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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.300

Statutory Authority

The rule is 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 affects 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 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER B. LICENSING

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 80, Texas Residential Mortgage Loan Companies. The commission's proposal was published in the September 10, 2021 issue of the *Texas Register* (46 TexReg 5679). The following rules sections are adopted with changes to the published text and are republished to reflect such changes: §80.102, and §80.107. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rules will not be republished as proposed rules for comment. The remaining rules 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 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The adopted rules were identified during the

department's periodic review of 7 TAC Chapter 80 conducted pursuant to Government Code §2001.039.

Changes Concerning Licensing Procedures

The department licenses residential mortgage loan companies (for purposes of the adopted rules, a "residential mortgage loan company" has the meaning assigned by Finance Code §156.002; mortgage company). The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The adopted rules make various changes to clarify and set forth in rule various procedures utilized by the department in licensing mortgage companies. The adopted rules, among other things: (i) clarify how a mortgage company goes about sponsoring individual residential mortgage loan originators and its responsibility for supervising such originators; (ii) clarify the role of the individual residential mortgage loan originator appointed as the qualifying individual for purposes of Finance Code §156.002(10-b), including requiring the consent of such individual to be appointed; and (iii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a minor deficiency so as to enable the licensed mortgage company to conduct regulated activities while the deficiency is resolved.

Changes Concerning License Records

The adopted rules make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed mortgage company to update such records; and the department's procedures for contacting a licensed mortgage company using the contact information derived from such records. The adopted rules, among other things: (i) expand existing requirements concerning a mortgage company updating and keeping current in the NMLS system various information associated with its license (contact information, information concerning its owners, etc.) by requiring that the mortgage company update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a licensed mortgage company from allowing an individual residential mortgage loan originator to act on its behalf prior to becoming sponsored of record by such mortgage company in the NMLS system; (iii) set forth in rule procedures for the department to contact a mortgage company utilizing the contact information designated by the licensed mortgage company; and (iv) establish a new requirement providing that a licensed mortgage company must monitor the email address it has designated in the NMLS system for purposes of receiving correspondence or other notices from the department.

Other Modernization and Update Changes

The adopted rules make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators.

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 10, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received

one comment in response the proposal from Black Mann & Graham L.L.P. (commenter). The commenter suggested proposed §80.102 (relating to Qualified Individual) be adopted with changes to subsection (b) to eliminate language the commenter deemed unnecessary. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. The commenter further suggested proposed §80.107 (relating to NMLS License Records; Notice to Licensee) be adopted with changes to subsection (d) to use the term "mortgage company" in place of "originator." The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

7 TAC §§80.101, 80.102, 80.105 - 80.107

Statutory Authority

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

§80.102. *Qualified Individual.*

(a) **Qualified Individual Required.** A mortgage company must appoint at least one originator to be the mortgage company's qualifying individual for purposes of Tex. Fin. Code §156.002 (Qualified Individual). As provided by Tex. Fin. 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. In order to serve as the Qualified Individual the licensee must hold his or her individual 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 seeks to serve as Qualified Individual. A mortgage company may appoint more than one originator as Qualifying Individual. If a mortgage company appoints more than one originator to serve as Qualified Individual, each such originator is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or individuals otherwise allowed to act as originator on its behalf.

(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 license record amendment in NMLS to reflect such appointment using the appropriate form prescribed by NMLS.

§80.107. *NMLS License Records; Notice to Licensee.*

(a) **Amendments to License Records Required.** Unless Tex. Fin. Code §156.211 applies and requires additional notice, a mortgage company must amend its NMLS license records (MU1 filing) within 10 days after any material change occurs affecting any aspect of the MU1 filing, including but not limited to:

- (1) name (which must be accompanied by supporting documentation submitted to the Department 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 for the mortgage company listed in the MU1 filing under "Identifying Information":

- (A) principal address (main address);
- (B) mailing address;
- (C) phone number;
- (D) fax number; and
- (E) email address;

(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).

(b) **Amendments to MU2 Associations Required.** A mortgage company must cause the individuals who are required to register an association with the mortgage company (MU2 filing) to do so within the NMLS system and must ensure such associations are amended within 10 days after any material change occurs affecting such associations.

(c) **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 §80.206 of this title (relating to Office Locations; Remote Work), which must be licensed prior to conducting operations at such office. The application must be submitted through NMLS and must be made using the appropriate form prescribed by NMLS (MU3 filing). A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after closing a branch office.

(d) **Notice to Licensee.** Service of any correspondence, notification, alert, message, official notice or other written communication issued by the Department will be served on the licensee in accordance with this subsection utilizing the licensee's current contact information of record in NMLS unless another method is prescribed by other applicable law (notice to the mortgage company in a matter referred to the State Office of Administrative Hearings for an adjudicative hearing will be performed in accordance with 1 Texas Administrative Code §155.105).

(1) **Service by Email.** Service by email will be made utilizing the email address the mortgage company has designated in its MU1 filing listed under "Identifying Information." Service by email is complete on transmission of the email by the Department to the mortgage company's email service provider; provided, the Department does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The mortgage company has an ongoing duty and a continuing obligation to monitor such email account including to ensure that correspondence from the Department is not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage company is deemed to have constructive notice of any email correspondence or NMLS system notifications sent to the email address it has designated in its MU1 filing listed under "Identifying Information."

(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 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 three 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.

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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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 to 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

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.

7 TAC §76.95

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a) which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.95. Fee for Special Examination or Audit.

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 30, 2021.

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Department of Savings and Mortgage Lending

Earliest possible date of adoption: October 10, 2021

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



7 TAC §76.95

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a) which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of Finance Code §96.0551(c) which authorizes the commissioner to collect a fee for conducting examinations on savings bank affiliates and third-party service providers. This proposal is also made under the authority of Finance Code §97.001(3) which authorizes the commission to adopt rules concerning the regulation of saving bank holding companies under Finance Code, Subtitle C, Subchapter A. This proposal is also made under the authority of Finance Code §97.006 which authorizes the commissioner to exam a savings bank holding company and requires the holding company to pay for the cost of examination.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

§76.95. Fee for Special Examination.

(a) A special examination is one that is conducted outside the context of a savings bank's annual examination and includes, but is not limited to, examinations of a savings bank holding company, interstate branches of savings banks in Texas as the host state, and a savings bank's affiliates and third-party service providers. The savings bank or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable to the special examination, and the actual costs by the examiner in conducting the special examination.

(b) The fee for a special examination under this section will be calculated at a rate not to exceed \$75 per examiner per hour. The entity that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The Commissioner, in his or her sole discretion, may lower the applicable rate for the examination fee or waive, in whole or in part, any fees or costs chargeable in accordance with this section.

(c) In connection with an examination under this section, the regulated entity or other legally responsible party (including the savings bank, with respect to affiliates and third-party service providers) must pay the examination fee and costs incurred as provided by 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.

Filed with the Office of the Secretary of State on August 30, 2021.

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Iain A. Berry

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Department of Savings and Mortgage Lending

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CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES SUBCHAPTER B. LICENSING

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rules in 7 Texas Administrative Code (TAC) Chapter 80, Subchapter B: §§80.102 - 80.104 and 80.107. The commission further proposes new rules concerning the same or similar subject matter in 7 TAC Chapter 80, Subchapter B: §§80.101, 80.102, 80.105, and 80.107. The commission further proposes amendments to existing rules in 7 TAC Chapter 80, Subchapter B as follows: §80.106. This proposal and the rules as repealed, amended, or added as new rules 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 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The proposed rules were identified during the department's periodic review of 7 TAC Chapter 80 conducted pursuant to Government Code §2001.039.

Changes Concerning Licensing Procedures

The department licenses residential mortgage loan companies (for purposes of the proposed rules, a "residential mortgage loan company" has the meaning assigned by Finance Code §156.002; mortgage company). The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The proposed rules, if adopted, would make various changes to clarify and set forth in rule various procedures utilized by the department in licensing mortgage companies. The proposed rules, among other things: (i) clarify how a mortgage company goes about sponsoring individual residential mortgage loan originators and its responsibility for supervising such originators; (ii) clarify the role of the individual residential mortgage loan originator appointed as the qualifying individual for purposes of Finance Code §156.002, including requiring the consent of such individual to be appointed; and (iii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a deficiency so as to enable the licensed mortgage company to conduct regulated activities while the deficiency is resolved.

Changes Concerning License Records

The proposed rules, if adopted, would make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed mortgage company to update such records; and the department's procedures for contacting a licensed mortgage company using the contact information derived from such records. The proposed rules, among other things: (i) expand existing requirements concerning a mortgage company updating and keeping current in the NMLS system various information associated with its license (contact information, information concerning its owners, etc.) by requiring that the mortgage company update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a licensed mortgage company from allowing an individual residential mortgage loan originator to act on its behalf prior to becoming sponsored of record by such mortgage company in the NMLS system; (iii) set forth in rule procedures for the department to contact a mortgage company utilizing the contact information designated by the licensed mortgage company; and (iv) impose a new requirement providing that a licensed mortgage company must monitor the email address it has designated in the NMLS system for purposes of receiving correspondence or other notices from the department.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators.

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 enforcing the proposed rules will be to have rules that are easier to read and understand.

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.

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 License Records create a new rule requirement requiring a licensed mortgage company to monitor the email address it has designated in its NMLS license records. The proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning License Records expand an existing rule requirement by expanding the types of information a change in which requires the licensee to update its license records in NMLS, including imposing a time period of ten days following a material change in such information to make such changes; (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.

7 TAC §§80.101, 80.102, 80.105 - 80.107

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.

§80.101. Sponsorship of Originator; Responsibility for Originator's Actions.

(a) Sponsorship Required. A mortgage company acts by and through one or more originators who must be sponsored by the mortgage company in NMLS. In order to sponsor an originator, the mortgage company must first register a relationship with the originator in NMLS. Once such 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 license record amendments in NMLS in order to establish such sponsorship, as provided by this section. Sponsorship is not effective until the sponsorship request has been reviewed and approved by the Department. 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.

(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, that 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 Tex. Fin. 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 alleged 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 the requirements of the Department's rules pertaining to originators contained in Chapter 81 of this title (relating to Mortgage Bankers and Residential Mortgage Loan Originators).

(c) Termination of Sponsorship. Sponsorship may be terminated by either the sponsoring mortgage company or the sponsored originator. If sponsorship is terminated, the party terminating the sponsorship must immediately make a license record amendment in NMLS notifying the Department that the sponsorship has been terminated, as provided by Tex. Fin. Code §156.211 and §157.019.

§80.102. Qualified Individual.

(a) Qualified Individual Required. A mortgage company must appoint at least one originator to be the mortgage company's qualifying individual for purposes of Tex. Fin. Code §156.002 (Qualified Individual). As provided by Tex. Fin. 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. In order to serve as the Qualified Individual, the licensee must hold his or her individual 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 seeks to serve as Qualified Individual. A mortgage company may appoint more than one originator as Qualifying Individual. If a mortgage company appoints more than one originator to serve as Qualified Individual, each such originator is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or individuals otherwise allowed to act as originator on its behalf.

(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 license record amendment in NMLS to reflect such appointment, and must be made using the appropriate form prescribed by NMLS.

§80.105. Fees.

(a) License fees will be established by the Commissioner in accordance with Finance Code Chapter 156. The amount of the fees may be modified on not less than 30 days' advance notice posted on the Department's website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to taking disciplinary action, collect a fee in an amount not to exceed \$50 for any returned check or credit card chargeback.

(d) For examinations that are conducted outside of Texas, the Commissioner may collect reimbursement of actual expenses. Actual expenses incurred will be in compliance with the Department's policies and procedures.

§80.106. Renewals.

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through NMLS [the Nationwide Mortgage Licensing System and Registry] together with [the] payment of the applicable renewal application fee; and

(2) a determination that the applicant continues to meet the minimum requirements for licensure [license issuance].

(b) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in his or her sole discretion, approve a renewal application with a deficiency the Commissioner deems to be minor in nature so as to allow the licensee to continue conducting regulated activities under the license while the deficiency is resolved. An application approved by the Commissioner with a pending deficiency will be assigned in NMLS the license status code "Approved - Deficient." Approval of the application by this method does not relieve the licensee of the obligation to resolve the deficiency noted. Failure to resolve such deficiency constitutes grounds for the Commissioner to take

disciplinary action against the licensee, including suspension or revocation of the license [Renewal of a license may be denied for reasons provided in Finance Code, §156.208].

(c) Supplemental Information. The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license issued pursuant to Finance Code[.] Chapter 156 as is deemed by the Commissioner to be necessary or advisable to determine compliance with the requirements of Finance Code[.] Chapter 156.

(d) Reinstatement. The provisions of this section also apply to a person seeking reinstatement of a recently-expired license, as provided by Tex. Fin. Code §156.2081, and should be construed accordingly.

§80.107. NMLS License Records; Notice to Licensee.

(a) Amendments to License Records Required. Unless Tex. Fin. Code §156.211 applies and requires additional notice, a mortgage company must amend its NMLS license records (MU1 filing) within 10 days after any material change occurs affecting any aspect of the MU1 filing, including but not limited to:

(1) name (which must be accompanied by supporting documentation submitted to the Department 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 for the mortgage company listed in the MU1 under "Identifying Information":

(A) principal address (main address);

(B) mailing address;

(C) phone number;

(D) fax number; and

(E) email address;

(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).

(b) Amendments to MU2 Associations Required. A mortgage company must cause the individuals who are required to register an association with the mortgage company (MU2 filing) to do so within the NMLS system and must ensure such associations are amended within 10 days after any material change occurs affecting such associations.

(c) 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 §80.206 of this title (relating to Office Locations; Remote Work), which must be licensed prior to conducting operations at such office. The application must be submitted through NMLS and must be made on the appropriate form prescribed by NMLS (MU3 filing). A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after closing a branch office.

(d) Notice to Licensee. Service of any correspondence, notification, alert, message, official notice or other written communication issued by the Department will be served on the licensee in accordance

with this subsection utilizing the licensee's current contact information of record in NMLS unless another method is prescribed by other applicable law (notice to the originator in a matter referred to the State Office of Administrative Hearings for an adjudicative hearing will be performed in accordance with 1 Texas Administrative Code §155.105).

(1) Service by Email. Service by email will be made utilizing the email address the mortgage company has designated in its MU1 filing listed under "Identifying Information." Service by email is complete on transmission of the email by the Department to the mortgage company's email service provider; provided, the Department does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The mortgage company has an ongoing duty and a continuing obligation to monitor such email account including to ensure that correspondence from the Department is not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage company is deemed to have constructive notice of any email correspondence or NMLS system notifications sent to the email address it has designated in its MU1 filing listed under "Identifying Information."

(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 three 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.

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

Earliest possible date of adoption: October 10, 2021

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



7 TAC §§80.102 - 80.104, 80.107

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.

§80.102. Sponsorship and Termination Thereof.

§80.103. License Record Changes.

§80.104. Background Checks.

§80.107. Fees.

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