

perform examinations of savings bank holding companies, affiliates, and third-party service providers; (ii) classifies the examination of a savings bank holding company, affiliate, or third-party service provider as a special examination subject to the rule; and (iii) changes the calculation for the fee assessed for a special examination from a daily fee (\$325) to an hourly fee (\$75). The department asserts an hourly fee more accurately reflects the actual work performed by the department's examiners and will result in fees that are more equitable and will better reflect the true cost of regulation. The existing daily fee of \$325 has been in place since the rule was originally adopted on January 5, 2012. Existing §76.95 is also patterned after a previous rule adopted by the Department (at that time, the Texas Savings and Loan Department) effective September 23, 1993 (18 TexReg 4808; 1993 rule) which was repealed and replaced by existing §76.95. The 1993 rule similarly imposed a daily fee of \$325 to conduct a special examination. Assuming a standard workday of eight hours, this \$325 daily figure amounts to an hourly fee of approximately \$42.63. According to an inflation calculator provided by the United States Bureau of Labor Statistics on its website, based on the consumer price inflation index, an hourly fee of \$42.63 in September of 1993 would equate to a fee of \$76.44 in July of 2021 (more than the \$75 in the adopted rule). As a result, the increased rate in the adopted rule is likely in keeping with the requirements of the original rule in 1993.

#### *Other Modernization and Update Changes*

New §76.95 makes changes to modernize and update existing §76.95 including: (i) adding and replacing language to improve clarity and readability; (ii) removing unnecessary or duplicative provisions; and (iii) updating terminology.

#### Summary of Public Comments

Publication of the commission's proposal to repeal and adopt a new rule at 7 TAC §76.95 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. No comments were received in response to the proposal.

### **7 TAC §76.95**

#### Statutory Authority

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

The adopted rule repeal affects the statutes contained in Finance Code Title 3, Subtitle C, the Texas State Savings Bank Act.

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

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

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Iain A. Berry  
Associate General Counsel  
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



### **7 TAC §76.95**

#### Statutory Authority

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

The adopted rule affects the statutes contained in Finance Code Title 3, Subtitle C, the Texas State Savings Bank Act.

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

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



## **CHAPTER 80. RESIDENTIAL MORTGAGE LOAN COMPANIES**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), adopts amendments, new rules, and rule repeals in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies. The commission's proposal was published in the September 3, 2021 issue of the *Texas Register* (46 TexReg 5501). 7 TAC §80.206 is adopted with changes to the published text and is republished to reflect such changes. The changes regulate no new parties and affect no new subjects of regulation. As a result, the rule will not be republished as a proposed rule for comment. The remaining rules sections in the proposal are adopted without changes to the text as published in the *Texas Register*, and will not be republished.

#### Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156).

#### *Changes Concerning Office Requirements and Remote Work*

Prior to September 1, 2021, pursuant to now former Finance Code Sections 156.2041(7) and 156.2042(6), a residential mort-

gage loan company or credit union subsidiary organization licensed by the department under Finance Code Chapter 156 was required to "maintain a physical office in Texas" (physical office requirement). During the 87th Legislature (Regular Session), Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617) were enacted into law (eff. September 1, 2021) which, among things, amended Finance Code Sections 156.2041 and 156.2042 to eliminate the physical office requirement. One stated purpose for HB3617, as reflected by the bill's House Committee Report was to address "a rise in demand for remote working." The adopted rules implement those portions of HB3617 addressing elimination of the physical office requirement and further seek to fulfill the stated purpose of HB3617 by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a "residential mortgage loan company" (as defined by Finance Code §156.002(13); mortgage company) to work remotely. The adopted rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage company such that the office must be licensed by the department. The adopted rules: (i) eliminate use of the term "physical office" throughout Chapter 80 and instead use the terms "main office" and "branch office" - terms that are used in Chapter 156; (ii) eliminate existing requirements for a mortgage company to maintain records tied to the now defunct physical office requirement; (iii) create definitions for the terms "administrative office," "branch office," "licensed office," and "main office" for purposes of administering the adopted rules, including to clarify which offices of a mortgage company must be licensed by the department; (iv) clarify that the main office or a branch office must be established by the mortgage company and not a sponsored originator; (v) describe conditions under and parameters by which the employees and sponsored originators of a mortgage company are authorized to work from a remote location; (vi) establish a new requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (vii) establish a new requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (viii) establish a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the adopted rules; and (xi) establish a new requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work remotely.

#### Summary of Public Comments

Publication of the commission's proposal for the rules recited a deadline of 30 days to receive public comments, or October 3, 2021. A public hearing in accordance with Government Code §2001.029 was not required. The commission received one comment in response the proposal from Black Mann & Graham L.L.P. (commenter). The commenter suggested proposed §80.206 (relating to Office Locations; Remote Work) be adopted with changes to define use of the terms "residential mortgage loan business" (as used in proposed §80.206(a)(5)) or "business and work" (as used in proposed §80.206(c)), or otherwise clarify the scope of work that an employee or sponsored originator of a mortgage company may perform remotely. The commission agrees with the substance of the comment, and the adopted rules reflect changes responsive to such comment.

### SUBCHAPTER A. GENERAL PROVISIONS

### 7 TAC §80.2

#### Statutory Authority

The rule is adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

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

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

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

TRD-202104103

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

Effective date: November 4, 2021

Proposal publication date: September 3, 2021

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



### SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

#### 7 TAC §§80.203, 80.204, 80.206

#### Statutory Authority

The rules are adopted under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

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

§80.206. *Office Locations; Remote Work.*

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Administrative office" means any office of a mortgage company that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage company conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

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

§52.306. Statute of Limitations at Inception.

Tex. Fin. Code §156.555(b) adopts by reference the statute of limitations period for making claims on the recovery fund under Finance Code Subchapter F and applies it to claims made against the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555. Specifically, pursuant to Tex. Fin. Code §156.503, a claim made on the recovery fund may not be filed after the fourth anniversary of the date the acts causing the actual damages occurred or should reasonably have been discovered. Tex. Fin. Code §156.555 and the Mortgage Grant Fund came into existence effective September 1, 2021. As a result, the earliest possible date for a claim to have accrued for purposes of the limitations period applicable to claims made under Tex. Fin. Code §156.555 is September 1, 2017, and any claim accruing prior to that date is barred.

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

Filed with the Office of the Secretary of State on August 23, 2021.

TRD-202103302

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: October 3, 2021

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



## CHAPTER 80. [TEXAS] RESIDENTIAL MORTGAGE LOAN COMPANIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rule in 7 Texas Administrative Code (TAC) Chapter 80, Subchapter C: §80.206. The commission further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 80, Subchapter C: §80.206. The commission further proposes amendments to existing rules in 7 TAC Chapter 80 as follows: Subchapter A, §80.2; Subchapter C, §80.203 and §80.204; and Subchapter D, §80.300. This proposal and the rules as repealed, amended, or added as a new rule by this proposal are referred to collectively as the "proposed rules."

### Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156).

### *Changes Concerning Office Requirements and Remote Work*

Prior to September 1, 2021, pursuant to now former Finance Code Sections 156.2041(7) and 156.2042(6), a residential mortgage loan company or credit union subsidiary organization licensed by the department under Finance Code Chapter 156 was required to "maintain a physical office in Texas" (physical office requirement). During the 87th Legislature (Regular Session), Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617) were enacted into law (eff. September 1, 2021) which, among things, amended Finance Code Sections 156.2041 and 156.2042 to eliminate the physical office requirement. One stated purpose for HB3617, as reflected by the bill's House Committee Report was to address "a rise in demand for remote working." The proposed rules implement those portions of HB3617 addressing elimina-

tion of the physical office requirement and further seek to fulfill the stated purpose of HB3617 by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a "residential mortgage loan company" (as defined by Finance Code §156.002(13); mortgage company) to work remotely. The proposed rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage company such that the office must be licensed by the department. The rules, if adopted, would: (i) eliminate use of the term "physical office" throughout Chapter 80 and instead use the terms "main office" and "branch office," terms that are used in Chapter 156; (ii) eliminate existing requirements for a mortgage company to maintain records tied to the now defunct physical office requirement; (iii) create definitions for the terms "administrative office," "branch office," "licensed office," and "main office" for purposes of administering the proposed rules, including to clarify which offices of a mortgage company must be licensed by the department; (iv) clarify that the main office or a branch office must be established by the mortgage company and not a sponsored originator; (v) describe conditions under and parameters by which the employees and sponsored originators of a mortgage company are authorized to work from a remote location; (vi) create a new requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (vii) create a new requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (viii) create a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules; and (ix) create a new requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work remotely.

### Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department. However, the proposed rules are intended to formalize and clarify existing



requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department.

#### Public Benefits

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

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

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As related above, the proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department by regulated persons. However, the proposed rules are intended to formalize and clarify existing requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department by regulated persons for a branch office license. The proposed rules related to Changes Concerning Office Requirements and Remote Work require a mortgage company to provide its employees and sponsored originators with training on how to work remotely in an environment conducive and appropriate to consumer privacy, and to maintain written procedures governing such remote work. However, most, if not all, mortgage companies already operate under existing authority for their employees and sponsored originators to work remotely, including existing parameters, presently not formalized in rule, that the mortgage company employ sufficient security protocols to protect consumer information, and to exercise appropriate oversight and supervision over an employee or sponsored originator working remotely. The proposed rules require the mortgage company to adequately train its employees and sponsored originators on conducting such remote work, and to document its procedures governing such remote work. As a result, the proposed rules do not directly impose a cost on regulated persons in order to comply with the proposed rules. A mortgage company may conceivably choose to engage, at some indeterminate cost, a third party to conduct such training or to develop such written procedures concerning remote work by its employees and sponsored originators; however, this potential cost would be at the election of the mortgage company, and is not directly required by the proposed rules. Furthermore, existing applicable law at the federal level already imposes similar requirements to ensure mortgage companies licensed by the department employ appropriate safeguards to protect a consumer's financial information, including activities conducted remotely by its employees and sponsored residential mortgage loan originators. Specifically, applicable regulations of

the Federal Trade Commission (FTC) (16 C.F.R. §§314.1-314.5 require mortgage companies to employ appropriate safeguards to (i) "[p]rotect the security and confidentiality of customer information"; (ii) "[p]rotect against any anticipated threats or hazards to the security or integrity of such information"; and (iii) "[p]rotect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer" (16 C.F.R. §314.3, concerning Standards for Safeguarding Customer Information). Taking the foregoing into consideration, the proposed rules do not impose economic costs on persons required to comply with the proposed rules.

#### One-for-One Rule Analysis

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

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency. The proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department by regulated persons. However, the proposed rules are intended to formalize and clarify existing requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department by regulated persons for a branch office license; (5) the proposed rules do create a new requirement (rule requirement). The proposed rules related to Changes Concerning Office Requirements and Remote Work create a new rule requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work from remotely. The proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

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

#### Fiscal Impact on Small and Micro-Businesses, and Rural Communities

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

#### Takings Impact Assessment

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

#### Public Comments

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

## SUBCHAPTER A. GENERAL PROVISIONS

### 7 TAC §80.2

#### Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act). 7 TAC §80.100(g) is also proposed under the authority of, and to implement, Finance Code §156.210.

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

#### §80.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 156, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §156.002(14) and paragraph (18) [(20)] of this section means a request, in any form, for an offer (or a response to a solicitation for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, and/or the mortgage loan amount.

[(2) "Branch office," as used in Tex. Fin. Code §156.2041(a)(4), means any office that is separate and distinct from the mortgage company's principal place of business of record with NMLS, whether located in Texas or not, which conducts mortgage business on residential real estate located in Texas.]

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

(3) [(4)] "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

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

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

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

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

(C) in the case of an LLC, is a managing member; or

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

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

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

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

(9) [(10)] "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §156.002.

(10) [(11)] "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §156.002.

(11) [(12)] "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §156.002(14), means, among other things, when an individual:

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

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

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

(12) [(43)] "Originator" has the meaning assigned by Tex. Fin. Code §156.002 in defining "residential mortgage loan originator." Paragraphs (11) [(42)] and (18) [(20)] of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

(13) [(44)] "Person" means an individual, corporation, company, limited liability company, partnership or association.

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

(14) [(46)] "Qualifying Individual" or "Qualified Individual" has the meaning assigned by Tex. Fin. Code §156.002 in defining "qualifying individual." Additionally, the license held by the Qualifying Individual must be held in a status which authorizes him or her [them] to conduct regulated activities, and the individual sponsored of record in NMLS by the mortgage company for which he or she is acting as [they are] the Qualifying Individual.

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

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

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

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

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

Filed with the Office of the Secretary of State on August 23, 2021.  
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Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
Earliest possible date of adoption: October 3, 2021  
For further information, please call: (512) 475-1535

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**SUBCHAPTER C. DUTIES AND RESPONSIBILITIES**

**7 TAC §§80.203, 80.204, 80.206**

**Statutory Authority**

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

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

*§80.203. Advertising.*

(a) - (b) (No change.)

(c) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan transaction or is otherwise designed to solicit residential mortgage loan [origination] business for the mortgage company or sponsored originator. This includes "flyers," business cards, or other handouts, and commercial messages delivered by and through a social media site. However, the requirements of subsection (b)(2) of this section do not apply to:

(1) - (2) (No change.)

(3) signs located on or adjacent to the mortgage company's licensed office as provided by §80.206 of this title (relating to Office Locations; Remote Work) [physical office].

(d) (No change.)

*§80.204. Books and Records.*

(a) (No change.)

(b) Mortgage Application Records. Each mortgage company or sponsored originator is required to maintain, at the location specified in their official record on file with the Department, the following books and records:

(1) - (2) (No change.)

(3) General Business Records. General business records include:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan [origination] business;

(B) (No change.)

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage company employees, independent contractors and all others compensated by such mortgage company in connection with the residential mortgage loan [origination] business;

(D) - (G) (No change.)