

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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Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



7 TAC §§80.102 - 80.104, 80.107

Statutory Authority

The rule repeals are adopted under the authority of Finance Code §156.102, which authorizes 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 (federal SAFE Act).

The adopted rule repeals affect the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

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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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 (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators, §§81.2, 81.203, 81.204, 81.206, 81.300. The commission's proposal was published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5506). Section 81.206 is adopted with changes to the published text and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. The remaining rule sections in the proposal are adopted without changes to the text as published in the *Texas Register*, and will not be republished.

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157.

Changes Concerning Office Requirements and Remote Work

The adopted rules recognize the growing demand for the employees and sponsored originators of a mortgage banker to work remotely by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage banker to do so. The adopted rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage banker such that the office must be registered with the department. The adopted rules are further designed to fully implement the requirement, pursuant to Finance Code §157.003(b)(6), for a mortgage banker to provide the commissioner with "a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business." The adopted rules: (i) create definitions for the terms "administrative office," "branch office," "main office," and "registered office," for purposes of administering the adopted rules, including to clarify which offices of a mortgage banker must be registered with the department; (ii) clarify that the main office or a branch office must be established by the mortgage banker or mortgage company and not an originator; (iii) describe conditions under and parameters by which the employees and sponsored originators of a mortgage banker are authorized to work from a remote location; (iv) establish a new requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (v) establish a new requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (vi) establish a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the adopted rules; and (vii) establish a new requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely.

Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received two comments in response the proposal. One commenter (Black Mann & Graham L.L.P.) suggested proposed §81.206 (relating to Office Locations; Remote Work) be adopted with changes to define use of the terms "residential mortgage loan business" (as used in proposed §81.206(a)(5)) or "business and work" (as used in proposed §81.206(c)), or otherwise clarify the scope of work that an employee or sponsored originator or a mortgage company may perform remotely. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. One commenter (Texas Mortgage Bankers Association) suggested that proposed §81.206(a) be adopted with changes to clarify and better define the types of activities that a mortgage banker acting as a residential mortgage loan servicer may perform at an "administrative office" of the mortgage banker as defined by the

adopted rules. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §81.2

Statutory Authority

The rule is adopted under the authority of Finance Code §157.0023 and §180.004 which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rule affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

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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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§81.203, 81.204, 81.206

Statutory Authority

The rules are adopted under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

The adopted rules affect the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

§81.206. Office Locations; Remote Work.

(a) Definitions. The following terms, when used in this section, will have the following meanings, 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 Tex. Fin. Code §180.002;

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

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

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

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

(v) administering the terms of an investor servicing agreement for a residential mortgage loan; 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 Tex. Fin. Code §180.002;

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

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

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

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

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

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

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

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

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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7 TAC §80.206

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes 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 (federal SAFE Act).

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

§80.206. Physical Office.

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. COMPLIANCE AND ENFORCEMENT

7 TAC §80.300

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes 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 (federal SAFE Act).

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

§80.300. Examinations.

(a) (No change.)

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person [~~qualifying individ-~~

~~ual~~] 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 [~~qualifying individual's~~] mailing address or email address of record with NMLS and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made [~~the mortgage company or sponsored originator must make~~] available to facilitate the examination.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 156 and this chapter, and will specifically address whether:

(1) all persons conducting residential mortgage loan origination activities are properly licensed and sponsored [~~by the mortgage company in NMLS~~];

(2) all office locations [~~at which such activities are conducted~~] are properly licensed or [~~and~~] registered, as provided by §80.206 of this title (relating to Office Locations; Remote Work) [~~with NMLS~~];

(3) - (5) (No change.)

(d) - (g) (No change.)

(h) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of a mortgage company or a sponsored originator because the required records are maintained at a location outside of Texas, [~~the mortgage company or sponsored originator will be required to reimburse~~] the Department will require reimbursement for the actual costs incurred by the Department in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs.

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 (department), proposes to repeal the following rule in 7 Texas Administrative Code (TAC) Chapter 81, Subchapter C: §81.206. The commission further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 81, Subchapter C: §81.206. The commission further proposes amendments to existing rules in 7 TAC Chapter 81 as follows: Subchapter A, §81.2; Subchapter C, §81.203 and §81.204; and Subchapter D, §81.300. This proposal and the rules as repealed, amended, or added as a new

rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157.

Changes Concerning Office Requirements and Remote Work

The proposed rules recognize the growing demand for the employees and sponsored originators of a mortgage banker to work remotely by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage banker to do so. The proposed rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage banker such that the office must be registered with the department. The proposed rules are further designed to fully implement the requirement, pursuant to Finance Code §157.003(b)(6), for a mortgage banker to provide the commissioner with "a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business." The rules, if adopted, would: (i) create definitions for the terms "administrative office," "branch office," "main office," and "registered office," for purposes of administering the proposed rules, including to clarify which offices of a mortgage banker must be registered with the department; (ii) clarify that the main office or a branch office must be established by the mortgage banker or mortgage company and not an originator; (iii) describe conditions under and parameters by which the employees and sponsored originators of a mortgage banker are authorized to work from a remote location; (iv) create a new requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (v) create a new requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (vi) create a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules; and (vii) create a new requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, 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 the state or 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 will be 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 will be no foreseeable losses or increases in revenue to the state as a result of enforcing or administering the proposed rules.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of adopting the proposed rules will be to have rules that formalize and clarify in rule the parameters by which the employees and sponsored originators of a mortgage banker may work remotely, including requiring training concerning such remote work, and written procedures governing such remote work, thereby ensuring the privacy of those members of the public utilizing the services of a mortgage banker, and confidentiality of their personal financial information.

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

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work require a mortgage banker to provide its employees and sponsored originators with training on how to work remotely in an environment conducive and appropriate to consumer privacy, and to maintain written procedures governing such remote work. However, most, if not all, mortgage bankers already operate under existing authority for their employees and sponsored originators to work remotely, including existing parameters, presently not formalized in rule, that the mortgage banker employ sufficient security protocols to protect consumer information, and to exercise appropriate oversight and supervision over an employee or sponsored originator working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further require the mortgage banker to adequately train its employees and sponsored originators on conducting such remote work, and to document its procedures governing such remote work. As a result, the proposed rules do not directly impose a cost on regulated persons in order to comply with the proposed rules. A mortgage banker may conceivably choose to engage, at some indeterminate cost, a third party to conduct such training or to develop such written procedures concerning remote work by its employees and sponsored originators, however, this potential cost would be at the election of the mortgage banker, and is not directly required by the proposed rules. Furthermore, existing applicable law at the federal level already imposes similar requirements to ensure mortgage bankers registered with the department employ appropriate safeguards to protect a consumer's financial information, including activities conducted remotely by its employees and sponsored residential mortgage loan originators. Specifically, applicable regulations of the Federal Trade Commission (FTC) (16 C.F.R. §§314.1-314.5 require mortgage bankers to employ appropriate safeguards to (i) "[i]nsure the security and confidentiality of customer information"; (ii) "[p]rotect against any anticipated threats or hazards to the security or integrity of such information"; and (iii) "[p]rotect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer" (16 C.F.R. §314.3, concerning Standards for Safeguarding Customer Information). Taking the foregoing into consideration, the proposed rules do not impose economic costs on persons required to comply with the proposed rules.

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future 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 Office Requirements and Remote Work create a new rule requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely. 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 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 substantial 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, Associate 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 §81.2

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

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

§81.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 157 and Chapter 180, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §§157.002(6) and 180.002(19), and paragraph (16) [(19)] of this section means a request, in any form, for an offer (or a response to a solicitation for 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, and/or the mortgage loan amount.

(2) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

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

[(4) "Criminal Offense" means any violation of any state or federal criminal statute which:]

[(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;]

[(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;]

[(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;]

[(D) involves deceiving the public by means of swindling, false advertising or the like;]

[(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;]

[(F) involves acts of violence or use of a deadly weapon;]

[(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or]

~~{(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.}~~

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

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

(6) ~~[(7)]~~ " 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.

(7) ~~[(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.

(8) ~~[(9)]~~ "Mortgage banker" has the meaning assigned by Tex. Fin. Code §157.002.

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

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

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

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

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

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

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

~~[(14) "Physical office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is conducted.]~~

~~[(15) "Recovery Fund" means the fund administered and maintained by the Commissioner for the recovery of actual damages by persons aggrieved by a licensed residential mortgage loan originator, established pursuant to Tex. Fin. Code §13.016.]~~

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

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

(15) ~~[(18)]~~ "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.

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

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 §§81.203, 81.204, 81.206

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residen-