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



## 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 rule repeals (§§81.102 - 81.104, 81.106 - 81.110), amendments (§81.101, §81.105), and new rules (§§81.102 - 81.104, 81.106 - 81.111) in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators. The commission's proposal was published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5683). The following rules are adopted with changes to the proposed text and are republished to reflect such changes: §81.103, and §81.110. 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 in the proposal are adopted without changes to the proposed 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. The adopted rules were identified during the department's periodic review of 7 TAC Chapter 81 conducted pursuant to Government Code §2001.039.

### *Criminal Conviction Guidelines*

The department licenses individuals to act as residential mortgage loan originators. Pursuant to Occupations Code §53.025, the department, as a licensing authority for an occupational license, is required to issue guidelines relating to the department's administration of Occupations Code Chapter 53, including stating the reasons a particular crime is considered to relate the duties and responsibilities of the license and any other criterion that affects the decisions of the department in administering Occupations Code Chapter 53. The adopted rules implement Occupations Code §53.025 by adopting comprehensive criminal conviction guidelines in rule. The authority for denial of 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. The adopted rules further outline the commissioner's authority for denial of an application for licensure under the Finance Code based on criminal history, including outlining certain offenses deemed by rule to be grounds for denial of licensure under the Finance Code.

### *Changes Concerning Licensing Procedures*

The department licenses individuals to act as residential mortgage loan originators. 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 residential mortgage loan originators. The adopted rules, among other things: (i) clarify how a residential mortgage loan originator goes about being sponsored by a mortgage company or mortgage banker so as to engage in regulated activities with the license; (ii) clarify how an individual licensed in another jurisdiction or by a different licensing authority as a residential mortgage loan originator, or is a "registered mortgage loan originator" (as defined by Finance Code §180.002(16)) may engage in regulated activities under temporary authority while he or she seeks licensure by the department; (iii) with respect to an applicant for licensure who is a military service member or military veteran, clarify that his or her military service, training, or education cannot constitute grounds for waiving the pre-licensing examination required by Finance Code §180.057, the pre-licensing education training and coursework required by Finance Code §180.056, or the continuing education training and coursework required by Finance Code §180.060; (iv) with respect to a military spouse, clarify that a military spouse seeking temporary authority to act as a residential mortgage loan originator in Texas must do in conformity with Finance Code §180.0511; (v) with respect to pre-licensing education, expand an existing requirement by requiring that such pre-licensing education lapses if the individual does not achieve licensure by limiting the applicable time period from four years to three years; (vi) with respect to pre-licensing education taken in another jurisdiction, establish a new requirement that any portion of such training and coursework which was specific to such jurisdiction does not count towards the minimum hours of required pre-licensing education; (vii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a minor deficiency so as to enable the individual to conduct regulated activities while the deficiency is resolved (viii) clarify the commissioner's authority to conduct background checks other than through the NMLS system; and (ix) set forth in rule procedures for conducting background checks by the department.

### *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 residential mortgage loan originator to update such records; and the department's procedures for contacting a residential mortgage loan originator using the contact information derived from such records. The adopted rules, among other things: (i) expand existing requirements concerning a residential mortgage loan originator updating and keeping current in the NMLS system various information associated with his or her license (contact information, disclosures concerning criminal history and financial background, etc.) by requiring that the originator update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a residential mortgage loan originator from engaging in regulated activities prior to becoming sponsored of record in the NMLS system by a mortgage company or mortgage banker; (iii) set forth in rule procedures for the department to contact a residential mortgage loan originator utilizing the contact information designated by the residential mortgage loan originator

in his or her NMLS license records; and (iv) establish a new requirement requiring a residential mortgage loan originator to monitor the email address he or she has designated in the NMLS system to manage his or her account with NMLS and receive system-generated messages from NMLS, 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 80, Texas Residential Mortgage Loan Companies.

#### 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 to the proposal from Black Mann & Graham, L.L.P. (commenter). The commenter suggested proposed §81.103 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses) be adopted with changes to subsection (c) to replace a reference to Finance Code §157.0062 with a reference to Finance Code §157.016. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment. The commenter further suggested proposed §81.110 be adopted with changes to: (i) revise subsection (f)(4) to clarify that the factors used by the department to evaluate an individual with a criminal history for licensure pertain to a license to act as a residential mortgage loan originator; (ii) revise subsection (g)(8) to use gender-specific pronouns; (iii) make clarifying revisions to resolve differing usage within the section of the terms "ineligible" and "disqualified" (or derivations thereof) with respect to the eligibility of an individual with a criminal history for a residential mortgage loan originator license; and (iv) reorganize or otherwise clarify the interplay between subsections (c) and (e) as proposed. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

## SUBCHAPTER B. LICENSING OF INDIVIDUAL ORIGINATORS

### 7 TAC §§81.101 - 81.111

#### Statutory Authority

The rules are adopted under the authority of Finance Code §157.0023, which authorizes 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 (federal SAFE Act). 7 TAC §81.103 is also adopted under the authority of, and to implement, Occupations Code Chapter 55. 7 TAC §81.108 is also adopted under the authority of Government Code §411.1385. 7 TAC §81.110 is also adopted under the authority of, and to implement, Occupations Code §53.025. 7 TAC §81.111 is also adopted under the authority of, and to implement, Occupations Code Chapter 53, Subchapter D.

The adopted rules affect the statutes contained 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.

#### *§81.103. Licensing of Military Service Members, Military Veterans, and Military Spouses.*

(a) Purpose and Applicability. The purpose of this section is to specify 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 Tex. Occ. Code §55.001.

(c) Late Renewal (Reinstatement). As provided by Tex. Occ. 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 the individual 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 prescribed by Tex. Fin. 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.

(d) Expedited License Procedure. As provided by Tex. Occ. Code §55.004 and §55.005, the Department will process a license application as soon as practicable and issue a license to a qualifying applicant who is a military service member, military veteran, or military spouse, if the applicant:

(1) holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117; or

(2) held a residential mortgage loan originator license in Texas within the five years preceding the date of the application.

(e) Temporary Authority for Military Spouse. Tex. Occ. Code §55.0041 provides that a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing in another jurisdiction with substantially similar licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual sanctioned to act as an originator in another jurisdiction may act under temporary authority in this state (12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)). Tex. Occ. Code §55.0041(c) further requires that a military spouse "comply with all other laws and regulations applicable to the business or occupation." As a result, a military spouse seeking to avail himself or herself of the temporary authority conferred by Tex. Occ. Code §55.0041 must apply for and seek temporary authority in accordance with Tex. Fin. Code §180.0511 and §81.102 of this title (relating to Temporary Authority).

(f) Substantial Equivalency. For purposes of this section and Tex. Occ. Code §55.004, a residential mortgage loan originator license issued in another jurisdiction is substantially equivalent to a Texas residential mortgage loan originator license if it is issued in accordance with the requirements of the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5501-5117. The Department will verify a license issued in another jurisdiction through NMLS.

(g) Credit for Military Experience. As provided by Tex. Occ. Code §55.007, with respect to an applicant who is a military service

member or military veteran, the Department 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 examination, as provided by Tex. Fin. Code §180.057;

(2) the required pre-licensing education training and coursework, as provided by Tex. Fin. Code §180.056 and §81.104 of this title (relating to Required Education); and

(3) continuing education training and coursework, as provided by Tex. Fin. Code §180.060 and §81.104 of this title (relating to Required Education).

§81.110. *Criminal Conviction Guidelines.*

(a) Purpose and Applicability. This section establishes the criteria utilized by the Commissioner and Department staff in reviewing an individual with a criminal history to determine his or her eligibility and fitness to be licensed by the Department as an originator. This section implements the requirements of Tex. Occ. Code §53.025, requiring the Department to establish guidelines related to such reviews, including designating particular crimes and offenses the Department 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 seven years preceding the date of the application, has been convicted of, or pled guilty or nolo contendere 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 Tex. Fin. 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 Tex. Fin. Code §180.055(a). Any felony offense listed in the schedule contained in subsection (e) of this section having a nexus to residential mortgage loan origination arising from the categories of criminal offenses related to residential mortgage loan origination under subsection (d)(1) or (2) of this section (concerning crimes involving fraud, falsification, dishonesty, deception and breach of trust, and theft or embezzlement, respectively) is deemed to constitute a crime involving an act of fraud, dishonesty, breach of trust, or money laundering for purposes of Tex. Fin. 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 underwriter who ultimately 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 making the loan application, and sometimes directs the consumer to present his or her financial informa-

tion 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 prequalification documents 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 prevailing 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 and 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, insurance providers, closing/settlement agents, and 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 Department's Commissioner has 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 Department's Commissioner has 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 the Department to act as an originator. The schedule includes those criminal offenses most likely to be encountered by Department staff 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 the Department 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, 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 §81.110(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 the Department 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 listed in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Tex. Fin. 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 the Department; 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 Tex. Fin. 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, the Commissioner may consider the individual's past history of disciplinary actions with the Department, 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 Tex. Fin. Code §180.055(a)(3), and honesty, trustworthiness and integrity in accordance with Tex. Fin. Code §157.012(c)(1).

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

Filed with the Office of the Secretary of State on October 15, 2021.

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Iain A. Berry

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Department of Savings and Mortgage Lending

Effective date: November 4, 2021

Proposal publication date: September 10, 2021

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



## SUBCHAPTER B. LICENSING

### 7 TAC §§81.102 - 81.104, 81.106 - 81.110

#### Statutory Authority

The rule repeals are adopted under the authority of Finance Code §157.0023, which authorizes 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 (federal SAFE Act).

The adopted rule repeals affect the statutes contained 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.

Filed with the Office of the Secretary of State on August 25, 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



## 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 rules in 7 Texas Administrative Code (TAC) Chapter 81, Subchapter B: §§81.102 - 81.104, and 81.106 - 81.110. The commission further proposes new rules concerning the same or similar subject matter in 7 TAC Chapter 81, Subchapter B: §§81.102 - 81.104, and 81.106 - 81.111. The commission further proposes amendments to existing rules in 7 TAC Chapter 81 as follows: Subchapter B, §81.101 and §81.105. 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 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. The proposed rules were identified during the department's periodic review of 7 TAC Chapter 80 conducted pursuant to Government Code §2001.039.

#### *Criminal Conviction Guidelines*

The department licenses individuals to act as residential mortgage loan originators. Pursuant to Occupations Code §53.025, the department, as a licensing authority for an occupational license, is required to issue guidelines relating to the department's administration of Occupations Code Chapter 53, including stating the reasons a particular crime is considered to relate the duties and responsibilities of the license and any other criterion that affects the decisions of the department in administering Occupations Code Chapter 53. The proposed rules, if adopted would implement Occupations Code §53.025 by adopting comprehensive criminal conviction guidelines in rule. The authority for denial of 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. The proposed rules, if adopted, would further outline the commissioner's authority for denial of an application for licensure under the Finance Code based on criminal history, including outlining certain offenses deemed by rule to be grounds for denial under the Finance Code.

#### *Changes Concerning Licensing Procedures*

The department licenses individuals to act as residential mortgage loan originators. 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 residential mortgage loan originators. The proposed rules, among other things: (i) clarify how a residential mortgage loan originator goes about being sponsored by a mortgage company or mortgage banker so as to engage in regulated activities with the license; (ii) clarify how an individual licensed in another jurisdiction or by a different licensing authority as a residential mortgage loan originator, or is a "registered mortgage loan originator" (as defined by Finance Code §180.002(16)) may engage in regulated activities under temporary authority while he or she seeks licensure by the department; (iii) with respect to an applicant for licensure who is a military service member or military veteran, clarify that his or her military service, training, or education cannot constitute grounds for waiving the pre-licensing examination required by Finance Code §180.057, the pre-licensing education training and coursework required by Finance Code §180.056, or the continuing education training and coursework required by Finance Code §180.060; (iv) with respect to a military spouse, clarify that a military spouse seeking temporary authority to act as a residential mortgage loan originator in Texas must do in conformity with Finance Code §180.0511; (v) with respect to pre-licensing education, expand an existing requirement by requiring that such pre-licensing education lapses if the individual does not achieve licensure by limiting the applicable time period from four years to three years; (vi) with respect to pre-licensing education taken in another jurisdiction, impose a new requirement that any portion of such training and coursework which was specific to such jurisdiction does not count towards the minimum hours of required pre-licensing education; (vii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a deficiency so as to enable the individual to conduct regulated activities while the deficiency is resolved (viii) clarify the commissioner's authority to conduct background checks other than through the NMLS system; and (ix) set forth in rule procedures for conducting background checks by the department.

#### *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 residential mortgage loan originator to update such records; and the department's procedures for contacting a residential mortgage loan originator using the contact information derived from such records. The proposed rules, among other things: (i) expand existing requirements concerning a residential mortgage loan originator updating and keeping current in the NMLS system various information associated with his or her license (contact information, disclosures concerning criminal history and financial background, etc.) by requiring that the originator update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a residential mortgage loan originator from engaging in regulated activities prior to becoming sponsored of record in the NMLS system by a mortgage company or mortgage banker; (iii) set forth in rule procedures for the department to contact a residential mortgage loan originator utilizing the contact information designated by the residential mortgage loan originator in his or her NMLS license records; and (iv) impose a new requirement requiring a residential mortgage loan originator to monitor the email address he or she has designated in the NMLS system to manage their account with NMLS and receive system-generated messages from NMLS, 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 80, Texas Residential Mortgage Loan Companies.

### 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 Licensing Records create a new rule requirement requiring a licensee to monitor the email address he or she 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 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.

## SUBCHAPTER B. LICENSING OF INDIVIDUAL ORIGINATORS

### 7 TAC §§81.101 - 81.111

#### Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, which authorizes 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 (federal SAFE Act). 7 TAC §81.103 is also proposed under the authority of, and to implement, Occupations Code Chapter 55. 7 TAC §81.108 is also proposed under the authority of Government Code §411.1385. 7 TAC §81.110 is also proposed under the authority of, and to implement, Occupations Code §53.025. 7 TAC §81.111 is also proposed under the authority of, and to implement, Occupations Code Chapter 53, Subchapter D.

This proposal affects the statutes contained 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.

#### *§81.101. Sponsorship of Originator [and Termination Thereof].*

(a) Sponsorship Required. In order to act in the capacity of an originator an [Aa] originator's license must be sponsored in NMLS [the Nationwide Mortgage Licensing System and Registry] by a mortgage company licensed under Finance Code Chapter 156 or a mortgage banker registered under Finance Code Chapter 157. In order to establish sponsorship by a mortgage company or a mortgage banker the originator must amend his or her NMLS license record (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 in order 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 license record amendments in NMLS in order to establish such sponsorship as provided by this section, including a request 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 the Department. A licensee 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.

(b) Termination of Sponsorship. Sponsorship may be terminated [removed] by [either] the sponsoring mortgage company or mortgage banker, or the originator. If sponsorship is terminated, the party terminating the sponsorship must immediately make a license record amendment in NMLS notifying the Department [shall notify the Commissioner through the Nationwide Mortgage Licensing System and Registry] that the sponsorship has been terminated, as provided by Tex. Fin. Code §156.211 and §157.019.

(c) Lapsing of Sponsorship; Inactive Status. Failure by an originator to maintain sponsorship will result in the license automatically reverting to an inactive status, during which time the licensee must not act or attempt to act in the capacity of an originator.

#### §81.102. Temporary Authority.

(a) Purpose and Applicability. The purpose of this section is to specify how an individual licensed in another jurisdiction or by a different licensing authority as an originator, or is a "registered mortgage loan originator" (as defined by Finance Code §180.002(16)), 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 the Department, as provided by Tex. Fin. Code §180.0511.

(b) Application Required. An individual seeking to act under temporary authority must comply with the requirements of Tex. Fin. Code §180.0511. Among other requirements, Tex. Fin. Code §180.0511 requires that the individual file an application with the Department seeking licensure in order to be recognized as having temporary authority. An individual must not act or attempt to act in the capacity of an originator until such application has been filed and the individual has been assigned an NMLS license status code by the Department recognizing such temporary authority. Several status codes reflect and recognize such temporary authority. An individual may confirm his or her temporary authority by reviewing his or her status on the NMLS Consumer Access website ([nmlsconsumeraccess.org](http://nmlsconsumeraccess.org)).

(c) Incomplete Applications. The requirements of §81.100(h) (relating to Licensing - General), providing for the deemed withdrawal of an application that is not complete, are inapplicable to an application for which temporary authority is conferred.

#### §81.103. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) Purpose and Applicability. The purpose of this section is to specify 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 Tex. Occ. Code §55.001.

(c) Late Renewal (Reinstatement). As provided by Tex. Occ. 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 the individual 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 prescribed by Tex. Fin. Code §157.0062; otherwise, the individual must obtain a new license, including complying with the requirements and procedures then in existence for obtaining an original license.

(d) Expedited License Procedure. As provided by Tex. Occ. Code §55.004 and §55.005, the Department will process a license application as soon as practicable and issue a license to a qualifying applicant who is a military service member, military veteran, or military spouse, if the applicant:

(1) holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117; or

(2) held a residential mortgage loan originator license in Texas within the five years preceding the date of the application.

(e) Temporary Authority for Military Spouse. Tex. Occ. Code §55.0041 provides that a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing in another jurisdiction with substantially similar licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual sanctioned to act as an originator in another jurisdiction may act under temporary authority in this state (12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)). Tex. Occ. Code §55.0041(c) further requires that a military spouse "comply with all other laws and regulations applicable to the business or occupation." As a result, a military spouse seeking to avail himself or herself of the temporary authority conferred by Tex. Occ. Code §55.0041 must apply for and seek temporary authority in accordance with Tex. Fin. Code §180.0511 and §81.102 of this title (relating to Temporary Authority).

#### §81.104. Required Education.

(a) Pre-Licensing Education. As provided by Finance Code Chapter 180, an individual applying for licensure 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 three hours of instruction relating to the applicable laws, rules and practice considerations governing residential mortgage loan origination in Texas.

(b) Lapsing of Pre-Licensing Education. An individual applying for licensure other than a current license holder seeking renewal or the holder of a recently-expired license seeking reinstatement as provided by Tex. Fin. Code §157.016 (an individual seeking an original license) must have completed the required pre-licensing education and coursework described by subsection (a) within the three years preceding the date of application; otherwise, such individual must retake the pre-licensing education and coursework approved and offered at the time of the application.

(c) Recognition of Pre-Licensing Education Taken in Another Jurisdiction. As provided by Tex. Fin. Code §180.056, the Department will recognize pre-licensing education 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 applicable requirements of the federal SAFE Act, and Finance Code Chapter 180. However, the Department will not recognize those hours

of pre-licensing education taken in another jurisdiction the content of which was dedicated to education specific to that jurisdiction and that comprised the twelve-hour undefined electives portion of such pre-licensing education program and coursework. An individual 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 section.

(d) Continuing Education. As provided by Tex. Fin. Code §180.060 and §81.106 of this title (relating to Renewals), a licensee must complete, on an annual basis, continuing education and coursework approved by NMLS in order to renew the license.

§81.105. Fees.

(a) Fees relating to a license or registration will [shall] be established by the Commissioner in accordance with Finance Code[;] Chapter 157. The amount of the fees may be modified upon not less than 30 days' [days] advance notice posted on the Department's [department's] website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any 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 [out of state], the Commissioner may collect reimbursement of actual expenses. Actual expenses incurred will be in compliance with the Department's [department's] policies and procedures.

§81.106. Renewals.

(a) A license may be renewed upon:

(1) submission of a completed application for renewal through NMLS together with payment of the applicable renewal application fee;

(2) a determination that the applicant continues to meet the minimum requirements for licensure; and

(3) satisfactory evidence provided to the Department that the license holder has completed the continuing education requirements of Finance Code §180.060.

(b) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in her 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 licensed activity 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 is grounds for the Commissioner to take disciplinary action against the licensee, including suspension or revocation of the license.

(c) Supplemental Information. The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license pursuant to Finance Code Chapters 157 and 180 as is deemed by the Commissioner to be necessary or advisable to determine compliance with the requirements of Finance Code Chapters 157 and 180.

(d) Reinstatement. The provisions of this section also apply to an individual seeking reinstatement of a recently-expired license, as provided by Tex. Fin. Code §157.016, and should be construed accordingly.

§81.107. NMLS Records; Notice to Licensee.

(a) Amendments to License Records Required. Unless Tex. Fin. Code §157.019 applies and requires additional notice, an originator licensed by the Department must amend his or her NMLS license record (MU4 filing) within 10 days after any material change occurs affecting any aspect of the MU4 filing, including, but not limited to:

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

(2) phone number;

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

(4) mailing address;

(5) residential history;

(6) employment history; and

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

(b) Amendments Requiring New Credit History Check. An originator amending his or her MU4 filing to make a financial disclosure is deemed to have authorized the Department to retrieve a current copy of his or her credit report, as provided by Tex. Fin. Code §157.0132 and §81.108 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 within the NMLS system.

(c) Amendments Requiring New Criminal Background Check. An originator amending his or her MU4 filing to make a criminal disclosure is deemed to have authorized the Department to perform an additional criminal background check in accordance with Tex. Fin. Code §157.0132 and §81.108 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 criminal background check within the NMLS system.

(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 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 by the Department to the originator'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 originator has an ongoing duty and a continuing obligation to monitor the email account designated as their NMLS account email address including to ensure that correspondence from the Department or system notifications from NMLS are not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. An originator is deemed to have constructive notice of any email correspondence or NMLS system notifications sent to the email address he or she has designated as his or her NMLS account email address.



(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.

§81.108. Background Checks.

(a) NMLS Background Check; Fingerprints Required. An individual applying for an originator's license must provide authorization and fingerprints as prescribed by NMLS in order to conduct a criminal background history check through the Federal Bureau of Investigation.

(b) Background Checks by the Commissioner. Pursuant to Tex. Fin. Code §157.0132 and Tex. Gov't Code §411.1385, the Commissioner is authorized to separately conduct a criminal background history check through the Texas Department of Public Safety (DPS) as determined in the sole discretion of the Commissioner, and may require the applicant to provide fingerprints in order to conduct a fingerprint-based criminal background history check administered by DPS and to pay any applicable fees to DPS or its designated third-party fingerprint processor.

(c) NMLS Credit Check. An individual applying for an originator's license must provide authorization in the NMLS system for the Department to obtain a copy of the applicant's credit report concerning the applicant's credit history from a credit reporting agency (credit bureau).

(d) Supplemental Information. An individual applying for an originator's license must provide to the Department, through NMLS, information related to any administrative, civil, or criminal findings or proceedings by a governmental jurisdiction, including any information required by §81.109 of this title (relating to Procedures for Review of Background Checks).

§81.109. Procedures for Review of Background Checks.

(a) Purpose and Applicability. This section establishes procedures utilized by the Commissioner and Department staff in performing background checks and reviewing an individual's criminal background and credit history to determine his or her fitness and eligibility for licensure in accordance with Tex. Fin. Code §157.0132.

(b) Supporting Information/Documentation for Criminal Background Check. In order to facilitate his or her review by the Department, an individual with a criminal history seeking to be licensed by the Department, when requested by Department staff, must provide the following in support of his or her application for each conviction or other criminal proceeding identified by Department staff:

(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. In order to facilitate his or her review by the Department, an individual seeking to be licensed by the Department, when requested by Department staff, must provide the following for each financial disclosure made in his or her application for licensure and each credit account on his or her credit report identified by Department staff:

(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 from such proceeding, or if the proceeding is ongoing, the current bankruptcy petition, together with the 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 the Department in accordance with subsections (b) and (c) of this section, the individual 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 the Department may rely on in making a decision on the application. By providing such supporting documentation, the individual consents to such documentation being admissible at an adjudicative hearing if the Commissioner seeks to deny the individual's application for licensure resulting in a contested case, and the individual waives 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, an individual seeking to be licensed by the Department must obtain and provide the Department with certified or exemplified copies of any documents described in subsections (b) and (c) of this section upon written request by Department staff.

§81.110. Criminal Conviction Guidelines.

(a) Purpose and Applicability. This section establishes the criteria utilized by the Commissioner and Department staff in reviewing individuals with a criminal history to determine his or her fitness to be licensed by the Department as an originator. This section implements the requirements of Tex. Occ. Code §53.025, requiring the Department to establish guidelines related to such reviews, including designating particular crimes and offenses which the Department considers to be directly related to the duties and responsibilities of acting as an originator, and that may constitute grounds for denial of licensure. The authority for denial of a license 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 as an originator by operation of law due to his or her criminal history:

(1) an individual who, within the seven years preceding the date of the application, has been convicted of, or pled guilty or nolo contendere 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 Tex. Fin. 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 Tex. Fin. Code §180.055(a).

(c) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission of Texas and the Department's Commissioner has determined the criminal offenses in the following schedule are directly related to the duties and responsibilities of an individual licensed by the Department to act as an originator. The schedule includes those criminal offenses most likely to be encountered by the Department 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 the Department from considering a criminal offense not specifically listed in the schedule. The schedule should 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, 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 §81.110(c)

(d) 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 underwriter who ultimately 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 they might qualify. The originator may assist the consumer in making 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 securing prequalification documents to establish their 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 prevailing rates and terms 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 and 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, insurance providers, closing/settlement agents, and representatives of various taxing authorities. In performing his or her duties, an originator is entrusted with, and 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.

(e) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission and the Department's Commissioner has 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.

(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 the Department 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 a license might offer an opportunity to engage in further criminal activity of the same type as that in which the individual had 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 the license sought by the individual; and

(5) any correlation between the elements of the crime and the duties and responsibilities of an individual licensed by the Department to act as an originator

(g) In addition to the factors listed in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Tex. Fin. Code §157.0131 and subsection (h) of this section) is unfit and should be disqualified from being licensed by the Department, 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 last 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 while incarcerated or after release;

(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 stating the reasons that the employer is recommending that the individual be considered fit to be licensed by the Department; and

(8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and their character and fitness, with specific and complete knowledge of the individual's criminal history, and 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 Tex. Fin. 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 convictions, the Commissioner may consider the individual's past history of disciplinary actions with the Department, 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 in favor of disqualifying the individual 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 convictions, 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 in favor of disqualifying an individual with a criminal history for licensure. The conviction of an offense having a nexus to the duties and responsibilities of an individual licensed by the Department as an originator is indicative of a failure to demonstrate requisite character and general fitness to command the confidence of the community in accordance with Tex. Fin. Code §180.055(a)(3), and honesty, trustworthiness and integrity in accordance with Tex. Fin. Code §157.012(c)(1).

(k) Offenses Deemed to Involve Fraud or Dishonesty. Any felony criminal offense listed in the schedule contained in subsection (c) of this section which has a nexus to residential mortgage loan origination arising from subsection (e)(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 Tex. Fin. Code §180.055(a), and will result in ineligibility by operation of law, as provided by subsection (b) of this section.

§81.111. 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 the Department with respect to his or her criminal history prior to formally applying with the Department for licensure, as authorized by Occupations Code Chapter

53. Pursuant to Tex. Occ. Code §53.102, the evaluation contemplated by this section is available to an individual who has reason to believe he or she is ineligible to be licensed by the Department 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 the Department. 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 on the form prescribed by the Commissioner and published on the Department's website. The fee to make a request under this section is \$75.

(c) Review of Request for Preliminary Evaluation. A request made under this section will be reviewed by the Commissioner and Department staff to determine the requestor's eligibility utilizing the same procedures for review of an individual's criminal history when making an application for licensure, and is subject to the Department's criminal conviction guidelines set forth in §81.110 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 Tex. Fin. Code. §157.0131 and §81.110 of this title (relating to Criminal Conviction Guidelines). The requestor's incarcerated status that would render the individual ineligible for licensure pursuant to Tex. Occ. Code §53.021(b) will be disregarded; however, the Department will consider the implications of the requestor's anticipated release from incarceration in making its determination.

(d) Determination of Eligibility. Within 90 days of receipt of the fully-completed request, the Department 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 the Department 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 the Department 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 Tex. Fin. Code §180.055(a) and §81.110 of this title (relating to Criminal Conviction Guidelines).

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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