

Rule Review and Proposal

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Director of Mortgage Regulation

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DEPARTMENT OF
**SAVINGS AND
MORTGAGE LENDING**

HECTOR RETTA, COMMISSIONER

Timeline and Roadmap

Timeline for Proposed Rules

- 06/07/2024 – pre-comment draft presented in a stakeholder’s webinar
- 06/18/2024 – pre-comment draft discussed in Emerging Issues webinar
- 07/12/2024 – deadline for written pre-comments
- 08/16/2024 – presentation of the rule changes to Finance Commission (FC) for possible publication
- 08/30/2024 (approx.) – publication in the Texas Register for formal comment period
- 10/25/2024 – presentation of the rules to FC on adoption
- 11/08/2024 (approx.) – publication of Final Rule in Texas Register (if adopted)
- Effective Date: Mid to Late November 2024 (some changes will have a delayed implementation date).

Roadmap

- Rule Review affecting all Chapters
- Overview of Changes
- Reorganization Changes
- New Rules of General Applicability (all chapters)
- Substantive Changes in RMLO Rules
- Substantive Changes in Mortgage Company and Mortgage Banker Rules
- Substantive Changes in Mortgage Servicer Rules
- Substantive Changes in Wrap Mortgage Loan Rules

Rule Chapters Affected

- Chapter 78 – Wrap Mortgage Loans
- Chapter 79 – Residential Mortgage Loan Servicers
- Chapter 80 – Residential Mortgage Loan Companies
- Chapter 81 – Mortgage Bankers and Residential Mortgage Loan Originators

Overview of Changes

- Reorganization (Relocation) of Chapters 78-81 into New Chapters 56-59
- Reorganization of RMLO rules from Chapter 81 into New Chapter 55
- Changes Concerning Licensing/Registration
- Changes Concerning Duties and Responsibilities
- Changes Concerning Compliance and Enforcement
- Other Modernization and Update Changes

Reorganization Changes

- Reorganization of Chapters 78-81 into New Chapters 56-59
- Reorganization of RMLO rules from Chapter 81 into New Chapter 55

STATUTE

RULES

Finance Code Chapters 157 and 180
(RMLOs)



Chapter 55, Residential Mortgage Loan
Originators

Finance Code Chapter 156
(Mortgage Companies)



Chapter 56, Mortgage Companies

Finance Code Chapter 157
(Mortgage Bankers)



Chapter 57, Mortgage Bankers

Finance Code Chapter 158
(Mortgage Servicers)



Chapter 58, Mortgage Servicers

Finance Code Chapter 159
(Wrap Mortgage Loans)



Chapter 59, Wrap Mortgage Loans



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Notable Changes

New Rules of General Applicability

The rules will be reorganized in a defined format and numbering system to permit a greater understanding.

- §XX.3 Formatting Requirements for Notices
- §XX.4 Electronic Delivery and Signature of Notices
- §XX.5 Computation of Time

RMLOs: General Licensing Requirements for an Originator

§55.100(a)(6) – clarifying when an originator license is required for a loan processor or underwriter

An individual working for a mortgage company licensed by SML or a mortgage banker registered with SML, whose compensation for federal income tax purposes is not reported on a W-2 form (e.g., a self-employed worker who is issued an IRS Form 1099-NEC), that acts as a loan processor or underwriter, is deemed to be an independent contractor loan processor or underwriter for purposes of Finance Code §180.051(b) and must be licensed as an originator. All individuals working for a mortgage company that is an independent loan processor underwriter company, regardless of how their income is documented (including W-2 employees), who act as a loan processor or underwriter or otherwise perform work in connection with the provision of loan processing or underwriting services by the company, are deemed to be independent contractors for purposes of Finance Code §180.051(b) and must be licensed as an originator.

RMLOs: Number of Permissible Sponsorships

§55.107(b) – clarifying sponsorship requirements for originators

(b) Number of Sponsorships. An originator may be sponsored by more than one mortgage company or mortgage banker if:

- (1) the originator clearly identifies to the mortgage applicant the sponsoring entity or entities on whose behalf the originator is acting prior to taking an application;
- (2) the application clearly states the sponsoring entity on whose behalf the originator is acting (e.g., in the "Loan Originator Information" section of the Fannie Mae 1003 Uniform Residential Loan Application). The mortgage applicant may apply with more than one sponsoring entity, provided, there are separate applications for each such entity that clearly identifies the sponsoring entity to which the application was submitted;
- (3) the authorization forms, disclosures, loan estimates, pre-qualification letters, conditional approval letters, closing disclosures, and other materials provided to the mortgage applicant clearly identify the mortgage company or mortgage banker providing residential mortgage loan origination services in the transaction;
- (4) the originator does not misrepresent or misconstrue to the mortgage applicant the mortgage company or mortgage banker providing residential mortgage loan origination services in the transaction;
- (5) the originator discloses to his or her sponsoring entities the existence the originator's multiple sponsorships;
- (6) the originator does not steer the mortgage applicant to a sponsoring entity offering terms less favorable to the mortgage applicant and that might have the effect of increasing the originator's compensation; and
- (7) the originator is only compensated for services actually performed and does not share or split any fee.

RMLOs: Required Education

§55.108(b) – clarifying lapsing of pre-licensing education and examination

An applicant other than a current license holder seeking renewal under §55.103 of this title (relating to Renewal of the License; i.e., an individual seeking a new license) must have completed the required pre-licensing education and coursework described by subsection (a) within the 3 years preceding the date of application; otherwise, the applicant must take the pre-licensing education and coursework approved and offered at the time of the application. Additionally, if an applicant for a new license did not pass the National Component with Uniform State Content examination approved by NMLS on or after April 1, 2013, the applicant must pass the current pre-licensing examination approved by NMLS in order to satisfy the requirements of Finance Code §180.057 (examinations taken prior to April 1, 2013, will not satisfy such requirements).

RMLOs: Temporary Authority

§55.109(d) – clarifying the requirements of temporary authority including the maximum duration of temporary authority

Maximum Duration. Pursuant to Finance Code §180.0511, the maximum duration for temporary authority is 120 days. When an originator has received the cumulative benefit of 120 days of temporary authority, no further temporary authority is allowed. An originator acting under temporary authority who has exceeded the 120-day maximum duration will have his or license status conferring temporary authority removed. An individual making an application for licensure who previously received the benefit of 120 days of temporary authority will not be conferred temporary authority status.

RMLOs: Education Fraud

§55.202(e) – clarifying fraudulent, misleading or deceptive practices and improper dealings to include education fraud

Education Fraud. The following conduct in connection with pre-licensing education or examination, or continuing education required by §55.108 of this title (relating to Required Education) constitutes a false or deceptive statement or representation for purposes of Finance Code §180.153(11) and a false statement or omission of material fact for purposes of Finance Code §180.153(12):

- (1) claiming credit for a pre-licensing education course, pre-licensing examination, or continuing education course the individual did not actually take; or
- (2) taking a pre-licensing education course, pre-licensing examination, or continuing education course on behalf of another individual.

Mortgage Companies and Mortgage Bankers: Subchapter A: General Provisions

§56.2 Definitions

- “E-Sign Act” (Electronic Signature in Global and National Commerce Act)
- “Engage in or conduct the business of a mortgage company”
- “Making a residential mortgage loan”
- “Mortgage banker”
- “Nationwide Multistate Licensing System”
- “SML” (replaces “Department”)
- “State Examination System”
- “Trigger lead”
- “UETA” (Texas Uniform Electronic Transactions Act)
- “Wrap lender”
- “Wrap mortgage loan”

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Mortgage Companies and Mortgage Bankers: Subchapter B: Licensing / Registration

§56.100 Licensing Requirements

- Subsection (a)(2) clarifies that a license is required to receive compensation for mortgage loan origination business
- Subsection (c) (Securing the Services of an Originator) clarifies that a lender is not required to have a license if the lender secures the services of a licensed mortgage company or registered mortgage banker except when there is a wrap mortgage loan or secondary mortgage loan

§57.100 Registration Requirements

- Subsection (a)(2) clarifies that a registration is required to receive compensation for mortgage loan origination business

Mortgage Companies and Mortgage Bankers: Subchapter B: Licensing / Registration

§56.101 Applications for Licensure / §57.101 Applications for Registration

- Subsection (a) provides that the licensing checklists published by SML on the NMLS website (“State Licensing Requirements”) must be used in making an application
- Subsection (c) clarifies that an application may be withdrawn for failure to pay the required fee

Mortgage Companies and Mortgage Bankers: Subchapter B: Licensing / Registration

§56.102 Fees

- Subsection (a) clarifies that license fees are exclusive of the fees charged by NMLS
- Subsection (a) provides that a fee decrease is effective immediately
- Subsection (c) clarifies that an applicant/licensee may be assessed a fee up to \$50 for a failed ACH payment

§57.102 Fees

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- Subsection (a) clarifies that a fee decrease is effective immediately

Mortgage Companies and Mortgage Bankers: Subchapter B: Licensing / Registration

§56.103 Renewal of the License

- Subsection (a)(2) includes statutory references to minimum requirements to renew
- Subsection (b) clarifies that a renewal request is a license application subject to the requirements of §56.101
- Subsection (c) provides that a license approved with a deficiency is a conditional license and requires that the deficiency be resolved within 30 days
- Subsection (d) clarifies that the rule's requirements apply to a request for renewal during the reinstatement period and further clarifies that an application beyond the reinstatement period is treated as an application for a new license

§57.103 Renewal of the Registration

- Subsection (a)(2) includes statutory references to minimum requirements to renew
- Subsection (b) clarifies that a renewal request is a registration application subject to the requirements of §57.101
- Subsection (c) provides that a registration approved with a deficiency requires that the deficiency be resolved within 30 days
- Subsection (d) clarifies that the rule's requirements apply to a request for renewal during the reinstatement period and further clarifies that an application beyond the reinstatement period is treated as an application for a new registration

Mortgage Companies and Mortgage Bankers: Subchapter B: Licensing / Registration

§56.104 NMLS Records; Notices Sent to the Mortgage Company / §57.104 NMLS Records; Notices Sent to the Mortgage Banker

- Subsection (d)(1) provides that email sent to the mortgage company or mortgage banker will be sent to the email designated in NMLS for the “Primary Company Contact”

Mortgage Companies and Mortgage Bankers: Subchapter B: Licensing / Registration

§56.105 Conditional License

- Subsection (a) includes possible terms and conditions for a conditional license
- Subsection (b) provides that a license subject to a probated suspension or revocation is a conditional license
- Subsection (c) clarifies the Commissioner's authority to issue a conditional license in lieu of denial

Mortgage Companies and Mortgage Bankers: Subchapter B: Licensing / Registration

§56.106 Surrender of the License / §57.106 Surrender of the Registration

- The section clarifies SML's authority not to grant a surrender request
- Subsection (a) clarifies reasons why a request to surrender the license/registration may not be granted
- Subsection provides that a license/registration will be assigned an inactive status if the request is not immediately granted

Mortgage Companies and Mortgage Bankers: Subchapter B: Licensing / Registration

§56.107 Sponsorship of Originator; Responsibility for Originator's Actions / §57.107 Sponsorship of Originator; Responsibility for Originator's Actions

- Subsection (b) clarifies a mortgage company or mortgage banker is responsible the actions of its sponsored originators (no existing rule for mortgage bankers)
- Subsection (d) clarifies that the license/registration will revert to an inactive status if the mortgage company or mortgage banker does not maintain sponsored originators to act on its behalf

Mortgage Companies and Mortgage Bankers: Subchapter B: Licensing / Registration

§56.108 Qualified Individual

- Subsection (a) provides that the contact information for the QI listed by the mortgage company in its MU1 must match the principal address of the mortgage company

Mortgage Companies and Mortgage Bankers: Subchapter C: Duties and Responsibilities

§56.200 Required Disclosures

- Subsection (b) revises the mortgage company disclosure form under Finance Code §156.004 adopted by rule
- Subsection (b) clarifies that the disclosure must be signed by the originator
- The consumer complaint notice is reduced from two paragraphs to one
- Subsection (c) provides that the consumer complaint notice required for posting on websites be in the form prescribed by SML and posted on SML's website
- The rule removes the requirement to post the consumer complaint notice on social media sites
- Subsection (d) requires that correspondence sent to the mortgage applicant must include the mortgage company's website address

§57.200 Required Disclosures

- Subsection (b) revises the mortgage banker disclosure form under Finance Code §157.0021 adopted by rule
- Subsection (b) provides that the disclosure must be signed by the originator
- The complaint notice is reduced from two paragraphs to one
- Subsection (c) provides that the consumer complaint notice required for posting on websites be in the form prescribed by SML and posted on SML's website
- The rule removes the requirement to post the consumer complaint notice on social media sites
- Subsection (d) requires that correspondence sent to the mortgage applicant must include the mortgage banker's website address
- Subsection (e) provides that the servicer disclosure required by §157.0021(b) must be in the form posted on SML's website

Mortgage Companies and Mortgage Bankers: Subchapter C: Duties and Responsibilities

§56.202 Fraudulent, Misleading, or Deceptive Practices / §57.202 Fraudulent, Misleading, or Deceptive Practices

- Subsection (a)(4) prohibits misrepresentations concerning lien position
- Subsection (a)(9) prohibits the use of an originator in an inactive status
- Subsection (a)(10) prohibits using a loan processing company in an inactive status
- Subsection (a)(11) prohibits the improper use of trigger leads
- Subsection (b)(2) clarifies additional state and federal law required for compliance
- Subsection (b)(3) prohibits solicitation of consumers on the do-not-call list
- Subsection (b)(4) prohibits the issuance of erroneous conditional pre-qualification or conditional approval letters

Mortgage Companies and Mortgage Bankers: Subchapter C: Duties and Responsibilities

§56.203 Advertising / §57.203 Advertising

- Subsection (c)(2) requires advertisements to include the website address
- Subsection (e) allows for the required information on advertisements on social media sites to be placed on the profile page rather than on each post
- Subsection (f) allows for the use of team names in advertisement provided certain requirements are met

Mortgage Companies and Mortgage Bankers: Subchapter C: Duties and Responsibilities

§56.204 Books and Records / §57.204 Books and Records

- Mortgage Transaction log – adds the following information to the current mortgage transaction log:
 - Application/loan identification number assigned by the mortgage company
 - Loan identification number assigned by the lender, if different than the mortgage company identification number
 - Address of the subject property
 - Interest rate
 - Loan product (conventional, FHA, VA, reverse); and
 - Closing date

Mortgage Companies and Mortgage Bankers: Subchapter C: Duties and Responsibilities

§56.204 Books and Records / §57.204 Books and Records

- Truth-in-Lending disclosures for home equity lines of credit transactions
 - Account-opening disclosure
 - Early disclosure statement
 - Home Equity Line of Credit Brochure
- Home Equity Loans
 - Any discount point acknowledgement form used by the lender to substantiate that the discount points are bona fide
 - Texas Home Equity Affidavit and Agreement

Mortgage Companies and Mortgage Bankers: Subchapter C: Duties and Responsibilities

§56.204 Books and Records / §57.204 Books and Records

- If conducting third-party loan processing and underwriting services, a loan processing and underwriting log must be maintained
- FTC's Standards for Safeguarding Customer Information rule was added to the list of other records required
- Records required for corrective action and unclaimed funds

Mortgage Companies and Mortgage Bankers: Subchapter C: Duties and Responsibilities

§56.205 Mortgage Call Reports / §57.205 Mortgage Call Reports

- Subsection (c) clarifies components of the MCR, including the State-Specific Supplemental Form are required (disclosure of information related to loan processors/underwriters)
- Subsection (e) clarifies that the Commissioner may grant a written extension of time to file a mortgage call report
- Subsection (f) clarifies that MCRs must be complete and accurate

Mortgage Companies and Mortgage Bankers: Subchapter C: Duties and Responsibilities

§56.210 Reportable Incidents / §57.210 Reportable Incidents

- Creates requirements to file a report concerning “reportable incidents” defined in the rule (including a root cause analysis for data breaches)
- Reportable incident must present a material, financial, or other significant risk to the mortgage entities operation such as a reporting data breach, security event, termination of a line of credit or funding source, or termination or curtailment of a relevant service provider
- Provides that the filing of reports required by other law satisfies the reporting requirements (except root cause analysis)
- Information relating to Reportable Incidents will be confidential examination information

Mortgage Companies and Mortgage Bankers: Subchapter D: Supervision and Enforcement

§56.300 and §57.300 Examinations

- Requiring the use of the State Examination System (SES)
- Establishing authority to accept and leverage examinations conducted by other states accredited by CSBS

§56.301 and §57.301 Investigations

Clarifying requirements related to investigations conducted by SML (primarily related to consumer complaints)

§56.302 and §57.302 Confidentiality of Examination, Investigation, and Inspection Information

Clarifying the confidentiality of records including corrective action taken by a regulated entity within the scope of an examination, inspection, or investigation

Mortgage Companies and Mortgage Bankers: Subchapter D: Supervision and Enforcement

§56.303 and §57.303 Corrective Action

- Clarifying the types of corrective actions SML may direct the regulated entity to take arising from an examination, investigation, or inspection
- Establishing requirements for the handling of the payment of refunds to the consumer

§56.304 and §57.304 Unclaimed Funds

Clarifying the handling of unclaimed funds

§56.310 and §57.310 Appeals

Clarifying the deadlines to file appeals of SML enforcement actions

§56.311 and §57.311 Hearings

Clarifying requirements related to adjudicative hearings

Mortgage Servicers: Subchapter B: Registration

§58.100(c) – clarifying that registration is required for a master servicer

Master Servicers and Subservicers. With respect to a residential mortgage loan for which the mortgage servicing rights are held by a person who is not the other of the note (a/k/a "master servicer"), the holder of the mortgage servicing rights must be registered under Finance Code Chapter 158 even if that person does not actually receive any payments from the borrower but, instead, contracts with another person to service the loan (a/k/a "subservicer").

Mortgage Servicers: Subchapter B: Registration

§58.103(d) Renewal of Registration

No Renewal after Expiration. If a mortgage servicer fails to make a renewal request during the annual renewal period (November 1 to December 31) while the registration is still active and before it expires, then the registration cannot be renewed. Instead, the person must apply for a new registration and comply with all current requirements and procedures governing issuance of a new registration.

Mortgage Servicers: Subchapter B: Registration

§58.107 Surety Bond Requirement

- NMLS Electronic Surety Bond will be required (no more paper bonds)
- Delayed implementation deadline until after the next renewal cycle (November 2024)
- Definition of mortgage servicer's volume of loans for the calculation of the surety bond amount
- Descriptive Minimum Bond Amount that is laid out in the rule

Mortgage Servicers: Subchapter C: Duties and Responsibilities

§58.200 Required Disclosures

Clarifies that the disclosure required by Finance Code §158.101 must be included in the first notice sent to the borrower (hello letter) and must be posted on servicer websites

The requirement to include the disclosure on all correspondence with the borrower is removed

§58.207 Periodic Statements

A mortgage servicer that services a loan secured by a dwelling must comply with the requirements of Section 1026.41 of Regulation Z (12 C.F.R. §1026.41), governing the issuance, content, form, and layout of periodic statements sent to the borrower.

Mortgage Servicers: Subchapter C: Duties and Responsibilities

§58.210 Reportable Incidents

- Creates requirements to file a report concerning “reportable incidents” defined in the rule (including a root cause analysis for data breaches)
- Reportable incident must present a material, financial, or other significant risk to the mortgage entities operation such as a reporting data breach, security event, termination of a line of credit or funding source, or termination or curtailment of a relevant service provider
- Provides that the filing of reports required by other law satisfies the reporting requirements (except root cause analysis)
- Information relating to Reportable Incidents will be confidential examination information

Mortgage Servicers: Subchapter D: Supervision and Enforcement

§58.301 Investigations

Clarifying requirements related to investigations conducted by SML (primarily related to consumer complaints)

§58.302 Confidentiality of Investigation Information

Clarifying the confidentiality of records including corrective action taken by a regulated entity within the scope of an investigation

Mortgage Servicers: Subchapter D: Supervision and Enforcement

§58.303 Corrective Action

- Clarifying the types of corrective actions SML may direct the regulated entity to take arising from an investigation
- Proper handling of the payment of refunds to the consumer

§58.304 Unclaimed Funds

Clarifying the handling of unclaimed funds

§56.310 Appeals

Clarifying the deadlines to file appeals of SML enforcement actions

§56.311 Hearings

Clarifying requirements related to adjudicative hearings

Wrap Lenders and Wrap Servicers

- Except for new rules of general applicability (see slide 10) and a few definition changes, there are no significant changes to the existing wrap lender/servicer rules
- With the new rule of general applicability governing the formatting of notices, the requirements of existing §78.101 are amended to remove such formatting requirements

Questions?

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Written Pre-Comments must be sent by July 12, 2024, at 5 p.m. to
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