

(4) "Registered office" means a physical office of the mortgage banker that is registered with the Department as its main office or a branch office.

(5) "Remote location" means a location other than a registered office or an administrative office of the mortgage banker from which the employees or sponsored originators of the mortgage banker conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage banker must register any office constituting the main office or a branch office of the mortgage banker. A mortgage banker must also register any office or location it advertises or promotes to the general public as an office or location at which the mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A registered office of the mortgage banker must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage banker or mortgage company. An originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a remote location to the same extent as if such employee or originators were physically present at a licensed or registered office of the mortgage banker; provided:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage banker and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker.

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 §81.206

Statutory Authority

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

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

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §81.300

Statutory Authority

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

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

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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 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

advertises or promotes to the general public as an office or location at which the mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage loan applicants. A registered office of the mortgage banker must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage banker or mortgage company. An originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section.

(c) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a location other than a registered office or an administrative office of the mortgage banker (remote location) if the mortgage banker:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage banker and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker.

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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7 TAC §81.206
Statutory Authority

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

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

§81.206. Physical Office.

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

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §81.300

Statutory Authority

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

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

§81.300. Examinations.

(a) The Commissioner, or the Commissioner's designee(s), will conduct periodic examinations of an an [a mortgage company or sponsored] originator as the Commissioner deems necessary.

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

(c) Examinations will be conducted to determine compliance with Finance Code, Chapters 157 and 180, [Chapter 156] and this chapter, and will specifically address whether:

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

(2) all office locations [at which such activities are conducted] are properly licensed or [and] registered, as provided by §80.206 (relating to Physical Office) and §81.206 of this title (relating to Office Locations; Remote Work) [with NMLS];

(3) (No change.)

(4) legal and regulatory requirements applicable to the originator and the mortgage banker or mortgage company sponsoring the originator [mortgage company and its originators] are being properly followed; and

(5) other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapters 157 and 180 [Chapter 156].

(d) The examiners will review a sample of residential mortgage loan files identified by the examiners and randomly selected from the originator's [mortgage company's] mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners may require an originator, at his or her [a mortgage company, at its] own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.

(f) (No change.)

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

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

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

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3010

The Finance Commission of Texas (commission) proposes amendments to §83.3010 (relating to Fees) in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the proposed rule changes to 7 TAC Chapter 83, Subchapter B is to reduce the annual assessment paid by licensed CABs for the Texas Financial Education Endowment (TFEE).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

Proposed amendments to §83.3010 relate to the amount of the annual assessment that CABs pay toward TFEE. Currently, §83.3010(g)(4) requires each licensed entity to pay a fee up to \$200 for each annual renewal, to contribute to TFEE. This provision also explains that the commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose. The proposed amendment to §83.3010(g)(4) would reduce the annual fee paid to TFEE from \$200 to \$100.

The commission and the OCCC believe that the endowment is close to a sustaining level, and that now is an appropriate time to reduce the \$200 assessment. As of February 28, 2021, the TFEE fund balance was approximately \$9.1 million. The fund balance has increased each year CABs have been licensed. For example, the fund balance was \$7.9 million in FY 2019 and \$8.3 million in FY 2020. In the 2020 - 2021 grant cycle, ten organizations were awarded a cumulative amount of \$300,000. In June 2021, the commission approved the TFEE Grant Advisory Committee's recommendation to disburse \$350,000 during the 2022-2023 TFEE grant cycle. The commission and the OCCC anticipate that a \$100 fee will enable TFEE to continue growing while also making substantial grants to support financial education in Texas.

Mirand Diamond, Director of Licensing and Finance, has determined that for the first five-year period the proposed rule changes are in effect, there will be fiscal implications for state government as a result of administering the rules. The proposed amendment to §83.3010 would decrease the annual CAB TFEE assessment from \$200 to \$100. Fees that CABs pay toward TFEE will decrease by approximately \$200,000 in each of the first five years the proposed rule change is in effect. In the last seven fiscal years, on average, the OCCC has collected approximately \$400,000 per year in fees from CABs for TFEE. Therefore, the OCCC anticipates that decreasing the fee by 50% will cause this amount to decrease by approximately \$200,000