

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

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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

(C) an office or location which conducts any combination of activities described by subparagraphs (A) or (B) of this paragraph.

(2) "Branch office" means any office a mortgage company maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees of the mortgage 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);

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

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

(3) "Licensed office" means a physical office of the mortgage company that is licensed by the Department as its main office or a branch office.

(4) "Main office" means the office the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by the Department through the mortgage company's license.

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

(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage company. A mortgage company must also obtain a license for any office or location it advertises or promotes to the general public as an office or location at which the mortgage company's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A licensed office of the mortgage company 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 company. A sponsored 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 company and its sponsored originators may conduct business and work from a remote location to the same extent as if such employees or originators were physically present at a licensed office of the mortgage company; provided, the mortgage company:

(1) maintains appropriate safeguards for the mortgage company 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 company, 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 company 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 licensed office or administrative office of the mortgage company.

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-202104104

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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



7 TAC §80.206

Statutory Authority

The rule repeal 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 repeal 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-202104105

(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.
TRD-202103303

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Earliest possible date of adoption: October 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

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.)

(4) Records Concerning Administrative Offices. A mortgage company must create and maintain a list reflecting any office constituting an "administrative office" of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work). [Records Establishing Physical Office. A mortgage company must create and maintain records establishing its physical office including:]

[(A) records reflecting the names and contact information for persons serving as staff for the mortgage company assisting customers at the physical office; and]

[(B) records reflecting the mortgage company's right to access the physical office and conduct business of the mortgage company at such office (e.g., a lease agreement or deed).]

(5) Records Concerning Remote Work. A mortgage company must create and maintain records reflecting its compliance with the requirements for remote work as provided by §80.206 of this title (relating to Office Locations; Remote Work).

(c) - (g) (No change.)

§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 or sponsored originators 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

(C) an office or location which performs any combination of activities described by subparagraphs (A) or (B) of this paragraph.

(2) "Branch office" means any office a mortgage company maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:

(A) an office or location at which the employees or sponsored originators 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);

(C) an office or location which performs any combination of the activities described by subparagraphs (A) and (B) of this paragraph; or

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

(3) "Licensed office" means a physical office of the mortgage company that is licensed by the Department as its main office or a branch office.

(4) "Main office" means the address the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by the Department through the mortgage company's license.

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

(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage company. A mortgage company must also obtain a license for any office or location it advertises or promotes to the general public as an office or location at which the mortgage company's sponsored originators meet in-person with mortgage applicants or prospective mortgage loan applicants. A licensed office of the mortgage company 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 company. A sponsored 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 company and its sponsored originators may conduct business and work from a location other than a licensed office or an administrative office of the mortgage company (remote location) if the mortgage company:

(1) maintains appropriate safeguards for the mortgage company 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 company, 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 company 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 licensed office or administrative office of the mortgage company.

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-202103304

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Department of Savings and Mortgage Lending

Earliest possible date of adoption: October 3, 2021

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



7 TAC §80.206

Statutory Authority

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

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

§80.206. *Physical Office.*

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

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

TRD-202103306

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



SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.300

Statutory Authority

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

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

§80.300. *Examinations.*

(a) (No change.)

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

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

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

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

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

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

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

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

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

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

TRD-202103307

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Earliest possible date of adoption: October 3, 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 rule in 7 Texas Administrative Code (TAC) Chapter 81, Subchapter C: §81.206. The commission further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 81, Subchapter C: §81.206. The commission further proposes amendments to existing rules in 7 TAC Chapter 81 as follows: Subchapter A, §81.2; Subchapter C, §81.203 and §81.204; and Subchapter D, §81.300. This proposal and the rules as repealed, amended, or added as a new