remove a reference to transfer facilities.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §493.0021, which establishes organizational flexibility.

Cross Reference to Statutes: None.

§152.1. Correctional Institutions Division.

The Correctional Institutions Division (CID) is the division of the Texas Department of Criminal Justice with operational responsibility for providing safe and appropriate confinement, supervision, and rehabilitation of Texas adult felony inmates [~~offenders~~]. The CID operates a variety of secure correctional facilities including prisons, pre-release facilities, psychiatric facilities, medical facilities, substance abuse felony punishment facilities, state jails, [~~transfer facilities,~~] and intermediate sanction facilities.

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

Filed with the Office of the Secretary of State on August 26, 2024.

TRD-202403922
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 6, 2024
For further information, please call: (936) 437-6700

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SUBCHAPTER B. CORRECTIONAL CAPACITY

37 TAC §§152.21, 152.23, 152.25, 152.27

The Texas Board of Criminal Justice (board) proposes amendments to Chapter 152, Subchapter B, concerning Correctional Capacity. The proposed amendments revise "offender" to "inmate" and make grammatical updates throughout the subchapter; and revise §152.25 to amend the title, update the names of units, remove units that were sold or closed with no possibility of reopening, and update the maximum rated capacity of individual units.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be to accurately reflect the maximum rated capacity of existing units within the TDCJ. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no elimination of employee positions but will create positions; will have an increase in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code § 492.013, which authorizes the board to adopt rules; and §

499.102-.110, which establishes procedures for determining unit and system capacity.

Cross Reference to Statutes: None.

§152.21. Purpose.

Pursuant to Texas Government Code §§499.102-499.110, the purpose of this subchapter is to establish the maximum rated capacity of individual units. This subchapter is not intended to create a liberty interest or grant a right on the part of any inmate [~~offender~~] within the custody of the Texas Department of Criminal Justice.

§152.23. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the content clearly indicates otherwise.

(1) De minimis increase in maximum rated unit capacity is the addition of 2% or fewer beds to the capacity of a unit on a one-time [~~one time~~] basis as originally established by the Texas Board of Criminal Justice (TBCJ), and that [~~the~~] addition will not increase the monthly gross payroll of the unit to which it is added by $500,000 or more.

[~~(2) H.B. 124 is the statutory process for increases other than a de minimis increase to capacity in accordance with Texas Government Code §§499.102-499.110, as enacted by H.B. 124, Acts 1991, 72nd Leg., ch. 655.~~]

(2) [~~(3)~~] Maximum rated unit capacity is the greatest density of inmates [~~offenders~~] in relation to space available for inmate [~~offender~~] housing as established by the TBCJ.

§152.25. Maximum Rated Capacity of Individual [~~Individuals~~] Units.

The Texas Board of Criminal Justice establishes the following maximum rated capacities for existing units.
Figure: 37 TAC §152.25
[~~Figure: 37 TAC §152.25~~]

§152.27. Unit and System Capacity Standards.

(a) Unit Capacity General Standard. Except as necessary on a temporary basis, the number of inmates [~~offenders~~] assigned to a unit shall not exceed the unit's maximum rated capacity as established by the Texas Board of Criminal Justice.

(b) Texas Department of Criminal Justice (TDCJ) Operational Capacity Standard. The TDCJ should operate at no higher than 96% of the maximum system capacity.

(c) Increases in Capacity. An increase in maximum rated unit capacity, other than a de minimis increase, shall be made in accordance with Texas Government Code §§499.102-499.110 [~~H.B. 124~~].

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

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Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 6, 2024
For further information, please call: (936) 437-6700

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.31

The Texas Board of Criminal Justice (board) proposes amendments to §163.31, concerning Sanctions, Programs, and Services. The proposed amendments revise presentence and postsentence investigations to mirror statutory language; revise continuum of sanctions to progressive sanctions throughout; update references to Texas Gov't Code; and make grammatical and formatting updates.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §509.003, which authorizes the board to adopt reasonable rules establishing standards and procedures for the TDCJ Community Justice Assistance Division.

Cross Reference to Statutes: None.

§163.31. Sanctions, Programs, and Services.

(a) Core Services.

(1) Court Services. Each community supervision and corrections department (CSCD) shall:

(A) conduct presentence and postsentence [~~pre/post-sentence~~] investigations as ordered by the court and in accordance with law;

(B) report violations to the court;

(C) provide testimony as custodian of the record;

(D) conduct assessments and complete reports mandated by law;

(E) make recommendations to the court regarding conditions of supervision; and

(F) maintain case files.

(2) Basic Supervision. Each CSCD shall:

(A) enforce conditions of community supervision;

(B) perform case intake;

(C) conduct assessments, reassessments, and case planning, and implement strategies to address identified offender risks and needs with the resources available to jurisdictions;

(D) provide contacts to offenders on direct community supervision per Texas Department of Criminal Justice (TDCJ) Community Justice Assistance Division (CJAD) standards;

(E) maintain case files;

(F) develop and monitor community service restitution programs;

(G) as ordered by the court, assess and, when needed, provide access to education, substance abuse, and mental impairment services;

(H) monitor employment and provide job and/or vocational services to employable offenders; and

(I) provide access to assessment and treatment services for sex offenders and violent offenders and maintain appropriate levels of supervision for these offenders.

(3) Administrative Services. Each CSCD shall provide adequate management and support service to the CSCD operation, commensurate with available resources, to include:

(A) administrative support staff;

(B) data processing support;

(C) data control and evaluation support;

(D) fiscal services support; and

(E) training coordinators.

(b) Progressive [~~Continuum of~~] Sanctions. Each CSCD director should [~~shall~~] ensure the development and implementation of a progressive [~~continuum of~~] sanctions model that addresses [~~address~~] the risks and needs of offenders as identified in the jurisdiction's strategic plan, subject to available resources and local policy.

(c) Regional Planning. Regional programs and services shall address regional needs as identified in each jurisdiction's strategic plan and respond efficiently and economically to specific offender issues for each of the participating jurisdictions. Each CSCD director participating in regional programs and services shall work with other CSCD directors affected by those regional efforts in the planning, developing, and implementing of regional programs and services to address offender needs.

(d) Community Service Restitution (CSR). Each CSCD director shall maintain written agreements with governmental and/or nonprofit entities to provide offenders opportunities to comply with court-ordered community service restitution according to Texas Code of Criminal Procedure article 42A.304.

(e) Educational Skill Level. Using a standardized educational screening instrument, each CSCD director shall ensure that all persons placed on community supervision, who are unable to document attainment of a high school diploma or GED shall be screened to determine if the persons possess:

(1) educational [~~Educational~~] skills equal to or greater than the sixth grade level; or

(2) the [~~The~~] intellectual capacity or learning ability to achieve the sixth grade skills level. Programs that assist offenders in attaining the educational skill level of sixth grade and above shall be developed and/or made available to the courts for offender referral. Each CSCD director may maintain written agreements with school and volunteer organizations to provide tutoring to teach reading to functionally illiterate offenders.

(f) Methods for Measuring the Success of Community Supervision and Corrections Program. For purposes of Texas Government Code §509.007(b)(2), the success of programs provided by a CSCD or an entity served by a CSCD is measured by assessing rates of program completion and recidivism.

(1) Program completion is the completion of all required components of the program, and/or an offender's release from the program that is not related to any non-compliant behavior, an inappropriate placement, or death.

(2) Recidivism is a subsequent arrest for a new, separate offense that is punishable by incarceration. This definition does not include arrests for motions to revoke community supervision and bond forfeitures.

(g) Conflicts of Interest. Each CSCD director shall ensure the adoption of a written policy that prohibits possible conflicts of interest affecting the CSCD, its supervision officers, and employees.

(h) Partnerships with Law Enforcement Agencies. Each CSCD shall cooperate with and provide assistance to municipal, county, and state law enforcement agencies or peace officers in situations relating to offender supervision, absconder apprehension, victim services, and other community-based criminal justice activities.

(i) A CSCD may contract with another CSCD for services or facilities.

(j) A judicial district may contract for programs and services with a CSCD established for another judicial district, in lieu of establishing its own CSCD, if such a contract promotes administrative convenience, economy, or improved services.

(k) More than one CSCD may serve a judicial district that includes more than one county if providing more than one CSCD promotes administrative convenience, economy, or improved services.

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

Filed with the Office of the Secretary of State on August 26, 2024.

TRD-202403924
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 6, 2024
For further information, please call: (936) 437-6700

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37 TAC §163.37

The Texas Board of Criminal Justice (board) proposes amendments to 37 TAC §163.37, concerning Reports and Records. The proposed amendments revise presentence report and postsentence report to mirror statutory language.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §509.003, which authorizes the board to adopt reasonable rules establishing standards and procedures for the TDCJ Community Justice Assistance Division.

Cross Reference to Statutes: None.

§163.37. Reports and Records.

(a) Case Records. Each community supervision and corrections department (CSCD) director shall develop and maintain a case record management system for offenders supervised by the CSCD. Each case record shall contain:

(1) the court order placing the person on community supervision citing all conditions of community supervision;

(2) a chronological listing of all supervision case activity, decisions, services rendered, and assessments;

(3) a criminal history record or summary issued by a law enforcement agency;

(4) periodic evaluations;

(5) if required, a presentence [~~pre-sentence investigation~~] report (PSR) [(~~PSIR~~)] or postsentence [~~post-sentence investigation~~] report; and

(6) other documents or information related to the defendant deemed appropriate by the community supervision officer or CSCD director.

(b) Case Record Confidentiality. Confidentiality of case records shall be maintained in accordance with federal and state laws. Confidential medical and psychological information shall be handled in accordance with 37 Texas Administrative Code §163.41. Information shall be released only under circumstances authorized by law or as directed by the court.

(c) Presentence and Postsentence [~~Pre- and Post- Sentence Investigation~~] Reports (Reports). Unless waived by the defendant, a PSR [~~PSIR~~] shall be completed before the imposition of a sentence and in accordance with the Texas Code of Criminal Procedure, art. 42A, Subchapter F. If a PSR [~~PSIR~~] was not completed, a postsentence [~~post-sentence investigation~~] report may be prepared, if directed by the judge, in accordance with Texas Code of Criminal Procedure, art. 42A.259. The reports, and the information obtained in connection with the reports, are confidential and may be released only to those persons and under those circumstances as authorized by Texas Code of Criminal Procedure, art. 42A.256. Information contained in the reports may be disclosed to the Department of Family and Protective Services to the extent that such information discloses that a child's physical or mental health or welfare has been adversely affected by abuse or neglect. Copies of the completed reports shall be maintained in a defendant's case file and made available for periodic audits, reviews, or inspections by the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) staff.

(d) PSR [~~PSIR~~] Format. The TDCJ CJAD format shall be used for preparing PSRs [~~PSIRs~~]. A different format may be used if the content requirements comply with Texas Code of Criminal Procedure, art. 42A.253 and the format is approved by both the TDCJ CJAD and the court having jurisdiction over the defendant.

(e) Transfer to the TDCJ. Upon the revocation of community supervision or an adjudication of guilt, the CSCD shall forward to the county, for inclusion in the defendant's penitentiary packet, a copy of the defendant's community supervision conditions, and if prepared, a copy of the victim's impact statement, and a copy of the presentence or postsentence [~~pre- or post- sentence investigation~~] report. The CSCD also shall forward any additional information that was prepared for a revocation or other hearing and information updating the PSR [~~PSIR~~].

(f) Interstate Transfer. CSCD directors shall comply with the uniform interstate transfer procedures and obtain the approval of the TDCJ Interstate Compact Office for an interstate transfer of supervision in accordance with Texas Government Code, Chapter 510 and the Interstate Compact for Adult Offender Supervision Rules.

(g) Intrastate Transfer. Each CSCD director shall comply with the uniform transfer procedures in accordance with 37 Texas Administrative Code §163.35(c)(8).

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

Filed with the Office of the Secretary of State on August 26, 2024.

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Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 6, 2024
For further information, please call: (936) 437-6700

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER O. COUNTY TRANSPORTATION INFRASTRUCTURE FUND GRANT PROGRAM

43 TAC §15.188

The Texas Department of Transportation (department) proposes the amendments to §15.188 concerning Application Procedure.

EXPLANATION OF PROPOSED AMENDMENTS

S.B. No. 160, 87th Legislature, Regular Session, 2021, amended Transportation Code, Chapter 256, to remove the requirement that a county must submit the county road condition report as part of the application process for consideration of being awarded a County Transportation Infrastructure Fund Grant.

Amendments to §15.188, Application Procedure, delete subsection (c), which provides the requirement that a county must submit a county road condition report as part of the application process for consideration of being awarded a County Transportation Infrastructure Fund Grant, and redesignates existing subsection (d) as subsection (c).

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Charon Williams, Director, Transportation Programs Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Charon Williams has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be that the application package that counties submit for consideration of being awarded a County Transportation Infrastructure Fund Grant will be streamlined and less onerous to counties.

COSTS ON REGULATED PERSONS

Charon Williams has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Charon Williams has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. She expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Charon Williams has determined that a written takings impact assessment in not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §15.188 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "CTIF Grant." The deadline for receipt of comments is 5:00 p.m. on October 7, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §256.103, which authorizes the commission to adopt rules to administer the County Transportation Infrastructure Fund Grant Program.

The authority for the proposed amendments was provided by S.B. 160, 87th Regular Session, 2021. The primary author and the primary sponsor of that bill are Senator Charles Perry and Representative Drew Darby, respectively.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 256.

§15.188. Application Procedure.

(a) Application form. An eligible county may submit to the department an application for a grant from the fund.

(1) The application must be submitted electronically using the department's automated system designated for the grant program.

(2) A county is responsible for obtaining its use of a computer system and access to the Internet.

(3) Upon request, a county may use the department's computer system at any district office location.

(4) For an application to be valid, the county must submit the application during a period designated under §15.187 of this subchapter (relating to Acceptance of Applications) and satisfy the requirements of this section.

(b) Plan requirements. An application must contain a plan that:

(1) provides a prioritized list of transportation infrastructure projects to be funded by the grant;

(2) describes the scope of each listed transportation infrastructure project including:

(A) a clear and concise description of the proposed work;

(B) an implementation plan, including a schedule of proposed activities;

(C) an estimate of project costs;

(D) the project funding sources; and

(E) other information required by the department;

(3) specifies the total amount of grant funds being requested in the application;

(4) identifies matching funds required under §15.183 of this subchapter (relating to Matching Funds); and

(5) identifies other potential sources of funding to maximize resources available for the listed transportation infrastructure projects.

[~~(c) Additional submissions. In addition to the application form, the county must also submit a road condition report described by Transportation Code, §251.018 made by the county for the preceding year.~~]

(c) [~~(d)~~] Information for previous grant. If the county has received a grant under this subchapter, it must also submit:

(1) a certification that all previous grants have been or are being spent in accordance with the applicable plan submitted under subsection (b) of this section; and

(2) an accounting of expenditures under the previous grant, including any amounts spent on administrative costs.

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

Filed with the Office of the Secretary of State on August 22, 2024.

TRD-202403886
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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