



NOTICE OF PRECOMMENT DRAFT AND STAKEHOLDERS WEBINAR (REVISED JUNE 7, 2024)

Mortgage Regulation Rule Review June 5, 2024 Pre-comment Draft

The Department of Savings and Mortgage Lending (SML) is considering changes to 7 Texas Administrative Code (TAC): Chapter 78, concerning Wrap Mortgage Loans; Chapter 79, concerning Residential Mortgage Loan Servicers; Chapter 80, concerning Residential Mortgage Loan Companies; and Chapter 81, concerning Mortgage Bankers and Residential Mortgage Loan Originators.

SML will hold a stakeholders webinar on Friday, June 7, 2024, at 1:00 p.m. (CDT) to discuss the pre-comment draft of the rule changes. (*Note: the webinar will also be recorded and posted on SML's website to stream on demand.*)

SML will also accept informal written pre-comments until July 12, 2024 at 5:00 p.m. (CDT).

SML plans to present the rule changes for consideration by the Finance Commission at its August 16, 2024, meeting.

Participating in the Webinar

The webinar will be conducted using the Teams platform by Microsoft. Registration is required to participate: [Webinar Registration Link](#).

Submission of Informal Pre-comments

Informal written pre-comments regarding the SML's draft rules may be submitted by email to rules.comments@sml.texas.gov. **Informal pre-comments must be received by 5:00 p.m. (CDT) on July 12, 2024.**

Overview of Changes:

Changes Concerning the Reorganization (Relocation) of Chapters 78-81 into New Chapters 56-59. SML's mortgage regulation rules are currently located in 7 TAC Chapters 78-81. SML has determined that it would be advantageous to relocate the rules to Chapters 56-59, which will largely coincide with chapter number of the statutes under which the rules are adopted and will allow for greater ease of use. Specifically:

- the subject matter for the rules in Chapter 78, concerning Wrap Mortgage Loans, and adopted under Finance Code Chapter 159, would be relocated to new Chapter 59;

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- the subject matter for the rules in Chapter 79, concerning Residential Mortgage Loan Servicers, and adopted under Finance Code Chapter 158, would be relocated to new Chapter 58;
- the subject matter for the rules in Chapter 80, concerning Residential Mortgage Loan Companies, and adopted under Finance Code Chapter 156, would be relocated to new Chapter 56;
- the subject matter for the rules in Chapter 81, concerning Mortgage Bankers and Residential Mortgage Loan Originators, and adopted partially under Finance Code Chapter 157, would be relocated to new Chapter 57 (see below concerning the individual residential mortgage loan originator rules); and
- all existing rules in Chapters 78-81 would be repealed.

Changes Concerning the Reorganization of Residential Mortgage Loan Originator Rules from Chapter 81 into a New Chapter 55. SML's existing rules in 7 TAC Chapter 81 affect mortgage bankers registered with SML and individual residential mortgage loan originators licensed by SML. The rule changes, if adopted, would:

- create new rules in Chapter 55 tailored to individual residential mortgage loan originators, largely patterned after the existing rules in Chapter 81 applicable to individual residential mortgage loan originators; and
- result in the rules mentioned above in new Chapter 57 being tailored to mortgage bankers registered with SML.

Changes Concerning General Provisions. The rule changes include new rules of general applicability including:

- rules concerning standard formatting requirements for disclosures sent by a regulated entity;
- rules concerning the electronic delivery and signature of disclosures sent by a regulated entity; and
- rules concerning computation of time concerning deadlines measured in calendar days.

Changes Concerning Licensing/Registration. The rule changes include various provisions concerning licensing/registration, including:

- clarifying when a license or registration is required;
- clarifying the application process for a license or registration;
- clarifying the requirements of temporary authority for individual residential mortgage loan originators;
- clarifying when a conditional license may be issued, if applicable;
- clarifying when a license or registration may be surrendered; and
- clarifying sponsorship requirements for residential mortgage loan originators.

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Changes Concerning Duties and Responsibilities. The rule changes include various changes concerning the duties and responsibilities of a regulated entity, including:

- clarifying the disclosures a regulated entity is required to make (including revising certain disclosure forms adopted by rule);
- clarifying what actions are deemed to be fraudulent, misleading, or deceptive practices and improper dealings (including as it relates to the use of trigger leads by a mortgage company, mortgage banker, or individual residential mortgage loan originator);
- clarifying advertising requirements (including the use of team names by a mortgage company, mortgage banker, or individual residential mortgage loan originator);
- clarifying requirements concerning the books and records mortgage companies and mortgage bankers are required to maintain (including transaction logs, and records related to home equity loans, home equity lines of credit, and wrap mortgage loans);
- clarifying requirements related to mortgage call reports filed by a mortgage company or mortgage banker (including use of the State-Specific Supplemental Form); and
- creating requirements for the regulated entity to report certain significant incidents affecting its operations to SML (e.g., data breaches).

Changes Concerning Compliance and Enforcement. The rule changes include various changes concerning supervisory and enforcement matters, including:

- clarifying examination requirements (including requiring use of the State Examination System, and establishing authority to accept and leverage examinations conducted by other states accredited by CSBS);
- clarifying requirements related to investigations conducted by SML (primarily related to consumer complaints);
- clarifying what information is considered to be confidential in connection with an examination, investigation, or inspection conducted by SML (including clarifying that corrective action taken by a regulated entity within an examination, investigation, inspection setting is confidential);
- clarifying the types of corrective action SML may direct the regulated entity to take arising from an examination, investigation, or inspection (including requirements concerning the payment of refunds to the consumers);
- clarifying the handling of unclaimed funds;
- clarifying deadlines to file appeals of enforcement actions; and
- clarifying requirements related to adjudicative hearings.

Other Modernization and Update Changes. The rule changes, if adopted, would make changes to modernize and update the rules, including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Text of the Rule Changes:

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 55 RESIDENTIAL MORTGAGE LOAN ORIGINATORS

{{All existing rules affecting residential mortgage loan originators in Chapter 81 will be repealed and replaced with new rules in Chapter 55 (the existing rules in Chapter 81 affecting mortgage bankers will be replaced with new rules in Chapter 57)}}}

SUBCHAPTER A GENERAL PROVISIONS

§55.1 Purpose and Applicability

This chapter governs SML's administration and enforcement of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act (other than Subchapter C), and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 (Texas SAFE Act), concerning the licensing and conduct of residential mortgage loan originators. This chapter applies to individuals licensed by SML as a residential mortgage loan originator or those required to be licensed, except for individuals engaged in authorized activity subject to the authority of the regulatory official under Finance Code §180.251(c).

§55.2 Definitions

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapters 157 (other than Subchapter C) and 180, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Application," as used in Finance Code §157.002(6) and §180.002(19), and paragraphs (7) and (18) of this section means a request, in any form, for an offer (or a response to a solicitation of 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, or the mortgage loan amount.

(2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(3) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(4) "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.

(5) "E-Sign Act" refers to the federal Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001 et seq.).

(6) "Making a residential mortgage loan," or any similar derivative or variation of that term, means when a person determines the credit decision to provide the residential mortgage loan, or the act of funding the residential mortgage loan or transferring money to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the residential mortgage loan.

(7) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited to obtain a residential mortgage loan and includes a person who has not completed or started completing a formal loan application on the appropriate form (e.g., the Fannie Mae Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(8) "Mortgage banker" has the meaning assigned by Finance Code §157.002.

(9) "Mortgage company" means, for purposes of this chapter, a "residential mortgage loan company," as defined by Finance Code §157.002.

(10) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §157.002 and §180.002 in defining "Nationwide Mortgage Licensing System and Registry."

(11) "Offers or negotiates the terms of a residential mortgage loan," as used in Finance Code §157.002(6) and §180.002(19), 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) "Originator" has the meaning assigned by Finance Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (11) and (18) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Finance 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 Finance Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Finance Code §180.051.

(13) "Person" has the meaning assigned by Finance Code §180.002.

(14) "Residential mortgage loan" has the meaning assigned by Finance Code §157.002 and §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan 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.

(15) "Residential real estate" has the meaning assigned by Finance Code §180.002 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.

(16) "SML" means the Department of Savings and Mortgage Lending.

(17) "State Examination System" or "SES" means an online, digital examination system developed by the Conference of State Bank Supervisors that securely connects regulators and regulated entities on a nationwide basis to facilitate the examination process.

(18) "Takes a residential mortgage loan application," as used in Finance Code §157.002(6) and §180.002(19) 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.

(19) "Trigger Lead" means information concerning a consumer's credit worthiness (consumer report) compiled by a credit reporting agency (consumer reporting agency), obtained in accordance with the federal Fair Credit Reporting Act (15 U.S.C. §1681b(c)(1)(B)) that is not initiated by the consumer but, instead, is triggered by an inquiry to a consumer reporting agency in response to an application for credit initiated by the consumer in a separate transaction. The term does not include a consumer report obtained by a mortgage company licensed by SML or a mortgage banker registered with SML in response to an application for credit made by a consumer with that mortgage company or mortgage banker or that is otherwise authorized by the consumer.

(20) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.

§55.3 Formatting Requirements for Notices

Any notice or disclosure (notice) required by Finance Code Chapters 157 or 180, or this chapter, must be made in at least 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. If Finance Code Chapters 157 or 180, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

(1) Arial;

(2) Aptos;

(3) Calibri;

(4) Century Schoolbook;

(5) Garamond;

(6) Georgia;

(7) Lucinda Sans;

(8) Times New Roman;

(9) Trebuchet; and

(10) Verdana.

§55.4 Electronic Delivery and Signature of Notices

Any notice or disclosure required by Finance Code Chapters 157 or 180, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of

electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

§55.5 Computation of Time

The calculation of any time period measured in days by Finance Code Chapters 157 or 180, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

§55.6 Enforceability of Liens

A violation of Finance Code Chapters 157 or 180, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

SUBCHAPTER B LICENSING

§55.100 Licensing Requirements

(a) License Required. An individual, unless exempt as provided by Finance Code §157.0121 or §180.003, or acting under temporary authority as provided by Finance Code §180.0511 and §55.109 of this title (relating to Temporary Authority), is required to be licensed as an originator under Finance Code Chapter 157 if the individual acts or attempts to act in the capacity of an originator concerning a loan or prospective loan secured or designed to be secured by residential real estate located in Texas, including, but not limited to:

(1) representing or holding that individual out to the public through advertising or other means of communication as a "loan officer," "mortgage consultant," "loan modification/refinance consultant," "mortgage broker," or "residential mortgage loan originator," or otherwise representing that the individual can or will perform residential mortgage loan origination services as an originator;

(2) signing a residential mortgage loan application as the originator (e.g., signing the "Loan Originator Information" section of the Fannie Mae Form 1003 Uniform Residential Loan Application; which is deemed to be a certification by the originator that he or she took the residential mortgage loan application);

(3) providing disclosures to a mortgage applicant or prospective mortgage applicant or discussing or explaining such disclosures (an individual who prepares a disclosure at the direction and under the supervision of a licensed originator who does not send the disclosure to or discuss the disclosure with the mortgage applicant or prospective mortgage applicant and does not sign the disclosure is deemed not to have provided a disclosure for purposes of this paragraph), including:

(A) the disclosures required by Finance Code §156.004 or §157.0021, and §55.200(a) of this title (relating to Required Disclosures);

(B) the good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar; and

(C) the disclosure for acting in the dual capacity of an originator and real estate broker, sales agent, or attorney, as described by Finance Code §157.024(a)(10);

(4) determining the lender or investor to which the prospective residential mortgage loan will be submitted;

(5) issuing or signing a conditional pre-qualification letter or conditional approval letter, or similar, as specified by Finance Code §156.105 and §157.02012, and §55.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters); and

(6) being a loan processor or underwriter who is an independent contractor, as provided by Finance Code §180.051(b). 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.

§55.101 Applications for Licensure

(a) NMLS. Applications for licensure must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation as deemed necessary or appropriate to determine that the licensing requirements of Finance Code Chapters 157 and 180 have been met.

(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.

§55.102 Fees

(a) License Fees. The license fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §157.013(b)(1), exclusive of fees charged by NMLS, as described in subsection (b) of this section, and exclusive of the recovery fund fee required by Finance Code §157.013(b)(2). The Commissioner may establish different fee amounts for a new license versus renewal of the license. The current fee is set in NMLS and posted on SML's website (sml.texas.gov). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The license fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges various fees to process the application. Such fees are determined by NMLS and must be paid by the applicant at the time he or she files the application. The current fees are set in NMLS and posted on the NMLS Resource Center website (nationwidelicensingsystem.org). Specifically, NMLS charges the following types of fees:

(1) application processing fee;

(2) credit report fee; and

(3) criminal background check fee.

(c) All fees are nonrefundable and nontransferable.

(d) Insufficient Funds Fee. The Commissioner may collect a fee in an amount determined by the Commissioner not to exceed \$50 for any returned check, credit card chargeback, or failed automated clearing house (ACH) payment. A fee assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

§55.103 Renewal of the License

(a) A license may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees;

(2) a determination by SML that the originator continues to meet the minimum requirements for licensure, including the requirements of Finance Code §§157.012(c), 157.015(g), and 180.055; and

(3) Completion of the continuing education required by Finance Code §180.060 and §55.108 of this title (relating to Required Education) as reflected in NMLS.

(b) Application of §55.101. A renewal request is a license application subject to the requirements of §55.101 of this title (relating to Applications for Licensure). A renewal request withdrawn under §55.101(c) of this title will be rejected in NMLS.

(c) Commissioner's Discretion to Approve with a Deficiency; Conditional License. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the originator to continue conducting regulated activities while the originator works diligently to resolve the deficiencies. A renewal request approved by the Commissioner under this subsection will be assigned the NMLS license status "Approved - Deficient." Approval under this subsection does not relieve the originator of the obligation to resolve the deficiencies. A license approved under this subsection is deemed to be a conditional license for which the originator, in order to maintain the license, must resolve the deficiencies within 30 days after the date the license is approved, unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the license.

(d) Reinstatement. This section applies to an individual seeking reinstatement of an expired license (assigned the license status "Terminated - Failed to Renew") during the reinstatement period described by Finance Code §157.016 and must be construed accordingly. An originator license cannot be renewed beyond the reinstatement period; instead, the individual must apply for a new license and comply with all current requirements and procedures governing issuance of a new license.

§55.104 NMLS Records; Notices Sent to the Originator

(a) NMLS License Status. SML is required to assign a status to the license in NMLS. The license status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the license status options available in NMLS. The NMLS Resource Center website (nationwidelicingsystem.org) describes the available license status options and their meaning.

(b) Amendments to License Records Required. Unless Finance Code §157.019 applies and requires additional notice, an originator must amend his or her NMLS license records (MU4 filing) within 10 days after the date of any material change affecting any aspect of the MU4 filing, including, but not limited to:

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

(2) phone number;

(3) email address (including his or her NMLS account email address, as described by subsection (d)(1) of this section);

(4) mailing address;

(5) residential history;

(6) employment history; and

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

(b) Amendments Requiring New Credit History Check. An originator amending his or her MU4 filing to make a financial disclosure is deemed to have authorized SML to retrieve a current copy of his or her credit report, as provided by Finance Code §157.0132 and §55.111 of this title (relating to Background Checks), and the originator must further amend his or her MU4 filing to formally consent to and request such credit report in NMLS, if requested by SML.

(c) Amendments Requiring New Criminal Background Check. An originator amending his or her MU4 filing to make a criminal disclosure is deemed to have authorized SML to perform an additional criminal background check in accordance with Finance Code §157.0132 and §55.111 of this title and the originator must further amend his or her MU4 filing to formally consent to and request such criminal background check in NMLS, if requested by SML.

(d) Notices Sent to the Originator. Any correspondence, notification, alert, message, official notice or other written communication from SML will be sent to the originator in accordance with this subsection using the originator's current contact information of record in NMLS unless another method is required by other applicable law.

(1) Service by Email. Service by email is made using the email address the originator has designated for use with his or her NMLS account (a/k/a the "NMLS account email address" or "individual account email address"). The NMLS account email address is the same email address to which NMLS-generated notifications are sent. Service by email is complete on transmission of the email to the license holder's email service provider; provided, SML does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. An originator must monitor the email account designated as his or her NMLS account email address and ensure that emails from SML or system notifications from NMLS are not lost in a "spam folder" or similar, or undelivered due to intervention by a "spam filter" or similar. An originator is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. An originator is further deemed to have constructive notice of any NMLS system notifications sent to him or her by email.

(2) Service by Mail. Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the originator by mail and the document communicates a deadline by or a time during which the originator must perform some act, such deadline or time period for action is extended by three days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

§55.105 Conditional License

(a) Conditional License; Terms and Conditions. The Commissioner may, in his or her sole discretion, issue a license on a conditional basis. A conditional license will be assigned the license status "Approved - Conditional" in NMLS. Reasonable terms and conditions for a conditional license include:

(1) requiring the originator to undergo additional credit checks or provide evidence of satisfaction concerning a debt, judgment, lien, child support obligation, or other financial delinquency affecting his or her financial condition;

(2) requiring the originator to undergo additional criminal background checks or provide information on a periodic basis or upon request concerning the status of a pending criminal proceeding that might affect his or her eligibility for the license;

(3) requiring the originator to take other specific action or provide other specified information to address a previously-noted deficiency; and

(4) requiring the originator to surrender the license upon the occurrence of an event that would render the originator ineligible for the license.

(b) Probated Suspensions and Revocations. A license subject to a probated suspension or revocation is deemed to be a conditional license.

(c) Conditional License in Lieu of Denial. The Commissioner may issue a license on a conditional basis in lieu of seeking denial of the license where the Commissioner determines the individual applying for the license has the capacity to resolve the deficiency serving as grounds for the denial in a reasonable period of time. The granting of a license under this subsection is a voluntarily forbearance from seeking denial of the license and does not operate as a waiver by the Commissioner of any grounds he or she has to seek denial of the license. The Commissioner is under no obligation to continue the license on a conditional basis and may seek denial in the future based on the same or similar circumstances that existed at the time the conditional license was granted.

§55.106 Surrender of the License

(a) Surrender Request. An originator may seek surrender of the license by filing a license surrender request (request) in NMLS. The request must be made using the current form prescribed by NMLS. SML will review the request and determine whether to grant it. SML may not grant the request if, among other reasons:

(1) the originator is the subject of a pending or contemplated examination, inspection, investigation, or disciplinary action;

(2) the originator is in violation of an order of the Commissioner; or

(3) the originator has failed to pay any administrative penalty, fee, charge, or other indebtedness owed to SML

(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses. During this time, the originator's license will be assigned the license status "Approved - Inactive" in NMLS.

§55.107 Sponsorship of Originator

(a) Sponsorship Required. In order to act in the capacity of an originator, an originator's license must be sponsored in NMLS by a mortgage company licensed by SML or a mortgage banker registered with SML. To establish sponsorship by a mortgage company or mortgage banker, the originator must amend his or her NMLS license record (MU4 filing) to reflect employment by such mortgage company or mortgage banker and grant such mortgage company or mortgage banker access to his or her license records to allow the mortgage company or mortgage banker to register a relationship with the originator in NMLS. The mortgage company or mortgage banker must make corresponding filings in NMLS to establish such sponsorship. Sponsorship is not effective until the mortgage company's or mortgage banker's sponsorship request has been reviewed and approved by SML. An originator must not act or attempt to act in the capacity of an originator on behalf of a mortgage company or mortgage banker until sponsorship with such mortgage company or mortgage banker has been established and is effective. Information about how to file for sponsorship is available on the NMLS Resource Center website (nationwidelicensingsystem.org).

(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.

(c) Inactive License Status Pending Sponsorship. An applicant may be issued a license in an inactive status if the applicant complies with all requirements for licensure except the requirement that the originator be sponsored by an appropriate entity, as provided by Finance Code §157.012(a)(1). While in an inactive status, an originator must not act in the capacity of an originator and must continue to meet the minimum requirements for licensure. A license in an inactive status is assigned the license status "Approved - Inactive" in NMLS.

(d) Termination of Sponsorship. Sponsorship may be terminated by the mortgage company or mortgage banker, or the originator. If sponsorship is terminated, the party terminating the sponsorship must

immediately notify SML of the termination by making a filing in NMLS to show the sponsorship as terminated in the system, as provided by Finance Code §156.211 and §157.019.

(e) Failure to Maintain Sponsorship; Inactive Status. If an originator's license does not maintain sponsorship by a mortgage company or mortgage banker, the license will revert to an inactive status ("Approved - Inactive") until a new sponsorship becomes effective, during which time the originator must not act or attempt to act in the capacity of an originator. An originator may voluntarily place his or her license in an inactive status by terminating all sponsorships as described by subsection (d) of this section.

§55.108 Required Education

(a) Pre-Licensing Education and Examination. As provided by Finance Code §180.056, an individual applying for an originator's license (applicant) must complete the pre-licensing education and coursework prescribed by the federal S.A.F.E. Mortgage Licensing Act (federal SAFE Act) and approved by NMLS. Such education and coursework must include 3 hours of instruction relating to the applicable laws, rules, and practice considerations governing residential mortgage loan origination in Texas. As provided by Finance Code §180.057, an applicant must pass a written test prescribed by the federal SAFE Act and approved by NMLS.

(b) 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 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).

(c) Recognition of Pre-Licensing Education Taken in Another Jurisdiction. As provided by Finance Code §180.056, SML will recognize pre-licensing education coursework taken in another jurisdiction subject to the requirements of the federal SAFE Act; provided, it is approved by NMLS for that purpose and otherwise meets the requirements of the federal SAFE Act, and Finance Code Chapter 180. However, SML will not recognize those hours of pre-licensing education taken in another jurisdiction the content of which was specific to that jurisdiction and that comprised the 12-hour undefined electives portion of such pre-licensing education and coursework. An applicant may take coursework that is of limited duration and limited in scope to the applicable laws, rules, and practice considerations governing residential mortgage loan origination in Texas in order to supplement and remedy a shortfall in hours derived from non-recognition of pre-licensing education taken in another jurisdiction, as provided by this subsection.

(d) Continuing Education. As provided by Finance Code §180.060 and §55.103 of this title, an originator must complete, on an annual basis, continuing education and coursework approved by NMLS in order to renew the license.

§55.109 Temporary Authority

(a) Purpose. The purpose of this section is to specify how an originator licensed in another jurisdiction or by a different licensing authority, or who is a "registered mortgage loan originator" (as defined by Finance Code §180.002), may avail himself or herself of the ability to act in the capacity of an originator in Texas temporarily while he or she seeks licensure by SML, as provided by Finance Code §180.0511.

(b) Application Required. An individual seeking to act under temporary authority must comply with the requirements of Finance Code §180.0511. Among other requirements, Finance Code §180.0511 requires

that the individual file an application with SML seeking licensure to be recognized as having temporary authority. An individual must not act or attempt to act in the capacity of an originator until the application has been filed and the individual has been assigned an NMLS license status by SML recognizing such temporary authority (see §55.104 of this title (relating to NMLS License Records; Notices Sent to the Originator)). An individual may confirm his or her temporary authority status by reviewing his or her license status in NMLS or on the NMLS Consumer Access website (nmlsconsumeraccess.org).

(c) Incomplete Applications. The requirements of §55.101(c) of this title (relating to Applications for Licensure), providing for the deemed withdrawal of an application that is not complete, do not apply to an application for which temporary authority status is conferred.

(d) 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.

§55.110 Licensing of Military Service Members, Military Veterans, and Military Spouses

(a) Purpose. This section specifies licensing requirements for military service members, military veterans, and military spouses, in accordance with Occupations Code Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings assigned by Occupations Code §55.001.

(c) Late Renewal (Reinstatement). As provided by Occupations Code §55.002, an individual is exempt from any increased fee or other penalty for failing to renew his or her originator license in a timely manner if the individual establishes to the satisfaction of the Commissioner that he or she failed to timely renew the license because the individual was serving as a military service member. A military service member who fails to timely renew his or her originator license must seek reinstatement of the license within the time period specified by Finance Code §157.016; otherwise, the individual must obtain a new license, including complying with the requirements and procedures then in existence for obtaining an original license (see §55.103 of this title (relating to Renewal of the License)).

(d) Expedited Review and Processing. Occupations Code §55.005 provides that a military service member, military veteran, or military spouse is entitled to expedited review and processing of his or her application for an originator license. A military service member, military veteran, or military spouse seeking expedited review of his or her application must, after applying for the license in NMLS, make a written request for expedited review using the current form prescribed by SML and posted on its website (sml.texas.gov), including providing the supporting documentation specified in the form, to enable SML to verify the individual's status as a military service member, military veteran, or military spouse. SML, within 30 days after the date it receives a complete application and request for expedited review from a qualifying applicant who is a military service member, military veteran, or military spouse, will process the application, and, provided the applicant is otherwise eligible to receive the license, issue a license to the applicant, if the applicant:

(1) is licensed as an originator in another jurisdiction with substantially equivalent licensing requirements; or

(2) was licensed as an originator in Texas within the 5 years preceding the date of the application.

(e) Temporary Authority for Military Service Member or Military Spouse. Occupations Code §55.0041

provides that a military service member or military spouse may engage in a business or occupation for which a license is required without obtaining the license if the military service member or military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual licensed to act as an originator in another jurisdiction may act under temporary authority in this state (the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act), 12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)). Occupations Code §55.0041(c) further requires that a military service member or military spouse "comply with all other laws and regulations applicable to the business or occupation." As a result, a military service member or military spouse seeking to avail himself or herself of the temporary authority conferred by Occupations Code §55.0041 must apply for and seek temporary authority in accordance with Finance Code §180.0511 and §55.109 of this title (relating to Temporary Authority).

(f) Substantial Equivalency. For purposes of this section and Occupations Code §55.004, an originator license issued in another jurisdiction is substantially equivalent to a Texas originator license if it is issued in accordance with the requirements of the federal SAFE Act (12 U.S.C. §§5501-5117). SML will verify a license issued in another jurisdiction in NMLS.

(g) Credit for Military Experience. As provided by Occupations Code §55.007, with respect to an applicant who is a military service member or military veteran, SML will credit verified military service, training, or education toward the requirements for an originator license by considering the service, training, or education as part of the applicant's employment history. The following items cannot be substituted for military service, training, or education:

(1) the pre-licensing education and coursework specified by Finance Code §180.056 and §55.108(a) of this title (relating to Required Education);

(2) the pre-licensing examination specified by Finance Code §180.057 and §55.108(a) of this title; and

(3) continuing education and coursework specified by Finance Code §180.060 and §55.108(c) of this title.

§55.111 Background Checks

(a) NMLS Background Check; Fingerprints Required. An individual applying for an originator license (applicant) must provide fingerprints as prescribed by NMLS in order to facilitate a criminal background check through the Federal Bureau of Investigation. Additionally, an applicant must amend his her license records (MU4 filing) to provide authorization for SML to obtain the criminal background check in NMLS.

(b) Background Checks by SML. Pursuant to Finance Code §157.0132 and Government Code §411.1385, SML is authorized to conduct a criminal background check through the Texas Department of Public Safety (DPS). If requested by SML, applicant must submit to the DPS criminal background check process upon request by SML, including providing fingerprints and paying any applicable fees to DPS or its designated third-party fingerprint processor to complete the criminal background check process.

(c) NMLS Credit Check. An applicant must amend his or her license records (MU4 filing) to provide authorization for SML to obtain a copy of the applicant's credit report concerning the applicant's credit history from a credit reporting agency (credit bureau) in NMLS.

(d) Supplemental Information. An applicant must provide information related to any administrative, civil, or criminal findings or proceedings by a governmental jurisdiction, including any information required by §55.112 of this title (relating to Procedures for Review of Background Checks) to SML. The information must be uploaded to NMLS.

§55.112 Procedures for Review of Background Checks

(a) Purpose. This section establishes procedures used by SML to perform background checks and review an individual's criminal background and credit history to determine his or her fitness and eligibility for licensure in accordance with Finance Code §157.0132.

(b) Supporting Information/Documentation for Criminal Background Check. An individual applying for an originator license (applicant) with a criminal history, when requested by SML, must provide the following information concerning each conviction or other criminal proceeding identified by SML:

(1) a detailed explanation, in writing, of the events and circumstances for each conviction or other criminal proceeding required to be self-disclosed in his or her application, signed and dated by the individual seeking licensure; and

(2) copies of court records or other documentation reflecting:

(A) the nature of the criminal offense (including the statutory provisions violated, and the severity or classification of the offense);

(B) the individual's plea (including any terms or other arrangements for the plea);

(C) the conviction (judgment or court order);

(D) the sentence imposed;

(E) any probation or community supervision imposed (including evidence of compliance); and

(F) any other action in the proceeding causing final disposition of the case to be deferred.

(c) Supporting Information/Documentation for Credit History Check. An applicant, when requested by SML, must provide the following information concerning each financial disclosure made in his or her application and each credit account on his or her credit report identified by SML:

(1) a detailed explanation, in writing, of the background and circumstances surrounding each financial disclosure made or credit account identified, signed and dated by the individual seeking licensure;

(2) if a bankruptcy proceeding is disclosed, a copy of the order of discharge from such proceeding, or if the proceeding is ongoing, the current bankruptcy petition, and the current the financial schedules filed in the proceeding;

(3) if a judgment or lien is disclosed, a copy of such judgment or lien filing; and

(4) if delinquent child support is disclosed, a copy of the most recent statement of account or other documentation reflecting the current amount due, and if the individual is in a payment plan or has otherwise entered into terms for repayment, a copy of such plan or terms.

(d) Effect of Providing Supporting Documentation. By providing documentation to SML in accordance with subsections (b) and (c) of this section, the applicant certifies that he or she has a good faith belief that such documents are true and correct copies of documents issued by the person that originally created the document that SML may rely on in making a decision on the application. By providing such supporting documentation, the applicant consents to such documentation being admissible at an adjudicative hearing if the Commissioner seeks to deny the application, resulting in a contested case, and the applicant is deemed to have waived any objections concerning the admissibility of such documentation into the

administrative record at such adjudicative hearing.

(e) Certified Documents. Notwithstanding subsection (d) of this section, the applicant, at his or her own cost, must obtain and provide SML with certified or exemplified copies of any documents described in subsections (b) and (c) of this section, upon written request by SML.

§55.113 Criminal Conviction Guidelines

(a) Purpose. This section establishes the criteria used by SML to review an individual's criminal history to determine his or her eligibility and fitness to be licensed by SML as an originator. This section implements the requirements of Occupations Code §53.025, requiring SML to establish guidelines related to such reviews, including designating particular crimes and offenses SML considers to be directly related to the duties and responsibilities of acting as an originator and may constitute grounds for denial of licensure. The Commissioner's authority to deny an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. This section also describes the Commissioner's other statutory authority arising from the Finance Code for denial of licensure based on an individual's criminal history, including outlining certain offenses deemed by this section to be grounds for denial under the Finance Code.

(b) Ineligibility by Operation of Law. The following individuals are ineligible for licensure by operation of law due to his or her criminal history:

(1) an individual who, within the 7 years preceding the date of the application, has been convicted of, or pled guilty or nolo contendere (no contest) to, a felony in a court of this state, another state or territory of the United States, a federal court of the United States, or other foreign, or military court, in accordance with Finance Code §180.055(a); and

(2) an individual who, at any time, has been convicted of, or pled guilty or nolo contendere to, a felony offense involving an act of fraud, dishonesty, breach of trust, or money laundering, in accordance with Finance Code §180.055(a). Any felony offense listed in the schedule contained in subsection (e) of this section having a nexus to residential mortgage loan origination arising from the categories of criminal offenses related to residential mortgage loan origination under subsection (d)(1) or (2) of this section (concerning crimes involving fraud, falsification, dishonesty, deception and breach of trust, and theft or embezzlement, respectively) is deemed to constitute a crime involving an act of fraud, dishonesty, breach of trust, or money laundering for purposes of Finance Code §180.055(a).

(c) Duties and Responsibilities of a Residential Mortgage Loan Originator. An originator acts as an intermediary between the consumer seeking a residential mortgage loan and the lender or underwriter that determines whether the consumer qualifies for the loan. The originator may assist the consumer in reviewing his or her income, expenses, and credit worthiness to determine whether he or she will qualify for a loan, and on what terms he or she might qualify. The originator may assist the consumer in completing the loan application, and sometimes directs the consumer to present his or her financial information in the manner to which the lender or underwriter is accustomed. A residential mortgage loan often takes place in the context of a real estate transaction, and as a result, an originator sometimes advises the consumer of his or her financial ability to purchase residential real estate, including providing a conditional pre-qualification letter to establish the consumer's purchasing power while shopping in the marketplace. Once the loan has entered the underwriting process, the originator may assist the consumer in resolving any outstanding conditions of the underwriter to qualify for the loan and obtain approval, including addressing items of concern on a consumer's credit report, immigration/residency status, available cash-on-hand for the transaction, and income which may not be readily established by documentary evidence such as that of an independent contractor. The originator communicates to the consumer the ever-changing loan terms as interest rates in the marketplace fluctuate and is often a key figure in advising the consumer of when and how he or she may "lock" the loan in advance of closing to

solidify the loan terms. The originator may serve as communications liaison between the consumer and various parties to the transaction, including the lender, the underwriting department or a third-party underwriter, real estate brokers and sales agents, appraisers, surveyors, insurance providers, closing/settlement agents, and the representatives of various taxing authorities. In performing his or her duties, an originator has access to sensitive information of the consumer, including his or her social security number, date of birth, immigration/residency status, and all the personal financial details of the consumer, including employment, income, assets, and expenses.

(d) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission of Texas and the Commissioner have determined the following categories of criminal offenses are directly related to the duties and responsibilities of acting as an originator:

(1) criminal offenses involving fraud, falsification, dishonesty, deception, and breach of trust;

(2) criminal offenses involving theft or embezzlement; and

(3) criminal offenses involving intoxication by drugs or alcohol.

(e) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission of Texas and the Commissioner have determined the criminal offenses in the following schedule meet one or more of the categories deemed to relate to residential mortgage loan origination by subsection (d) of this section and are directly related to the duties and responsibilities of an individual licensed by SML to act as an originator. The schedule includes those criminal offenses most likely to be encountered by SML and is made from the perspective of the criminal laws of the State of Texas and the United States federal government. However, the schedule is not an exhaustive review of all offenses and does not limit SML from considering a criminal offense not specifically listed in the schedule. The schedule should be construed to include any criminal offense meeting one or more of the categories deemed to relate to residential mortgage loan origination, as provided by subsection (d) of this section. The schedule should further be construed to include the substantially similar or functionally equivalent crime of any state or territory of the United States, violations of the Texas Code of Military Justice (Government Code Chapter 432), violations of the Uniform Code of Military Justice (10 U.S.C. §801 et seq.), or crimes of a foreign country or governmental subdivision thereof. In determining whether a criminal offense of another jurisdiction is substantially similar or functionally equivalent, an inquiry will be made comparing the subject offense with an offense on the schedule to determine whether the subject offense has similar elements, including intent and classification of punishment, and whether the crime would have been punishable had the acts been committed in Texas.

Figure: 7 TAC §55.113(e)

(f) Factors. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in determining whether a criminal offense is directly related to the duties and responsibilities of an individual licensed by SML to act as an originator, SML will consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to act as an originator;

(3) the extent to which an originator license might offer an opportunity for the individual to engage in further criminal activity of the same type as that in which the individual has previously been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed originator; and

(5) any correlation between the elements of the crime and the duties and responsibilities of licensed originator.

(g) In addition to the factors in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Finance Code §157.0131 and subsection (h) of this section) is unfit and ineligible for licensure, will consider:

(1) the extent and nature of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

(3) the amount of time that has elapsed since the individual's criminal activity;

(4) the amount of time that has elapsed since the individual's release from incarceration;

(5) the conduct and work activity of the individual before and after the criminal activity;

(6) evidence of the individual's rehabilitation or rehabilitative efforts;

(7) letters of recommendation, signed and dated, by a current employer, if the individual is employed, or a previous employer, stating that the employer has specific and complete knowledge of the individual's criminal history and the reasons the employer is recommending that the individual be considered fit to be licensed by SML; and

(8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and his or her character and fitness, with specific and complete knowledge of the individual's criminal history, able to offer competent information about the nature and extent of the applicant's rehabilitative efforts.

(h) Convictions Considered. The determination of whether a criminal proceeding is considered to have resulted in a conviction for purposes of this section will be made in accordance with Finance Code §157.0131, which states that an individual is considered to have been convicted of a criminal offense if:

(1) a sentence is imposed on the individual;

(2) the individual received probation or community supervision, including deferred adjudication or community service; or

(3) the court deferred final disposition of the individual's case.

(i) Consideration of Disciplinary Actions. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, the Commissioner may consider the individual's past history of disciplinary actions with SML, or another regulatory body or official of another jurisdiction regulating residential mortgage loan origination or other financial services, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure.

(j) Consideration of Financial Responsibility, Character and General Fitness. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal history, the Commissioner may consider the individual's financial responsibility, and other evidence of character and general fitness, which may serve as separate grounds for license ineligibility, or as an aggravating factor rendering the individual ineligible for licensure. A conviction for a criminal offense having a nexus to residential mortgage loan origination arising from the categories of

criminal offenses deemed to relate to residential mortgage loan origination under subsection (d) of this section is indicative of a failure to demonstrate requisite character and general fitness to command the confidence of the community in accordance with Finance Code §180.055(a)(3), and honesty, trustworthiness and integrity in accordance with Finance Code §157.012(c)(1).

§55.114 Request for Criminal History Eligibility Determination

(a) Purpose and Applicability. This section establishes the procedures by which an individual may seek a preliminary review of his or her eligibility to be licensed by SML with respect to his or her criminal history prior to formally applying with SML for licensure, as authorized by Occupations Code Chapter 53. Pursuant to Occupations Code §53.102, this section applies to an individual who has reason to believe he or she is ineligible to be licensed by SML due to a conviction or deferred adjudication for a felony or misdemeanor offense, and who is enrolled or is planning to enroll in an educational program that prepares an individual to be licensed by SML. The Commissioner will not offer advisory opinions concerning criminal convictions or sentences that have not actually occurred.

(b) Request for Preliminary Eligibility Determination; Supporting Documentation. The request must be made using the current form prescribed by SML and posted on its website (sml.texas.gov). The fee to make a request under this section is determined by the Commissioner and posted on SML's website. The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days.

(c) Review of Request for Preliminary Evaluation. A request made under this section will be reviewed by SML to determine the requestor's eligibility using the same procedures for review of an individual's criminal history when making an application for licensure and is subject to SML's criminal conviction guidelines set forth in §55.113 of this title (relating to Criminal Conviction Guidelines). As a result, the requestor, in making the request, must list all offenses that actually resulted in a criminal conviction or that otherwise constitute a criminal conviction for purposes of Finance Code §157.0131 and §55.113 of this title. The requestor's incarcerated status that would render the individual ineligible for licensure pursuant to Occupations Code §53.021(b) will be disregarded; however, SML will consider the implications of the requestor's anticipated release from incarceration in making its determination.

(d) Determination of Eligibility. Within 90 days after the date the fully-completed request is received, SML will notify the requestor of his or her eligibility to receive a license issued under Finance Code Chapters 157 and 180.

(e) Effect of Determination. In the absence of new evidence known but not disclosed by the requestor, or not reasonably available to SML in consideration of the disclosures made by the requestor, the Commissioner's decision regarding eligibility of the requestor concerning his or her criminal history will be determinative for purposes of reviewing a subsequent application for licensure from the requestor. However, the Commissioner's decision regarding eligibility will not be determinative to the extent the request for preliminary eligibility determination contained fraudulent or misleading information or supporting documentation or otherwise failed to list a criminal conviction of the requestor that was not otherwise discovered by SML in investigating the request, regardless of whether or not the requestor was aware of the conviction at the time of the request, and including any subsequent conviction received by the requestor. A decision that the requestor is eligible will not be determinative if the requestor is determined to be ineligible for licensure by operation of law as provided by Finance Code §180.055(a) and §55.113 of this title.

SUBCHAPTER C DUTIES AND RESPONSIBILITIES

§55.200 Required Disclosures

(a) Specific Notice to Applicant. An originator sponsored by a mortgage company licensed by SML must provide a mortgage applicant with the notice required by §56.200(b) of this title (relating to Required Disclosures). An originator sponsored by a mortgage banker registered with SML must provide a mortgage applicant with the notice required by §57.200(b) of this title (relating to Required Disclosures). The notice must be sent at the time the originator takes the initial application for a residential mortgage loan. The notice must be signed by the originator and the mortgage applicant.

(b) Posted Notice on Websites. An originator sponsored by a mortgage company licensed by SML must comply with the requirements of §56.200(c) of this title. An originator sponsored by a mortgage banker registered with SML must comply with the requirements of §57.200(c) of this title.

(c) Disclosures in Correspondence. An originator must provide the following information on all correspondence sent to a mortgage applicant:

(1) the name of the mortgage company or mortgage banker sponsoring the originator and its NMLS ID;

(2) the mortgage company's or mortgage banker's website address, if it has a website; and

(3) the name of the originator and his or her NMLS ID.

§55.201 Conditional Pre-Qualification and Conditional Approval Letters

(a) Compliance with Mortgage Company and Mortgage Banker Rules. An originator sponsored by a mortgage company licensed by SML must comply with the requirements of §56.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters). An originator sponsored by a mortgage banker registered with SML must comply with the requirements of §57.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters).

(b) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the originator.

(c) Duty to Issue Accurate Letters; Caution. A conditional pre-qualification letter or conditional approval letter must be accurate and reflect the actual information that the originator considered in issuing the letter. An originator is cautioned that the issuance of an inaccurate, erroneous, or a negligently-issued conditional pre-qualification letter or conditional approval letter constitutes a violation as provided by §55.202 of this title (relating to Fraudulent, Misleading, or Deceptive Practices, and Improper Dealings) and may result in disciplinary action against the originator. Additionally, if an inaccurate, erroneous, or a negligently-issued conditional pre-qualification letter or conditional approval letter is relied on by the mortgage applicant to incur out-of-pocket costs in connection with the prospective mortgage loan, it may subject the originator to recovery claims made under Finance Code Chapter 156, Subchapter F.

§55.202 Fraudulent, Misleading, or Deceptive Practices and Improper Dealings

(a) Fraudulent, Misleading, or Deceptive Practices. The following conduct by an originator constitutes fraudulent and dishonest dealings for purposes of Finance Code §157.024(a)(3), deceptive practices for purposes of Finance Code §180.153(2), a scheme to defraud a person for purposes of Finance Code §180.153(1), and a false or deceptive statement or representation for purposes of Finance Code §180.153(11):

(1) knowingly misrepresenting the originator's relationship to a mortgage applicant or any other party to a residential mortgage loan transaction or prospective residential mortgage loan transaction;

(2) knowingly misrepresenting or understating any cost, fee, interest rate, or other expense to a mortgage applicant or prospective mortgage applicant in connection with a residential mortgage loan;

(3) knowingly overstating, inflating, altering, amending or disparaging any source or potential source of residential mortgage loan funds in a manner which disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly misrepresenting the lien position of a residential mortgage loan or prospective residential mortgage loan;

(5) knowingly participating in or permitting the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether to make or acquire a residential mortgage loan;

(6) as provided by Regulation X (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan for which the originator receives compensation for services not actually performed or where the compensation received bears no reasonable relationship to the value of the services actually performed;

(7) recommending or encouraging default or delinquency or the continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(8) altering any document produced or issued by SML, unless otherwise permitted by statute or a rule of SML.

(9) acting as an originator when the originator is licensed but not sponsored by a mortgage company or mortgage banker, or the license is otherwise in an inactive status (which is deemed to constitute unlicensed activity);

(10) using a trigger lead in misleading or deceptive manner by, among other things:

(A) failing to state in the initial communication with the consumer:

(i) the originator's name and mortgage company or mortgage banker on behalf of which the originator is acting;

(ii) a brief explanation of how the originator or his or her sponsoring mortgage company or mortgage banker obtained the consumer's contact information to make the communication (i.e., an explanation of trigger leads);

(iii) that the originator and his or her sponsoring mortgage company or mortgage banker is not affiliated with the creditor to which the consumer made the credit application that resulted in the trigger lead; and

(iv) that the purpose of the communication is to solicit new business for the mortgage company or mortgage banker sponsoring the originator;

(B) contacting a consumer who has opted out of prescreened offers of credit under the federal Fair Credit Reporting Act (FCRA; 12 U.S.C. §1681b(e)); or

(C) failing in the initial communication with the consumer to make a firm offer of credit as provided by the FCRA (12 U.S.C. §1681a(l) and §1681b(c));

(11) engaging in any other practice which the Commissioner, by published interpretation, has determined is fraudulent, misleading, or deceptive.

(b) Improper and Unfair Dealings. The following conduct by an originator constitutes improper dealings for purposes of Finance Code §157.024(a)(3) and unfair practices for purposes of Finance Code §180.153(2):

(1) Acting negligently in performing an act requiring a license under Finance Code Chapters 157 or 180;

(2) Violating any provision of a local, State of Texas, or federal constitution, statute, rule, ordinance, regulation, or final court decision that governs the same or a closely related activity, transaction, or subject matter that is governed by the provisions of Finance Code Chapters 157 or 180, or this chapter, including, but not limited to:

(A) Consumer Credit Protection Act, Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.);

(B) Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.);

(C) Regulation N (12 C.F.R. §1014.1 et seq.);

(D) Gramm-Leach-Bliley Act (GLBA; 15 U.S.C. §6801 et seq.), Regulation P (12 C.F.R. §1016.1 et seq.), and the Federal Trade Commission's (FTC) Privacy of Consumer Financial Information rules (16 C.F.R. §313.1 et seq.);

(E) Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(F) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. 1024.1 et seq.);

(G) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.);

(H) the FTC's Standards for Safeguarding Customer Information rule (16 C.F.R. §314.1 et seq.);

(I) Finance Code Chapter 158 and Chapter 58 of this title;

(J) Finance Code Chapter 159 and Chapter 59 of this title; and

(K) Texas Constitution, Article XVI, §50 and Chapter 153 of this title;

(3) soliciting by phone a consumer who has placed his or her contact information on the national do-not-call registry maintained by the Federal Trade Commission (FTC), unless otherwise allowable under the FTC's Telemarketing Sales Rule (16 C.F.R. §310.4(b)(iii)(B));

(4) Issuing a conditional pre-qualification letter or conditional approval letter under §55.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters) that does not comply with the required form for the letter or is inaccurate, erroneous, or negligently-issued;

(5) Representing to a mortgage applicant that a charge or fee which is payable to the originator or the

mortgage company or mortgage banker sponsoring the originator is a "discount point" or otherwise confers a financial benefit on the mortgage applicant unless the loan closes and:

(A) the mortgage company or mortgage banker sponsoring the originator is making the residential mortgage loan (lender); or

(B) the mortgage company or mortgage banker sponsoring the originator is not the lender but demonstrates by clear and convincing evidence that the lender has charged or collected discount points or other fees which the mortgage company or mortgage banker sponsoring the originator has actually paid to the lender on behalf of the mortgage applicant to buy down the interest rate on the residential mortgage loan;

(6) Failing to accurately respond within a reasonable time to reasonable questions from a mortgage applicant or prospective mortgage applicant concerning the scope and nature of the originator's services and any costs.

(c) Related Transactions. An originator engages in fraudulent and deceptive dealings for purposes of Finance Code §157.024(a)(3), deceptive practices for purposes of Finance Code §180.153(2), and a scheme to defraud a person for purposes of Finance Code §180.153(1) when, in connection with the origination of a residential mortgage loan:

(1) the originator:

(A) offers other goods or services to a mortgage applicant in a separate but related transaction;
and

(B) the originator engages in fraudulent, misleading, or deceptive acts in the related transaction; or

(2) the originator:

(A) affiliates with another person that provides goods or services to a mortgage applicant in a separate but related transaction;

(B) the affiliated person engages in fraudulent, misleading, or deceptive acts in that transaction;

(C) the originator knew or should have known of the fraudulent, misleading, or deceptive acts of the affiliated person; and

(D) the originator failed to take appropriate steps to prevent or limit the fraudulent, misleading, or deceptive acts.

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. An originator must not offer or agree to share or split any loan origination fees with a mortgage applicant, rebate all or a part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with performing residential mortgage loan origination services unless otherwise allowable under Regulation X (12 C.F.R. §1024.14) and Regulation Z (12 C.F.R. §1026.36(d)). An originator acting in the dual capacity of an originator and real estate sales broker or agent licensed under Occupations Code Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described by this subsection occurs as a part of closing and is properly reflected in the closing disclosure. If a payment or other transfer described by this subsection occurs after closing, a rebuttable presumption exists that the payment or transfer is derived

from the originator's fees for residential mortgage loan origination services and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption may only be overcome by clear and convincing evidence established by the originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection is be deemed to constitute improper dealings for purposes of Finance Code §157.024(a)(3) and unfair practices for purposes of Finance Code §180.153(2).

(e) 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.

§55.203 Advertising

An originator sponsored by a mortgage company licensed by SML must comply with the advertising requirements in §56.203 of this title (relating to Advertising). An originator sponsored by a mortgage banker registered with SML must comply with the advertising requirements in §57.203 of this title (relating to Advertising).

§55.204 Books and Records

An originator sponsored by a mortgage company licensed by SML must comply with the books and records requirements in §56.204 of this title (relating to Books and Records). An originator sponsored by a mortgage banker registered with SML must comply with the books and records requirements in §57.204 of this title (relating to Books and Records). An originator fulfills the requirements of §56.204 of this title and §57.204 of this title, as applicable, if his or her sponsoring mortgage company or mortgage banker maintains the required books and records on behalf of the originator. An originator must work diligently and cooperatively with his or her sponsoring mortgage company or mortgage banker to ensure that the records arising from the originator's work are properly maintained by the mortgage company or mortgage banker sponsoring his or her license.

§55.205 Mortgage Call Reports

(a) Purpose. This section clarifies and establishes requirements related to the mortgage call reports an originator is required to file under Finance Code §180.101.

(b) Fulfillment by Mortgage Company or Mortgage Banker. Mortgage companies licensed by SML and mortgage bankers registered with SML are required to file mortgage call reports. An originator is not expected to and should not attempt to file his or her own mortgage call reports. Instead, the originator's activity must be included in the mortgage call reports filed by the mortgage company or mortgage banker sponsoring the originator. An originator fulfills the requirements of Finance Code §180.101 if his or her sponsoring mortgage company or mortgage banker files mortgage call reports that include the originator's activity. An originator must work diligently and cooperatively with his or her sponsoring mortgage company or mortgage banker to ensure that the originator's activity is included in a mortgage call report filed by his or her sponsoring mortgage company or mortgage banker in compliance with §56.205 of this title (relating to Mortgage Call Reports), applicable to mortgage companies licensed by SML, and §57.205 of this title (relating to Mortgage Call Reports), applicable to mortgage bankers registered with SML.

SUBCHAPTER D SUPERVISION AND ENFORCEMENT

§55.300 Examinations

(a) Purpose. This section clarifies and establishes requirements related to examinations of an originator conducted by SML under Finance Code §157.021.

(b) State Examination System (SES). Examinations are conducted in SES (stateexaminationsystem.org). The mortgage company or mortgage banker sponsoring the originator must use SES to facilitate the examination.

(c) Examinations by Other State Agencies. SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority if that state agency's or regulatory authority's mortgage regulation program is accredited by the Conference of State Bank Supervisors.

(d) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person of the mortgage banker or mortgage company sponsoring the originator listed in NMLS or a person designated by the primary contact person advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which SML's examiners are scheduled to begin the examination. Failure to 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 available to facilitate the examination.

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

(1) all persons are properly licensed and sponsored;

(2) all office locations are properly licensed or registered, as provided by §56.206 of this title (relating to Office Locations; Remote Work) and §57.206 of this title (relating to Office Locations; Remote Work);

(3) all required books and records are being maintained in accordance with §56.204 of this title (relating to Books and Records) and §57.204 of this title (relating to Books and Records);

(4) legal and regulatory requirements applicable to the originator and the mortgage banker or mortgage company sponsoring the originator are being properly followed (including, but not limited to, the requirements described in §55.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings); and

(5) other matters as SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapters 156, 157, and 180.

(d) The examiners will review a sample of residential mortgage loan files identified by the examiners from the mortgage transaction log required by §56.204(c)(1) or (d)(1) of this title, applicable to mortgage companies licensed by SML, or §57.204(c)(1) or (d)(1) of this title, applicable to mortgage bankers registered with SML. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

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

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

(h) Reimbursement for Costs. When SML's examiners must travel outside of Texas to conduct an examination of an originator because the required records are maintained at a location outside of Texas, SML will require reimbursement for the actual costs incurred in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs. Any such costs will be assessed against the originator in NMLS and must be paid in NMLS.

§55.301 Investigations

(a) Purpose. This section clarifies and establishes requirements related to investigations of an originator conducted by SML under Finance Code §157.021.

(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has no reason to believe is other than credible indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate an action taken by SML to address a violation found during the course of an investigation.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. An investigation may include:

(1) review of documentary evidence;

(2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;

(3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;

(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and

(5) other lawful investigative methods SML deems necessary or appropriate.

§55.302 Confidentiality of Examination, Investigation, and Inspection Information

(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §157.021.

(b) Confidential Information. All information obtained by SML during an examination, investigation, or inspection is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §156.301 (list is not exhaustive):

(1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or created during an examination, investigation, or inspection;

(2) information that is derived from or is the product of the confidential information described by paragraph (1) of this subsection, including any reports or other information chronicling or summarizing the results, conclusions, or other findings of an examination, investigation, or inspection, including assertions of any violations, deficiencies, or issues identified, or any directives, mandates, or recommendations for action by the regulated entity to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection; including, but not limited to, any corrective or remedial action directed by SML or taken by the originator entity under §55.303 of this title (relating to Corrective Action);

(3) information that is derived from or is the product of the confidential information described by paragraphs (1) and (2) of this subsection, including any communications, documentary evidence, or other information concerning the regulated entity's compliance with any directives, mandates, or recommendations for action by the mortgage company and any corrective or remedial action taken by the regulated entity to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection.

(c) Loss of Confidentiality. Subsection (b) notwithstanding, information described by that subsection is not confidential to the extent the information becomes publicly available in a disciplinary or enforcement action that is a contested case (i.e., information made part of the administrative record during an adjudicative hearing that is open to the public).

§55.303 Corrective Action

(a) Corrective Action, Generally; Purpose. During an examination, investigation, or inspection, SML may determine that violations, deficiencies, or compliance issues (collectively, violations) occurred. Within the confidential environment of the examination, investigation, or inspection, and typically in lieu of possible disciplinary or enforcement action against the originator that is not confidential, SML may direct the originator to take corrective action to address the violations identified during the examination, investigation, or inspection. This section clarifies and establishes requirements related to such corrective action.

(b) Internal Reviews. If SML determines during an examination, investigation, or inspection that a violation may be systemic, SML may direct the originator to conduct his or her own review to self-identify any other violations, compile information concerning such violations, and report his or her findings to SML. SML may direct the originator to take corrective action for any violations identified.

(c) Refunds to Consumers. SML may direct the originator to make refunds to consumers affected by the violation. Any refund must comply with this subsection. The Commissioner, in his or her sole discretion, may waive or modify the requirements of this subsection to achieve appropriate, practical, and workable results. A refund must be made by one of the following methods:

(1) Certified Funds. The refund may be made by certified funds (cashier's check or money order) sent to the mortgage applicant at his or her last known address. The mortgage company must use reasonable diligence to determine the last known address of the mortgage applicant. The payment must be sent in a manner that includes tracking information and confirmation of delivery (e.g., certified mail return receipt requested, or commercial delivery service with tracking). The mortgage company must capture and maintain records evidencing the payment, including a copy of the payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation; or

(2) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the mortgage applicant's verified bank account. The mortgage company must capture and maintain records evidencing the payment, including any transaction receipt, confirmation page, or similar, reflecting:

- (A) name of the sender and any relevant contact information;
- (B) sender's bank information (institution, routing number, and account number);
- (C) name of the recipient and any relevant contact information;
- (D) recipient's bank information (routing number and account number); and
- (E) the transaction reference number or confirmation code.

§55.310 Appeals

(a) Purpose. Finance Code Chapter 157 provides that certain decisions of the Commissioner adverse to an originator or other individual may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which an originator or other individual must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) License Denials. A license denial under Finance Code §157.017 must be appealed within 10 days after the date notice of the Commissioner's decision is received by the individual seeking the license.

(2) Order of Suspension for Violation of Final Order. An order of suspension issued by the Commissioner under Finance Code §156.303(h) must be appealed within 15 days after the date the order is issued.

(3) Notice of Suspension for Criminal Offense Involving Fraud, Theft, or Dishonesty. A notice of suspension issued under Finance Code §156.303(k) must be appealed within 15 days after the date the notice is issued.

(4) Notice of Disciplinary Action. A notice of disciplinary action issued under Finance Code §§ 157.023(a), 157.024(a), or 157.024(b) must be appealed within 30 days after the date the notice is issued.

(5) Order for Disciplinary Action (Order to Take Affirmative Action or Order to Cease and Desist). An order of the Commissioner issued under Finance Code §157.024(c) or §157.031(b) must be appealed within 30 days after the date the order is issued. This deadline does not apply to an order for disciplinary action issued by the Commissioner under Finance Code §§ 157.023(a), 157.024(a), or 157.024(b) that was preceded by notice issued under paragraph (4) of this subsection.

(6) Other Deadlines. Any appeal not otherwise addressed by this section must be made within 30 days after the date the notice or order is issued.

(c) Requests for Appeal. An appeal must be made in writing and received by SML on or before the appeal deadline. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (enforcement@sml.texas.gov).

(d) Effect of Not Appealing. An originator or other individual who does not timely appeal the Commissioner's decision is deemed to have irrevocably waived any right he or she had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to him or her for purposes of judicial review of the Commissioner's decision under Government Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner's decision means the Commissioner can issue a final, non-appealable order at any time without further

notice or opportunity for a hearing to the originator.

§55.311 Hearings

(a) Hearings, Generally. Adjudicative hearings conducted under Finance Code Chapters 157 and 180 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.

(b) Hearing Costs for License Denials. Hearing costs assessed against an individual under Finance Code §157.017(f) include:

(1) filing fees;

(2) the costs of a court reporter;

(3) the costs of the administrative law judge (ALJ) or hearings officer presiding over the hearing;

(4) the expense of SML's staff to prepare for and attend the hearing or any ancillary proceedings (i.e., the hearing of motions, status conferences, etc.), and any related travel expenses;

(5) the cost of any outside counsel retained to represent SML; and

(6) the cost of any expert witness retained by SML.

(c) Determination of Hearing Costs for License Denials. Unless the ALJ makes more specific findings of fact or conclusions of law concerning the hearing costs described by subsection (b)(3) of this section, such costs are deemed to be \$500. Hearing costs described by subsection (b)(4) of this section are measured based on the diversion of productivity of such staff away from their typical duties and toward the hearings process and are calculated by multiplying the number of hours spent by each staff member in furtherance of the hearings process (measured in increments of 1/10 of an hour) by their current hourly compensation rate. The Commissioner may rely on affidavit testimony of such staff members to make appropriate findings of fact and conclusions of law concerning the hearing costs described by subsection (b)(4) of this section.

Figure: 7 TAC §55.113(e)

Schedule of Criminal Offenses Determined to be Directly Related to Residential Mortgage Loan Origination

Texas Offenses:

Offense	Statutory Reference	Nexus to Residential Mortgage Loan Origination (reference to Rule §55.110(e))
Abuse of Official Capacity	Tex. Pen. Code §39.02	(1), (2)
Acceptance of Gift/Honorarium by Public Servant	Tex. Pen. Code §§36.07, 36.08	(1)
Agreement to Abduct Child	Tex. Pen. Code §25.031	(2)
Burglary, in furtherance of theft; Burglary of Vehicle	Tex. Pen. Code §§30.02, 30.04	(2)
Breach of Computer Security	Tex. Pen. Code §33.02	(1), (2)
Bribery	Tex. Pen. Code §36.02	(1)
Bribery, Commercial	Tex. Pen. Code §32.43	(1)
Coercion of Public Servant or Voter	Tex. Pen. Code §36.03	(1)
Counterfeiting Trademark	Tex. Pen. Code §32.23	(1)
Credit Card or Debit Card Abuse	Tex. Pen. Code §32.31	(1), (2)
Credit Card Transaction Record Laundering	Tex. Pen. Code §32.35	(1)
Criminal Attempt, Solicitation, or Conspiracy	Tex. Pen. Code §§15.01, 15.02, 15.03, 15.031	See offense attempted, solicited or conspired
Criminal Simulation	Tex. Pen. Code §32.22	(1)
Criminally Negligent Homicide, arising from intoxication	Tex. Pen. Code §19.05	(3)
Deceptive Business Practices	Tex. Pen. Code §32.42	(1)
Driving/Boating/Flying while Intoxicated	Tex. Pen. Code §§49.04, 49.05, 49.06, 49.09	(3)
Driving while Intoxicated with Child Passenger	Tex. Pen. Code §49.045	(3)
Drug Offenses	Tex. Health & Safety Code Chs. 481, 482, 483	(3)
Escape from Custody	Tex. Pen. Code §38.06	(1)

Figure: 7 TAC §55.113(e)

Evading Arrest or Detention	Tex. Pen. Code §38.04	(1)
Exploitation of Child/Elderly/Disabled	Tex. Pen. Code §32.53	(1), (2)
False Report of Emergency	Tex. Pen. Code §42.06	(1)
False Report to Law Enforcement	Tex. Pen. Code §37.08	(1)
False Statement to Obtain Property, Credit or Services	Tex. Pen. Code §32.32	(1), (2)
Forgery	Tex. Pen. Code §32.21	(1), (2)
Fraudulent Court Record	Tex. Pen. Code §37.13	(1)
Fraudulent Destruction, Removal, or Concealment of Writing	Tex. Pen. Code §32.47	(1)
Fraudulent Filing of Financing Statement	Tex. Pen. Code §37.101	(1)
Fraudulent or Fictitious Military Record	Tex. Pen. Code §32.54	(1)
Fraudulent Use or Possession of Identifying Information	Tex. Pen. Code §32.51	(1)
Fraudulent, Substandard, or Fictitious Degree	Tex. Pen. Code §32.52	(1)
Fraudulent Transfer of a Motor Vehicle	Tex. Pen. Code §32.34	(1)
Hindering Apprehension or Prosecution	Tex. Pen. Code §38.05	(1)
Hindering Secured Creditors	Tex. Pen. Code §32.33	(1), (2)
Impersonating Lawyer	Tex. Pen. Code §38.122	(1)
Impersonating Public Servant	Tex. Pen. Code §37.11	(1)
Impersonating Peace Officer	Tex. Pen. Code §37.12	(1)
Improper Gift to Public Servant	Tex. Pen. Code §36.09	(1)
Improper Influence	Tex. Pen. Code §36.04	(1)
Insurance Fraud	Tex. Pen. Code §35.02	(1)
Intoxication Assault	Tex. Pen. Code §49.07	(3)
Intoxication Manslaughter	Tex. Pen. Code §49.08	(3)
Manslaughter, arising from intoxication	Tex. Pen. Code §19.04	(3)
Medicaid Fraud	Tex. Pen. Code §35A.02	(1), (2)
Misapplication of Fiduciary Property or Property of Financial Institution	Tex. Pen. Code §32.45	(1), (2)
Misuse of Official Information	Tex. Pen. Code §39.06	(1)
Money Laundering	Tex. Pen. Code §34.02	(1), (2)

Figure: 7 TAC §55.113(e)

Official Oppression by Public Servant	Tex. Pen. Code §39.03	(1)
Online Impersonation	Tex. Pen. Code §33.07	(1)
Organized Criminal Activity	Tex. Pen. Code §71.02	See underlying offense
Perjury; Aggravated Perjury	Tex. Pen. Code §§37.02, 37.03	(1)
Prohibited Substances and Items in Correctional Facility	Tex. Pen. Code §38.11	(1), (3)
Robbery; Aggravated Robbery	Tex. Pen. Code §§29.02, 29.03	(2)
Securing Execution of Document by Deception	Tex. Pen. Code §32.46	(1), (2)
Simulating Legal Process	Tex. Pen. Code §32.48	(1)
Smuggling of Persons; Continuous Smuggling of Persons	Tex. Pen. Code §§20.05, 20.06	(1)
Stealing or Receiving Stolen Check	Tex. Pen. Code §32.24	(1), (2)
Tampering of Electronic Data	Tex. Pen. Code §33.023	(1)
Tampering with Consumer Product	Tex. Pen. Code §22.09	(1)
Tampering with Governmental Record	Tex. Pen. Code §37.10	(1)
Tampering with Identification Numbers	Tex. Pen. Code §31.11	(1)
Tampering with or Fabricating Physical Evidence	Tex. Pen. Code §37.09	(1)
Tampering with Witness	Tex. Pen. Code §36.05	(1)
Theft	Tex. Pen. Code §31.03	(2)
Theft – Organized Retail Theft	Tex. Pen. Code §31.16	(2)
Theft of Cargo	Tex. Pen. Code §31.18	(2)
Theft of Petroleum Product	Tex. Pen. Code §31.19	(2)
Theft of Service	Tex. Pen. Code §31.04	(1), (2)
Trafficking of Persons; Continuous Trafficking of Persons	Tex. Pen. Code §§20A.02, 20A.03	(1)
Unauthorized Absence from Corrections Facility	Tex. Pen. Code §38.113	(1)
Unauthorized Acquisition or Transfer of Financial Information	Tex. Pen. Code §31.17	(1), (2)
Unauthorized Use of a Vehicle	Tex. Pen. Code §31.07	(1), (2)
Unlawful Access to Stored Communications	Tex. Pen. Code §16.04	(1), (2)
Unlawful Interception, Use, or Disclosure of Wire, Oral or Electronic Communications	Tex. Pen. Code §16.02	(1)

Figure: 7 TAC §55.113(e)

Unlawful Use of Criminal Instrument or Mechanical Security Device	Tex. Pen. Code §16.01	(1)
Unlawful Use of Pen Register or Trap and Trace Device	Tex. Pen. Code §16.03	(1)

Federal Offenses:

Offense	Statutory Reference	Nexus to Residential Mortgage Loan Origination (reference to Rule §55.110(e))
Bankruptcy Fraud	18 U.S.C. §§151-158	(1)
Bribery, Graft and Conflicts of Interest	18 U.S.C. §§201-227	(1)
Conspiracy to Commit Offense or Defraud	18 U.S.C. §§371-373	(1); See also conspired offense, if applicable
Counterfeiting and Forgery	18 U.S.C. §§470-514	(1)
Customs Fraud	18 U.S.C. §§541-555	(1)
Drug Offenses	21 U.S.C. §§841-865	(3)
False Claims Affecting Government	18 U.S.C. §§281-293	(1)
Fraud, False Statements, Identity Theft	18 U.S.C. §§1001-1070	(1)
Mail Fraud, and other fraud offenses (Wire Fraud, bank fraud, health care fraud, securities/investment fraud)	18 U.S.C. §§1341-1351; 15 U.S.C. §§ 78ff(a), 78j, 77x, 80b-17, 80a-48, 77yyy	(1), (2)
Obstruction of Justice / Tampering with Government Records	18 U.S.C. §§1501-1521; 2071-2076	(1)
Passport/Visa Fraud	18 U.S.C. §§1541-1547	(1)
Perjury	18 U.S.C. §§1621-1623	(1)
Racketeering/RICO Offenses/ Money Laundering Offenses	18 U.S.C. §§1951-1990	(1), (2)
Robbery and Burglary	18 U.S.C. §§2111-2119	(2)
Tax Fraud	26 U.S.C. §§7201-7230	(1), (2)
Theft, Embezzlement	18 U.S.C. §§641-670	(2)

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 56 RESIDENTIAL MORTGAGE LOAN COMPANIES

{{All existing rules affecting residential mortgage loan companies in Chapter 80 will be repealed and replaced with new rules in Chapter 56}}

SUBCHAPTER A GENERAL PROVISIONS

§56.1 Purpose and Applicability

This chapter governs the SML's administration and enforcement of Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act (other than Subchapters F and G), concerning the licensing, registration, and operations of mortgage companies, financial services companies, credit union subsidiary organizations, auxiliary mortgage loan activity companies, and independent contractor loan processor or underwriter companies (each a residential mortgage loan company). This chapter applies to persons licensed by SML as a residential mortgage loan company or those required to be licensed. Pursuant to Finance Code §156.2012(d) a person registered with SML as a financial services company is subject to the requirements of this chapter as if the company were licensed by SML as a residential mortgage loan company and the rules in this chapter must be construed accordingly.

§56.2 Definitions

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 156 (other than Subchapters F and G), the following definitions apply, unless the context clearly indicates otherwise:

(1) "Application," as used in Finance Code §156.002(14) and paragraphs (9) and (22) of this section means a request, in any form, for an offer (or a response to a solicitation of 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, or the mortgage loan amount.

(2) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(3) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(4) "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 a limited liability company, is a manager or managing member; or

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

(5) " 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.

(6) " E-Sign Act " refers to the federal Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001 et seq.).

(7) " Engage in or conduct the business of a mortgage company " or " engage in or conduct the business of residential mortgage loan origination, " or any similar derivative or variation of those terms, means to contract for (as provider), provide, or offer to contract for or provide, residential mortgage loan origination services for compensation or gain or with the expectation of compensation or gain.

(8) " Making a residential mortgage loan, " or any similar derivative or variation of that term, means when a person determines the credit decision to provide the residential mortgage loan, or the act of funding the residential mortgage loan or transferring money to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have " made " the residential mortgage loan.

(9) " Mortgage applicant " has the meaning assigned by Finance 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.

(10) " Mortgage banker " has the meaning assigned by Finance Code §156.002.

(11) " Mortgage company " means, for the purposes of this chapter, a " residential mortgage loan company " as is defined by Finance Code §156.002.

(12) " Nationwide Multistate Licensing System " or " NMLS " has the meaning assigned by Finance Code §156.002 in defining " Nationwide Mortgage Licensing System and Registry. "

(13) " Offers or negotiates the terms of a residential mortgage loan, " as used in Finance 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.

(14) " Originator " has the meaning assigned by Finance Code §156.002 in defining " residential mortgage loan originator. " Paragraphs (13) and (22) of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Finance 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 Finance Code §180.003 are exempt for purposes of this chapter.

except as otherwise provided by Finance Code §180.051.

(15) "Person" has the meaning assigned by Finance Code §180.002.

(16) "Qualifying Individual" or "Qualified Individual" has the meaning assigned by Finance Code §156.002 in defining "qualifying individual."

(17) "Residential mortgage loan" has the meaning assigned by Finance Code §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan 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.

(18) "Residential real estate" has the meaning assigned by Finance 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.

(19) "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.

(20) "SML" means the Department of Savings and Mortgage Lending.

(21) "State Examination System" or "SES" means an online, digital examination system developed by the Conference of State Bank Supervisors that securely connects regulators and regulated entities on a nationwide basis to facilitate the examination process.

(22) "Takes a residential mortgage loan application," as used in Finance 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.

(23) "Trigger Lead" means information concerning a consumer's credit worthiness (consumer report) compiled by a credit reporting agency (consumer reporting agency), obtained in accordance with the federal Fair Credit Reporting Act (15 U.S.C. §1681b(c)(1)(B)) that is not initiated by the consumer but, instead, is triggered by an inquiry to a consumer reporting agency in response to an application for credit initiated by the consumer in a separate transaction. The term does not include a consumer report obtained by a mortgage company licensed by SML or a mortgage banker registered with SML in response to an application for credit made by a consumer with that mortgage company or mortgage banker or that is otherwise authorized by the consumer.

(24) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.

(25) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(26) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

§56.3 Formatting Requirements for Notices

Any notice or disclosure (notice) required by Finance Code Chapter 156, or this chapter, must be made in at least 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 156, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice or disclosure must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

(1) Arial;

(2) Aptos;

(3) Calibri;

(4) Century Schoolbook;

(5) Garamond;

(6) Georgia;

(7) Lucinda Sans;

(8) Times New Roman;

(9) Trebuchet; and

(10) Verdana.

§56.4 Electronic Delivery and Signature of Notices

Any notice or disclosure required by Finance Code Chapter 156, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

§56.5 Computation of Time

The calculation of any time period measured in days by Finance Code Chapter 156, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

§56.6 Enforceability of Liens

A violation of Finance Code Chapter 156, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

SUBCHAPTER B LICENSING

§56.100 Licensing Requirements

(a) License Required. A person, unless exempt as provided by Finance Code §156.202, is required to be licensed as a mortgage company under Finance Code Chapter 156 if the person engages in or conducts

the business of a mortgage company or advertises or holds that person out to the public as engaging in or conducting the business of residential mortgage loan origination concerning a loan or prospective loan secured or designed to be secured by residential real estate located in Texas, including, but not limited to:

(1) representing or holding that person out to the public through advertising or other means of communication as a mortgage company; and

(2) receiving compensation for engaging in or conducting the business of residential mortgage loan origination (a person must be licensed at the time it receives compensation even if the compensation relates to services provided when the person was licensed).

(b) Branch Office License Required. A mortgage company must apply for and obtain a branch office license for each office constituting a branch office of the mortgage company for purposes of §56.206 of this title (relating to Office Locations; Remote Work).

(c) Securing the Services of an Originator. A person making a residential mortgage loan (lender), other than a wrap lender making a wrap mortgage loan, or the maker of a secondary mortgage loan subject to the requirements of Finance Code Chapter 342, is not required to be licensed as a mortgage company if the lender secures the services of a licensed mortgage company or registered mortgage banker authorized to originate the loan and that mortgage company or mortgage banker, and not the lender, fulfills the functions of origination by actually providing residential mortgage loan origination services in connection with the loan. However, if the lender owns the residential real estate securing the loan and has exceeded the limit for exempt transactions as provided by Finance Code §156.202(a-1)(3), the lender must be licensed under Finance Code Chapter 156, regardless of whether the lender has secured the services of an originator as provided by this subsection.

§56.101 Applications for Licensure

(a) NMLS. Applications for licensure must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation as deemed necessary or appropriate to determine that the licensing requirements of Finance Code Chapter 156 have been met.

(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.

§56.102 Fees

(a) License Fees. The license fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §156.203(b), exclusive of fees charged by NMLS, as described in subsection (b) of this section. The Commissioner may establish different fee amounts for a new license versus renewal of the license. The current fee is set in NMLS and posted on SML's website (sml.texas.gov). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The license fee must be paid

in NMLS.

(b) NMLS Fees. NMLS charges a fee to process the application. Such fee is determined by NMLS and must be paid by the applicant at the time it files the application. The current fee is set in NMLS and posted on the NMLS Resource Center website (nationwidelicensingsystem.org).

(c) All fees are nonrefundable and nontransferable.

(d) Insufficient Funds Fee. The Commissioner may collect a fee in an amount determined by the Commissioner not to exceed \$50 for any returned check, credit card chargeback, or failed automated clearinghouse (ACH) payment. A fee assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

§56.103 Renewal of the License

(a) A license may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees; and

(2) a determination by SML that the mortgage company continues to meet the minimum requirements for licensure, including the requirements of Finance Code §§156.2041(a), 156.2042(a), 156.2042(a), 156.2043(a), or 156.2044(a), as applicable, and 156.208(a-1).

(b) Application of §56.101. A renewal request is a license application subject to the requirements of §56.101 of this title (relating to Applications for Licensure). A renewal request withdrawn under §56.101(c) of this title will be rejected in NMLS.

(c) Commissioner's Discretion to Approve with a Deficiency; Conditional License. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the mortgage company to continue conducting regulated activities while the mortgage company works diligently to resolve the deficiencies. An application approved by the Commissioner under this subsection will be assigned the NMLS license status "Approved - Deficient." Approval under this subsection does not relieve the mortgage company of the obligation to resolve the deficiencies. A license approved under this subsection is deemed to be a conditional license for which the mortgage company, in order to maintain the license, must resolve the deficiencies within 30 days after the date the license is approved unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the license.

(d) Reinstatement. This section applies to a person seeking reinstatement of an expired license (assigned the license status "Terminated - Failed to Renew") during the reinstatement period described by Finance Code §156.2081 and must be construed accordingly. A mortgage company license cannot be renewed beyond the reinstatement period; instead, the person must apply for a new license and comply with all current requirements and procedures governing issuance of a new license.

§56.104 NMLS License Records; Notices Sent to the Mortgage Company

(a) NMLS License Status. SML is required to assign a status to the license in NMLS. The license status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the license status options available in NMLS. The NMLS Resource Center (nationwidelicensingsystem.org) describes the available license status options and their meaning.

(b) Amendments to NMLS Records Required. A mortgage company must amend its NMLS license records

(MU1 filing) within 10 days after the date of any material change affecting any aspect of the MU1 filing, including, but not limited to:

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

(2) the addition or elimination of an assumed name (a/k/a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);

(3) the contact information under "Identifying Information";

(4) the contact information under "Resident/Registered Agent";

(5) the contact information under "Contact Employee Information"; and

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

(c) Amendments to MU2 Associations Required. A mortgage company must cause the individuals who are required to register an association with the mortgage company (control persons and Qualified Individuals) to make the proper filings in NMLS using the current form prescribed by NMLS (MU2 filing) and must ensure such associations are amended within 10 days after the date of any material change affecting such associations.

(d) Notices Sent to the Mortgage Company. Any correspondence, notification, alert, message, official notice or other written communication from SML will be sent to the mortgage company in accordance with this subsection using the mortgage company's current contact information of record in NMLS unless another method is required by other applicable law.

(1) Service by Email. Service by email is made using the email address the mortgage company has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by email is complete on transmission of the email to the mortgage company's email service provider; provided, SML does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The mortgage company must monitor such email account and ensure that emails sent by SML are not lost in a "spam folder" or similar, or undelivered due to intervention by a "spam filter" or similar. A mortgage company is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. A mortgage company is further deemed to have constructive notice of any NMLS system notifications sent to it by email.

(2) Service by Mail. Service by mail is made using the address the mortgage company has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage company by mail and the document communicates a deadline by or a time during which the mortgage company must perform some act, such deadline or time period for action is extended by 3 days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

§56.105 Conditional License

(a) Conditional License; Terms and Conditions. The Commissioner may, in his or her sole discretion, issue a license on a conditional basis. A conditional license will be assigned the license status "Approved -

Conditional" in NMLS. Reasonable terms and conditions for a conditional license include:

(1) requiring the mortgage company to undergo additional credit checks or provide evidence of satisfaction concerning a debt, judgment, lien, child support obligation, or other financial delinquency affecting its financial condition;

(2) requiring the mortgage company to undergo additional criminal background checks or provide information on a periodic basis or upon request concerning the status of a pending criminal proceeding that might affect its eligibility for licensure;

(3) requiring the mortgage company to take other specific action or provide other specified information to address a previously-noted deficiency; and

(4) requiring the mortgage company to surrender the license upon the occurrence of an event that would render the mortgage company ineligible for the license.

(b) Probated Suspensions and Revocations. A license subject to a probated suspension or revocation is deemed to be a conditional license.

(c) Conditional License in Lieu of Denial. The Commissioner may issue a license on a conditional basis in lieu of seeking denial of the license where the person applying for the license has the capacity to resolve the deficiency serving as grounds for the denial in a reasonable period of time. The granting of a license under this subsection is a voluntarily forbearance from seeking denial of the license and does not operate as a waiver by the Commissioner of any grounds he or she has to seek denial of the license. The Commissioner is under no obligation to continue the license on a conditional basis and may seek denial in the future based on the same or similar circumstances that existed at the time the

§56.106 Surrender of the License

(a) Surrender Request. A mortgage company may seek surrender of the license by filing a license surrender request (request) in NMLS. The request must be made using the current form prescribed by NMLS. SML will review the request and determine whether to grant it. SML may not grant the request if, among other reasons:

(1) the mortgage company is the subject of a pending or contemplated examination, inspection, investigation, or disciplinary action;

(2) the mortgage company is in violation of an order of the Commissioner;

(3) the mortgage company has failed to pay any administrative penalty, fee, charge, or other indebtedness owed to SML; or

(4) the mortgage company has failed to file mortgage call reports as required by §56.205 of this title (relating to Mortgage Call Reports).

(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses. During this time, the mortgage company's license will be assigned the license status "Approved - Inactive" in NMLS.

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

(a) Sponsorship Required. A mortgage company acts through one or more originators who must be

sponsored by the mortgage company in NMLS. To sponsor an originator, the mortgage company must first register a relationship with the originator in NMLS. When a relationship has been registered, the mortgage company may then file a request in NMLS to establish sponsorship of the originator. An originator must make corresponding filings in NMLS to establish such sponsorship. Sponsorship is not effective until the sponsorship request has been reviewed and approved by SML. A mortgage company must not allow an individual to act on its behalf in the capacity of an originator until such sponsorship has been established and is effective. Information about how to file for sponsorship is available on the NMLS Resource Center website (nationwidelicensingsystem.org).

(b) Responsibility for Originator's Actions. By sponsoring an originator, or otherwise allowing an individual to act on its behalf in the capacity of an originator, the mortgage company and the Qualified Individual for the mortgage company each assumes responsibility for the actions of such originator or individual acting in the capacity of an originator. As provided by Finance Code §156.201, all violations of law by an originator or individual acting in the capacity of an originator are deemed to be attributable and imputed to the mortgage company sponsoring the originator or for which the individual acting as an originator was allowed to act, and the Commissioner may seek disciplinary action against the mortgage company, the Qualified Individual for the mortgage company, and the originator simultaneously for the same conduct giving rise to the violation. As a result, a mortgage company and its Qualified Individual are both charged with knowledge of and must ensure compliance by their sponsored originators with the requirements of Finance Code Chapters 157 and 180, and of SML's rules concerning originators in Chapter 55 of this title (relating to Residential Mortgage Loan Originators).

(c) Termination of Sponsorship. Sponsorship may be terminated by the mortgage company or the sponsored originator. If sponsorship is terminated, the party terminating the sponsorship must immediately notify SML of the termination by making a filing in NMLS to show the sponsorship as terminated in the system, as provided by Finance Code §156.211 and §157.019.

(d) Failure to Maintain Sponsored Originator; Inactive Status. If a mortgage company does not have sponsored originators that are licensed, the license will revert to an inactive status ("Approved - Inactive") until a new sponsorship becomes effective, during which time the mortgage company must not conduct regulated activities.

§56.108 Qualified Individual

(a) Qualified Individual Required. A mortgage company must appoint at least one licensed originator to be the mortgage company's Qualified Individual. As provided by Finance Code §156.002, the Qualified Individual is a personal representative of the mortgage company and is deemed to have authority to bind the mortgage company concerning its operations in Texas. To serve as the Qualified Individual, the originator must hold his or her license in a status which enables him or her to engage in regulated activities with the license and must be sponsored by the mortgage company for which he or she serves as the Qualified Individual. The contact information for the Qualified Individual listed by the mortgage company in its license records (MU1 filing), in the "Qualifying Individuals" section, must match the principal address (main address) of the mortgage company listed in the "Identifying Information" section of the MU1 filing. A mortgage company may appoint more than one originator as Qualified Individual. If a mortgage company appoints more than one Qualified Individual, each Qualified Individual is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or other individuals acting on its behalf in the capacity of an originator.

(b) Consent Required. The appointment of the Qualified Individual must be consented to by the originator. The originator must acknowledge and confirm his or her consent by making a corresponding filing in NMLS to reflect such appointment, using the current form prescribed by NMLS.

SUBCHAPTER C DUTIES AND RESPONSIBILITIES

§56.200 Required Disclosures

(a) Purpose. This section clarifies and establishes requirements related to the disclosure a mortgage company is required to make under Finance Code §156.004.

(b) Specific Notice to Applicant. A mortgage company must send written notice to a mortgage applicant concerning SML's regulatory oversight. The notice must be sent at the time the mortgage company and its sponsored originator receives the initial application for a residential mortgage loan. The notice must be signed by the mortgage company's sponsored originator that took the application and the mortgage applicant. The notice must be in the following form:

Figure: 7 TAC §56.200(b)

(c) Posted Notice on Websites. A mortgage company must post a notice concerning SML's regulatory oversight on each website of the mortgage company, other than a social media site, that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business or from which the mortgage company advertises to solicit such business, as provided by §56.203 of this title (relating to Advertising). The notice must be in the current form prescribed by SML and posted on its website (sml.texas.gov). The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked webpage with the link to such webpage displayed on the initial or home page.

(d) Disclosures in Correspondence. All correspondence sent to a mortgage applicant must include:

- (1) the mortgage company's name and NMLS ID; and
- (2) the mortgage company's website address, if it has a website.

§56.201 Conditional Pre-Qualification and Conditional Approval Letters

(a) Conditional Pre-Qualification Letter. Except as provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant, written confirmation of conditional pre-qualification (conditional pre-qualification letter) must include the information in Form A, Figure: 7 TAC §56.201(a). The information must be provided using Form A or an alternate form approved by the mortgage company that includes all of the information found on Form A. There is no requirement to issue a conditional pre-qualification letter. Form A or an alternate form may be modified by adding any of the following as needed:

Figure: 7 TAC §56.201(a)

- (1) Any additional aspects of the loan as long as not misleading;
- (2) Any additional items that the originator has reviewed in determining conditional qualifications; or
- (3) Any additional terms, conditions, and requirements.

(b) Conditional Approval Letter. When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan approval on the basis of credit worthiness, but not on the basis of collateral (conditional approval letter), must include the information in Form B, Figure: 7 TAC §56.201(b). The information can be provided using Form B or an alternate form approved by the mortgage company that includes all of the information found on Form B. There is no requirement to issue a conditional approval letter. Form B or an alternate form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or a disclosure of fees charged. A disclosure of fees charged, on Form

B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional approval letter must not be issued unless the mortgage company or its sponsored originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts. Verification may be conducted manually or by electronic means.

Figure: 7 TAC §56.201(b)

(c) Firm Offers of Credit. Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined by 15 U.S.C. §1681a(l).

(d) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the mortgage company's sponsored originator acting on behalf of the mortgage company to originate the prospective residential mortgage loan.

§56.202 Fraudulent, Misleading, or Deceptive Practices and Improper Dealings

(a) Fraudulent, Misleading, or Deceptive Practices. The following conduct by a mortgage company or its sponsored originators constitutes fraudulent and dishonest dealings for purposes of Finance Code §156.303(a)(3):

(1) knowingly misrepresenting the mortgage company's or sponsored originator's relationship to a mortgage applicant or any other party to a residential mortgage loan transaction or prospective residential mortgage loan transaction;

(2) knowingly misrepresenting or understating any cost, fee, interest rate, or other expense to a mortgage applicant or prospective mortgage applicant in connection with a residential mortgage loan;

(3) knowingly overstating, inflating, altering, amending, or disparaging any source or potential source of residential mortgage loan funds in a manner which disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly misrepresenting the lien position of a residential mortgage loan or prospective residential mortgage loan;

(5) knowingly participating in or permitting the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether to make or acquire a residential mortgage loan;

(6) as provided by Regulation X (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan for which the mortgage company or sponsored originator receives compensation for services not actually performed or where the compensation received bears no reasonable relationship to the value of the services actually performed;

(7) recommending or encouraging default or delinquency or the continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(8) altering any document produced or issued by SML, unless otherwise permitted by statute or a rule of SML;

(9) Allowing a licensed originator to act on behalf of the mortgage company when the originator is not sponsored by the mortgage company or otherwise holds his or her license in an inactive status (which is

deemed to constitute unlicensed activity);

(10) using the services of a mortgage company or mortgage banker to provide loan processing services when the mortgage company or mortgage banker providing the services holds its license in an inactive status (which is deemed to constitute unlicensed activity);

(11) using a trigger lead in a misleading or deceptive manner by, among other things:

(A) failing to state in the initial communication with the consumer:

(i) the mortgage company's name;

(ii) a brief explanation of how the mortgage company obtained the consumer's contact information to make the communication (i.e., an explanation of trigger leads);

(iii) that the mortgage company is not affiliated with the creditor to which the consumer made the credit application that resulted in the trigger lead; and

(iv) that the purpose of the communication is to solicit new business for the mortgage company;

(B) contacting a consumer who has opted out of prescreened offers of credit under the federal Fair Credit Reporting Act (FCRA; 12 U.S.C. §1681b(e)); or

(C) failing in the initial communication with the consumer to make a firm offer of credit as provided by the FCRA (12 U.S.C. §1681a(l) and §1681b(c));

(12) engaging in any other practice which the Commissioner, by published interpretation, has determined is fraudulent, misleading, or deceptive.

(b) Improper or Unfair Dealings. The following conduct by a mortgage company or its sponsored originators constitutes improper dealings for purposes of Finance Code §156.303(a)(3):

(1) acting negligently in performing an act requiring a license under Finance Code Chapter 156, or Chapters 157 and 180;

(2) violating any provision of a local, State of Texas, or federal constitution, statute, rule, ordinance, regulation, or final court decision that governs the same or a closely related activity, transaction, or subject matter that is governed by the provisions of Finance Code Chapters 156, 157, or 180, including, but not limited to:

(A) Consumer Credit Protection Act, Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.);

(B) Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.);

(C) Regulation N (12 C.F.R. §1014.1 et seq.);

(D) Gramm-Leach-Bliley Act (GLBA; 15 U.S.C. §6801 et seq.), Regulation P (12 C.F.R. §1016.1 et seq.), and the Federal Trade Commission's (FTC) Privacy of Consumer Financial Information rules (16 C.F.R. §313.1 et seq.);

(E) Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et

seq.);

(F) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. 1024.1 et seq.);

(G) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.);

(H) the FTC's Standards for Safeguarding Customer Information rule (16 C.F.R. §314.1 et seq.);

(I) Finance Code Chapter 158 and Chapter 58 of this title;

(J) Finance Code Chapter 159 and Chapter 59 of this title; and

(K) Texas Constitution, Article XVI, §50 and Chapter 153 of this title;

(3) soliciting by phone a consumer who has placed his or her contact information on the national do-not-call registry maintained by the Federal Trade Commission (FTC), unless otherwise allowable under the FTC's Telemarketing Sales Rule (16 C.F.R. §310.4(b)(iii)(B));

(4) Issuing a conditional pre-qualification letter or conditional approval letter under §56.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters) that does not comply with the required form for the letter or is inaccurate, erroneous, or negligently-issued;

(5) representing to a mortgage applicant that a charge or fee which is payable to the mortgage company or sponsored originator is a "discount point" or otherwise confers a financial benefit on the mortgage applicant unless the loan closes and:

(A) the mortgage company is making the residential mortgage loan (lender); or

(B) the mortgage company is not the lender but demonstrates by clear and convincing evidence that the lender has charged or collected discount points or other fees which the mortgage company actually paid to the lender on behalf of the mortgage applicant to buy down the interest rate on the residential mortgage loan; and

(6) failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant concerning the scope and nature of the mortgage company's services and any costs.

(c) Related Transactions. A mortgage company engages in fraudulent and dishonest dealings for purposes of Finance Code §156.303(a)(3) when, in connection with the origination of a residential mortgage loan:

(1) the mortgage company or sponsored originator:

(A) offers other goods or services to a mortgage applicant in a separate but related transaction; and

(B) the mortgage company or sponsored originator engages in fraudulent, misleading, or deceptive acts in the related transaction; or

(2) the mortgage company or sponsored originator:

(A) affiliates with another person that provides goods or services to a mortgage applicant in a separate but related transaction;

(B) the affiliated person engages in fraudulent, misleading, or deceptive acts in that transaction;

(C) the mortgage company or sponsored originator knew or should have known of the fraudulent, misleading, or deceptive acts of the affiliated person; and

(D) the mortgage company or sponsored originator failed to take appropriate steps to prevent or limit the fraudulent, misleading, or deceptive acts.

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage company and its sponsored originators must not offer or agree to share or split any residential mortgage loan origination fees with a mortgage applicant, rebate all or part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing residential mortgage loan origination services unless otherwise allowable under Regulation X (12 C.F.R. §1024.14) and Regulation Z (12 C.F.R. §1026.36(d)). A sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent licensed under Occupations Code Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described by this subsection occurs as a part of closing and is properly reflected in the closing disclosure. If a payment or other transfer described by this subsection occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the originator's fees for residential mortgage loan origination services and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption may only be overcome by clear and convincing evidence established by the mortgage company or sponsored originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection is deemed to constitute improper dealings for purposes of Finance Code §156.303(a)(3).

§56.203 Advertising

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "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 its sponsored originators. The term includes "flyers," business cards, or other handouts, and messages or posts made on a social media site. The term does not include:

(A) any advertisement which indirectly promotes a residential mortgage loan transaction and contains only the name of the mortgage company or sponsored originator and not any contact information with the exception of a website address, such as on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value;

(B) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or

(C) signs located on or adjacent to the mortgage company's licensed office as provided by §56.206 of this title (relating to Office Locations; Remote Work).

(2) "Team logo" means a logo, symbol, or other graphic used to identify the group using a team name.

(3) "Team name" means a name other than the mortgage company's legal name or a properly registered assumed name typically used by a geographically or administratively distinct group of employees working

for the mortgage company as a division or team within the larger organization (e.g., the employees of a branch office).

(b) Compliance with Federal Law. A mortgage company or sponsored originator that advertises rates, terms, or conditions must comply with the requirements of Regulation N (12 C.F.R. §1014.1 et seq.), and Regulation Z (12 C.F.R. §1026.24).

(c) Required Content. Except as provided by subsections (d) and (e) of this section, an advertisement must contain:

- (1) the mortgage company's name and NMLS ID;
- (2) the mortgage company's website address, if it has a website; and
- (3) the sponsored originator's name and NMLS ID.

(d) Advertising Directly by a Mortgage Company. A mortgage company may advertise directly to the public and is not required to advertise through a sponsored originator. The requirements of subsection (c)(3) of this section do not apply to an advertisement made directly by a mortgage company.

(e) Advertising on Social Media Sites. If the mortgage company or sponsored originator is advertising on a social media site, the requirements of subsection (c) of this section may be met by prominently displaying the required information on the home page, profile page, or similar, on such social media site so that the viewer can quickly discern the information without reviewing various historical content posted by the mortgage company or sponsored originator on the social media site.

(f) Use of Team Names and Team Logos. A mortgage company and its sponsored originators may use team names and team logos in advertisements if the following requirements are met:

(1) Team names and team logos are permitted for advertising purposes only. A team name or team logo may not be used to conduct residential mortgage loan origination business. For clarity, a team name or team logo may not appear on any documentation sent to the mortgage applicant in connection with a residential mortgage loan or on any documentation in the residential mortgage loan file a mortgage company is required to maintain under §56.204(c)(2) of this title (relating to Books and Records).

(2) The mortgage company's legal name or an assumed name of the mortgage company and its NMLS ID must be used with the team name or team logo, in substantially equivalent prominence, and must be connected with an explanatory word or phrase that clearly links the two (e.g., "(team name) of (mortgage company name and NMLS ID)" or "(team name) powered by (mortgage company name and NMLS ID)"). The information must be presented in a manner that makes it readily apparent to the viewer what mortgage company is making the advertisement. The mortgage company may not obscure the information by, among other things, using graphics, shading, or coloration to deemphasize or mask the appearance of the mortgage company's name and NMLS ID. If the advertisement is made on a social media site, the requirements of this paragraph may be met by prominently displaying the information on the home page, profile page, or similar, on such social media site so that the viewer can quickly discern the information without reviewing various historical content posted by the mortgage company or sponsored originator on the social media site.

(3) If a team logo is used, it must be used with the team name, unless the team name is contained in the team logo, and if so, the team logo may be used without the team name.

§56.204 Books and Records

(a) Purpose and Applicability. This section clarifies and establishes requirements related to the books and records a mortgage company and its sponsored originators are required to keep under Finance Code §156.301. Subsection (c) of this section applies to a mortgage company and its sponsored originators in connection with the origination of residential mortgage loans. Subsection (d) of this section applies to a mortgage company and its sponsored originators in connection with the provision of third-party loan processing or underwriting services (including independent loan processor or underwriter companies).

(b) Maintenance of Records, Generally. In order to ensure a mortgage company and its sponsored originators have all records necessary to facilitate an inspection (including an examination) by SML of the mortgage company and its sponsored originators, enable SML to investigate complaints against a mortgage company or its sponsored originators, and otherwise ensure compliance with the requirements of Finance Code Chapter 156, and this chapter, a mortgage company and its sponsored originators must maintain records as prescribed by this section.

(1) Format. The records required by this section may be maintained using a physical, electronic, or digitally-imaged recordkeeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.

(2) Location. A mortgage company and its sponsored originators must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage company or the location the mortgage company has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section "main office" has the meaning assigned by §56.206 of this title (relating to Office Locations; Remote Work.)

(3) Production of Records; Disciplinary Action. All records required by this section must be maintained in good order and produced to SML upon request. Failure by a mortgage company or its sponsored originators to produce records upon request after a reasonable time for compliance may result in disciplinary action against the mortgage company or its sponsored originators, including, but not limited to, suspension or revocation of the mortgage company's or sponsored originator's license.

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law. If a mortgage company terminates operations, the mortgage company must, within 10 days after the date the mortgage company terminates operations, provide SML with written notice of where the records required by this section will be maintained for the required period. If such records are transferred to another mortgage company licensed by the Department, the transferee must provide the Department with written notice within 10 days after the date it receives such records.

(5) Maintenance by the Mortgage Company. A mortgage company is required to maintain records on behalf of the originators it sponsors in connection with work performed by the originator for that mortgage company.

(6) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage company or its sponsored originators differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.

(c) Required Records (Origination). A mortgage company and its sponsored originators must maintain the following items in connection with the origination of residential mortgage loans by the mortgage company:

(1) Mortgage Transaction Log. A mortgage transaction log maintained on a current basis (meaning all entries must be made within 7 days after the date on which the events they relate to occurred, and updated as the information changes) setting forth, at a minimum (the log may include additional information, provided, the information is readily sortable as required by subsection (b)(1) of this section):

(A) full name of each mortgage applicant (last name, first name);

(B) application/loan identification number assigned by the mortgage company;

(C) loan identification number assigned by the lender, if different than subparagraph (B) of this paragraph;

(D) date of the initial loan application;

(E) address of the subject property (street address, city, state, zip code);

(F) interest rate;

(G) description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);

(H) loan product (conventional, FHA, VA, reverse, etc.);

(I) full name of the lender that initially funded or acquired the loan and their NMLS ID, if applicable;

(J) full name of the originator who took the initial loan application and his or her NMLS ID;

(K) closing date;

(L) lien position (e.g., first lien, second lien, or wrap mortgage);

(M) description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence)); and

(N) description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied);

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction, a residential mortgage loan file containing, at a minimum:

(A) All Transactions. For all transactions, the following records:

(i) the initial and any final loan application (including any attachments, supplements, or addendum thereto), signed and dated by each mortgage applicant and the sponsored originator, and any other written or recorded information used in evaluating the application, as required by Regulation B (12 C.F.R. §1002.4(c));

(ii) the initial and any revised good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar, provided to the mortgage applicant;

(iii) the final settlement statement (Regulation X, 12 C.F.R. §1024.8), closing statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

(iv) the disclosure statement required by Finance Code §156.004 and §56.200(b) of this title (relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored

originator;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the conditional pre-qualification letter, or similar, as specified by Finance Code §156.105 and §56.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters);

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the conditional approval letter, or similar, as specified by Finance Code §156.105 and §56.201 of this title;

(vii) each item of correspondence, all evidence of any contractual agreement or understanding, and all notes and memoranda of conversations or meetings with a mortgage applicant or any other party in connection with the loan application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);

(viii) if the loan is a "home loan" as defined by Finance Code §343.001, the notice of penalties for making a false or misleading written statement required by Finance Code §343.105, signed at closing by each mortgage applicant;

(ix) if the transaction is a purchase money or wrap mortgage loan transaction, the real estate sales contract or real estate purchase agreement for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the residential mortgage loan or prospective residential mortgage loan, and if a fee is paid by or imposed on the mortgage applicant for such consumer report or credit report, invoices and proof of payment for the purchase of the consumer report or credit report;

(xi) appraisal reports or written valuation reports used to determine the value of the residential real estate secured or designed to be secured by the loan, and if a fee is paid by or imposed on the mortgage applicant for such appraisal report or written valuation report, invoices and proof of payment for the appraisal report or written valuation report;

(xii) invoices and proof of payment for any third-party fees paid by or imposed on the mortgage applicant;

(xiii) refund checks issued to the mortgage applicant;

(xiv) if applicable, the risk-based pricing notice required by Regulation V (12 C.F.R. §1022.72);

(xv) if applicable, invoices for independent loan processors or underwriters;

(xvi) if the mortgage company or sponsored originator acts in a dual capacity as the loan originator and real estate broker, sales agent, or attorney in the transaction, the disclosure of multiple roles in a consumer real estate transaction, signed and dated by each mortgage applicant, as required by Finance Code §156.303(a)(13) and §157.024(a)(10);

(xvii) the initial privacy notice required by Regulation P (12 C.F.R. §1016.4) or the Federal Trade Commission's Privacy of Consumer Financial Information rules (16 C.F.R. §313.4);

(xviii) the mortgage applicant's written authorization to receive electronic documents as required by the E-Sign Act and Regulation Z (12 C.F.R. §1026.17(a)(1));

(xix) records reflecting compensation paid to employees or independent contractors in connection with the transaction;

(xx) any other agreements, notices, disclosures, or affidavits required by federal or state law in connection with the transaction; and

(xxi) any written agreements or other records governing the origination of the residential mortgage loan or prospective residential mortgage loan;

(B) Lender Transactions. For transactions where the mortgage company made the loan (lender), the following records:

(i) the promissory note, loan agreement, or repayment agreement, signed by the borrower (mortgage applicant);

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document, signed by the borrower (mortgage applicant);

(iii) any verifications of income, employment, or deposits obtained in connection with the loan;

(iv) copies of any title insurance policies with endorsements or title search reports obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such title insurance policies or title search reports, invoices and proof of payment for the title insurance policy or title search report; and

(v) if applicable, the flood determination certificate obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such flood certificate, invoices and proof of payment for the flood determination certificate;

(C) Truth in Lending Act (TILA). For transactions that are subject to the requirements of TILA (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.), the following records:

(i) the initial Truth-in-Lending statement for home equity line of credit and reverse mortgage transactions required by Regulation Z (12 C.F.R. §1026.19);

(ii) if the transaction is an adjustable rate mortgage transaction, the adjustable rate mortgage program disclosures;

(iii) records relating to the mortgage applicant's ability to repay the loan, as required by Regulation Z, (12 C.F.R. §1026.43(c));

(iv) if the mortgage applicant is permitted to shop for a settlement service, the written list of providers required by Regulation Z (12 C.F.R. §1026.19(e)(1)(vi)(C));

(v) the notice of intent to proceed with the transaction required by Regulation Z (12 C.F.R. §1026.19(e)(2)(i)(A));

(vi) if applicable, records related to a changed circumstance required by Regulation Z (12 C.F.R. §1026.19(e)(3)(iv));

(vii) the notice of right to rescission required by Regulation Z (12 C.F.R. §1026.15 or §1026.23);

(viii) for high-cost mortgage loans, the disclosures required by Regulation Z (12 C.F.R. §1026.32(c));

(ix) for high-cost mortgage loans, the certification of counseling required by Regulation Z (12

C.F.R. §1026.34(a)(5)(i);

(x) for home equity line of credit transactions:

(I) the account-opening disclosure required by Regulation Z (12 C.F.R. §1026.6(a));

(II) the early disclosure statement required by Regulation Z (12 C.F.R. §1026.40(d));

(III) the Home Equity Line of Credit Brochure required by Regulation Z (12 C.F.R. §1026.40(e)); and

(xi) any other notice or disclosure required by TILA or Regulation Z;

(D) Real Estate Settlement Procedures Act (RESPA). For transactions that are subject to the requirements of RESPA (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.), the following records:

(i) records reflecting delivery of the special information booklet required by Regulation X (12 C.F.R. §1024.6);

(ii) any affiliated business arrangement disclosure statement provided to the mortgage applicant in accordance with Regulation X (12 C.F.R. §1024.15);

(iii) records reflecting delivery of the list of homeownership counseling organizations required by Regulation X (12 C.F.R. §1024.20); and

(iv) any other notice or disclosure required by RESPA or Regulation X;

(E) Equal Credit Opportunity Act - Transactions Not Resulting in Approval. For residential mortgage loan applications where a notice of incompleteness is issued, a counteroffer is made, or adverse action is taken, as provided by Regulation B (12 C.F.R. §1002.1 et seq.), the following records, as applicable:

(i) the notice of incompleteness required by Regulation B (12 C.F.R. §1002.9(c)(2));

(ii) the counteroffer letter sent to the mortgage applicant in accordance with Regulation B (12 C.F.R. §1002.9); and

(iii) the adverse action notification (a/k/a turndown letter) required by Regulation B (12 C.F.R. §1002.9(a));

(F) Home Equity Transactions. For home equity loan transactions or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 refer to Article XVI, Section 50, Texas Constitution; see also subparagraph (C)(x) of this paragraph):

(i) the preclosing disclosures required by Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii); as provided by such section, the closing disclosure or account-opening disclosures required by Regulation Z fulfills this requirement);

(ii) the consumer disclosure required by Section 50(g) and §153.51 of this title (relating to Consumer Disclosure: Section 50(g));

(iii) if an attorney-in-fact executes the closing documents on behalf of the owner or owner's spouse, a copy of the executed power of attorney and any other documents evidencing execution of such

power of attorney at the permanent physical address of an office of the lender, an attorney at law, or a title company, as required by §153.15 of this title (relating to Location of Closing: Section 50(a)(6)(N));

(iv) if the borrower (mortgage applicant) uses the proceeds of the loan to pay off a non-homestead debt with the same lender, a written statement, signed by the mortgage applicant, indicating the proceeds of the home equity loan were voluntarily used to pay such debt (see Section 50(a)(6)(Q)(i));

(v) notice of the right of rescission, as required by Section 50(a)(6)(Q)(viii) (as provided by §153.25 of this title (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), the notice of right of rescission required by TILA and Regulation Z fulfills this requirement);

(vi) the written acknowledgement as to the fair market value of the homestead property, as required by Section 50(a)(6)(Q)(ix) and §153.26 of this title (relating to Acknowledgement of Fair Market Value: Section 50(a)(6)(Q)(ix));

(vii) any discount point acknowledgement form used by the lender to substantiate that the discount points are bona fide as required by §153.5 of this title (relating to Two Percent Fee Limitation: Section 50(a)(6)(E);

(viii) the Texas Home Equity Affidavit and Agreement (Fannie Mae Form 3185), or similar;

(ix) for home equity lines of credit, the Texas Home Equity Line of Credit Agreement or repayment agreement;

(x) if the home equity loan is refinanced into a non-home equity loan, the Texas Notice Concerning Refinance of Existing Home Equity to Non-Home Equity Loan, as required by Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f));

(G) Wrap Mortgage Loans. For wrap mortgage loan transactions subject to the requirements of Finance Code Chapter 159, the following records:

(i) the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), signed and dated by each mortgage applicant, and any foreign language disclosure statement required by Finance Code §159.102;

(ii) the disclosure statement required by Property Code §5.016, provided to each existing lienholder (the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure) referenced in clause (i) of this subparagraph fulfills this requirement if it was provided to each existing lienholder); and

(iii) documents evidencing that the wrap mortgage loan was closed by an attorney or a title company, as required by Finance Code §159.105;

(H) Home Improvement Loans. For home improvement transactions (including repair, renovation, and new construction), the following records:

(i) the mechanic's lien contract;

(ii) documents evidencing the transfer of lien from the contractor to the lender;

(iii) the residential construction contract;

(iv) notice of the right of rescission required by Section 50(a)(5)(C) (the notice of right of

rescission required by TILA and Regulation Z fulfills this requirement); and

(v) any other notice or disclosure required by Texas Property Code Chapter 53;

(l) Reverse Mortgages. For reverse mortgage transactions, the following records:

(i) the disclosure required by Section 50(k)(9);

(ii) the certificate of counseling required by Section 50(k)(8);

(iii) the servicing disclosure statement required by Regulation X (12 C.F.R. §1024.33(a));

(iv) the disclosures required by Regulation Z (12 C.F.R. §1026.33(b)); and

(v) any other notice or disclosure required by federal or state law to originate a reverse mortgage.

(d) Required Records (Loan Processing and Underwriting). A mortgage company and its sponsored originators must maintain the following items in connection with the provision of third-party loan processing and underwriting services by the mortgage company to a mortgage company licensed by SML or a mortgage banker registered with SML:

(1) Loan Processing and Underwriting Log. A loan processing and underwriting log, maintained on a current basis (meaning all entries must be made within 7 days after the date on which the events they relate to occurred, and updated as the information changes) setting forth, at a minimum (the log may include additional information, provided, the information is readily sortable as required by subsection (b)(1) of this section):

(A) full name of each mortgage applicant (last name, first name);

(B) application/loan identification number assigned by the mortgage company;

(C) application/loan identification number assigned by the mortgage company or mortgage banker to which the mortgage company is providing loan processing or underwriting services, if different than subparagraph (B) of this paragraph;

(D) loan identification number assigned by the lender, if different than subparagraphs (B) or (C) of this paragraph;

(E) address of the subject property (street address, city, state, zip code);

(F) full name and NMLS ID of the mortgage company or mortgage banker to which the mortgage company is providing loan processing or underwriting services;

(G) the name, NMLS ID, and employment status (e.g., W-2 or 1099) of each individual loan processor or underwriter performing loan processing or underwriting services on behalf of the mortgage company;

(H) closing date;

(I) description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence));

(J) description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied);

(K) dollar amount invoiced, assessed, charged, collected, and/or paid by the mortgage applicant for the loan processing or underwriting services provided by the mortgage company; and

(L) description of whether the fee for the loan processing or underwriting services was included on the Closing Disclosure as a fee paid directly to the mortgage company at closing (e.g., on CD, or not on CD).

(e) Other Records Required by Federal Law. A mortgage company and its sponsored originators must maintain such other books and records as may be required to evidence compliance with applicable federal laws and regulations, including, but not limited to:

(1) the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(2) the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and the Federal Trade Commission's (FTC) Privacy of Consumer Financial Information rules (16 C.F.R. §313.1 et seq.);

(3) the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); an

(4) Regulation N (12 C.F.R. §1014.1 et seq.), and

(5) the FTC's Standards for Safeguarding Customer Information rule (16 C.F.R. §314.1 et. Seq.)

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

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

(2) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

(3) 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 the mortgage company in connection with residential mortgage loan origination business;

(5) all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(6) all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(7) all reports of audits, examinations, inspections, reviews, investigations, or similar, performed by any third party, including any regulatory or supervisory authorities;

(8) all advertisements in the medium (e.g., recorded audio, video, Internet or social media site posting, or print) in which they were published or distributed; and

(9) policies and procedures related to the origination of residential mortgage loans by the mortgage company and its sponsored originators, including, but not limited to:

(A) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));

(B) anti-money laundering program (31 C.F.R. §1029.210);

(C) information security program (16 C.F.R. §314.3(a));

(D) ability-to-repay underwriting policies, if any, under Regulation Z (12 C.F.R. §1026.43(c));

(E) quality control policy, if any;

(F) compliance manual, if any; and

(G) personnel administration/employee policies, if any;

(g) Records Concerning Administrative Offices. A mortgage company must maintain a list reflecting any office constituting an "administrative office" of the mortgage company for purposes of §56.206 of this title (relating to Office Locations; Remote Work);

(h) Records Concerning Remote Work. A mortgage company must maintain records reflecting its compliance with the requirements for remote work, as provided by §56.206 of this title;

(i) Records Concerning Corrective Action. A mortgage company must maintain records showing compliance with §56.304 of this title (relating to Corrective Action);

(j) Records Concerning Unclaimed Funds. A mortgage company must maintain records showing compliance with §56.305 of this title (relating to Unclaimed Funds); and

(k) Other Records Designated by SML. A mortgage company and its sponsored originators must maintain such other books and records as SML may, from time to time, specify in writing.

§56.205 Mortgage Call Reports

(a) Purpose. This section clarifies and establishes requirements related to the mortgage call reports a mortgage company is required to file under Finance Code §156.213.

(b) NMLS Filing Requirements. Mortgage call reports must be filed in NMLS by the deadlines established by NMLS. The mortgage call report must be filed using the current form prescribed by NMLS. Information about how to file the mortgage call report and applicable filing deadlines is available on the NMLS Resource Center website (nationwidelicensingsystem.org).

(c) Components. The mortgage call report consists of three components, all of which must be completed:

(1) Residential Mortgage Loan Activity (RMLA);

(2) State-Specific Supplemental Form (SSSF); and

(3) Statement of Financial Condition.

(d) Partial Reporting Periods; Periods of Inactivity. A mortgage call report must be filed for all reporting periods during which the mortgage company is licensed, including partial periods, and periods during which

the mortgage company has no reportable activity.

(e) Extensions of Time. The Commissioner, in his or her sole discretion, may grant an extension of time to file the mortgage call report. A request for an extension of time must be made in writing and approved by the Commissioner.

(f) Duty to File Complete and Accurate Reports. The mortgage call report must contain complete and accurate information at the time it is filed. A mortgage call report containing incomplete or inaccurate information is deemed to be a failure to file the report. A mortgage company must act diligently to compile the information necessary to complete the mortgage call report in advance of the deadline to file the mortgage call report. For clarity, the filing of incomplete or inaccurate information, even on a temporary basis with the intent to amend the filing with complete and accurate information, constitutes a violation of Finance Code §156.213, and this section, and may result in disciplinary action as described by subsection (g) of this section.

(g) Failure to File; Disciplinary Action. Failure to file a mortgage call report may result in disciplinary action, including, but not limited to, denial, suspension, or revocation of the license, or the imposition of an administrative penalty.

§56.206 Office Locations; Remote Work

(a) Definitions. For purposes of this section, the following definitions apply, 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 Finance 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 Finance 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 Finance 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 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 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. A branch office must be licensed by the Department prior to conducting operations. A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after the date the branch office closes.

(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 SML 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.

§56.210 Reportable Incidents

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Catastrophic event" means an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations (e.g., the destruction of a principal office or data center).

(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage company's operations or its customers. A reportable incident includes the following items, provided, it presents a material risk:

(A) a "catastrophic event" as defined by this subsection

(B) a "security event" as defined by this subsection;

(C) the termination or curtailment of a line of credit or funding source; or

(D) the termination or curtailment of a service provided to the mortgage company by a third-party service provider.

(3) "Root cause analysis report" means a written report concerning the results or findings of an audit or investigation to determine the origin or root cause of a security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event.

(4) "Security event" means an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form. It includes information that is encrypted, if the person with unauthorized access to the information can decrypt the data.

(b) Incident Report. Except as provided by subsection (c) of this section, a mortgage company must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage company becomes aware of the reportable incident. The report must include:

(1) a detailed description of the nature and circumstances of the reportable incident;

(2) the number of Texas residents affected or potentially affected by the reportable incident;

(3) the measures taken by the mortgage company to resolve or address the reportable incident;

(4) the measures the mortgage company plans to take to resolve or address the reportable incident; and

(5) the point of contact designated by the mortgage company for inquires by SML about the reportable incident.

(c) Incidents Reported to Other Agencies. A mortgage company must provide SML with a copy of the following notifications sent to other agencies at the time it makes the notification. Except as provided by subsection (d) of this section, a notification provided to SML under this subsection satisfies the requirement to file a report under subsection (b) of this section:

(1) the notification to the Federal Trade Commission (FTC) required by Section 314.4(j) of the FTC's Standards for Safeguarding Customer Information rules (16 C.F.R. §314.4(j)); and

(2) the notification to the Office of the Attorney General of Texas required by Business and Commerce Code §521.053(i).

(d) Root Cause Analysis for Data Breaches. For any security event triggering a notification described by subsection (c) of this section (data breach), the mortgage company must provide SML with a root cause analysis report within 120 days after the date the mortgage company becomes aware that the data breach occurred.

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. Information reported under subsection (b) or (d) of this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §156.301 and §56.302 of this title (relating to Confidentiality of Examination, Investigation, and Inspection Information).

SUBCHAPTER D SUPERVISION AND ENFORCEMENT

§56.300 Examinations

(a) Purpose. This section clarifies and establishes requirements related to examinations of a mortgage company and its sponsored originators conducted by SML under Finance Code §156.301.

(b) State Examination System (SES). Examinations are conducted in SES (stateexaminationsystem.org). A mortgage company must use SES to facilitate the examination.

(c) Examinations by Other State Agencies. SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority if that state agency's or regulatory authority's mortgage regulation program is accredited by the Conference of State Bank Supervisors.

(d) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person 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 mailing address or email address of record with NMLS and will specify the date on which SML's examiners are scheduled to begin the examination. Failure to 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 available to facilitate the examination.

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

(1) all persons are properly licensed and sponsored;

(2) all office locations are properly licensed, as provided by §56.206 of this title (relating to Office Locations; Remote Work);

(3) all required books and records are being maintained in accordance with §56.204 of this title (relating to Books and Records);

(4) legal and regulatory requirements applicable to the mortgage company and its sponsored originators

are being properly followed (including, but not limited to, the requirements described in §56.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings)); and

(5) other matters as SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapters 156, 157, and 180.

(f) The examiners will review a sample of residential mortgage loan files identified by the examiners from the mortgage company's mortgage transaction log required by §56.204(c)(1) of this title or the loan processing or underwriting log required by §56.204(d)(1) of this title. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(g) The examiners may require a mortgage company, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate.

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

(i) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of a mortgage company or its sponsored originators because the required records are maintained at a location outside of Texas, 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. Costs assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

§56.301 Investigations

(a) Purpose. This section clarifies and establishes requirements related to investigations of a mortgage company and its sponsored originators conducted by SML under Finance Code §156.301.

(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has no reason to believe is other than credible indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate action taken by SML to address a violation found during the course of an investigation.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. An investigation may include:

(1) review of documentary evidence;

(2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;

(3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;

(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and

(5) other lawful investigative methods SML deems necessary or appropriate.

§56.302 Confidentiality of Examination, Investigation, and Inspection Information

(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §156.301.

(b) Confidential Information. All information obtained by SML during an examination, investigation, or inspection is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §156.301 (list is not exhaustive):

(1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or created during an examination, investigation, or inspection;

(2) information that is derived from or is the product of the confidential information described by paragraph (1) of this subsection, including any reports or other information chronicling or summarizing the results, conclusions, or other findings of an examination, investigation, or inspection, including assertions of any violations, deficiencies, or issues identified, or any directives, mandates, or recommendations for action by the regulated entity to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection; including, but not limited to, any corrective or remedial action directed by SML or taken by the regulated entity under §56.303 of this title (relating to Corrective Action);

(3) information that is derived from or is the product of the confidential information described by paragraphs (1) and (2) of this subsection, including any communications, documentary evidence, or other information concerning the regulated entity's compliance with any directives, mandates, or recommendations for action by the mortgage company and any corrective or remedial action taken by the regulated entity to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection.

(c) Loss of Confidentiality. Subsection (b) of this section notwithstanding, information described by that subsection is not confidential to the extent the information becomes publicly available in a disciplinary or enforcement action that is a contested case (i.e., information made part of the administrative record during an adjudicative hearing that is open to the public).

§56.303 Corrective Action

(a) Corrective Action, Generally; Purpose. During an examination, investigation, or inspection, SML may determine that violations, deficiencies, or compliance issues (collectively, violations) occurred. Within the confidential environment of the examination, investigation, or inspection, and typically in lieu of possible disciplinary or enforcement action against the mortgage company or its sponsored originators that is not confidential, SML may direct the mortgage company to take corrective action to address the violations identified during the examination, investigation, or inspection. This section clarifies and establishes requirements related to such corrective action.

(b) Internal Reviews. If SML determines during an examination, investigation, or inspection that a violation may be systemic, SML may direct the mortgage company to conduct its own internal review to self-identify any other violations, compile information concerning such violations, and report its findings to SML. SML may direct the mortgage company to take corrective action for any violations identified during the review.

(c) Policies and Procedures and Internal Controls. SML may direct the mortgage company to develop and adopt policies and procedures and institutional controls designed to prevent or mitigate future violations.

(d) Refunds to Consumers. SML may direct the mortgage company to make refunds to consumers affected by the violation. Any refund must comply with this subsection. The Commissioner, in his or her sole discretion, may waive or modify the requirements of this subsection to achieve appropriate, practical, and workable results. A refund must be made by one of the following methods:

(1) Certified Funds. The refund may be made by certified funds (cashier's check or money order) sent to the mortgage applicant at his or her last known address. The mortgage company must use reasonable diligence to determine the last known address of the mortgage applicant. The payment must be sent in a manner that includes tracking information and confirmation of delivery (e.g., certified mail return receipt requested, or commercial delivery service with tracking). The mortgage company must capture and maintain records evidencing the payment, including a copy of the payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation;

(2) Corporate Check. The refund may be made by issuing a check to the mortgage applicant. The check must be drawn on a bank account owned by the mortgage company. The check must be sent to the mortgage applicant at his or her last known address. The mortgage company must use reasonable diligence to determine the last known address of the mortgage applicant. The mortgage company must capture and maintain records evidencing the payment, including a copy of the check, any correspondence accompanying the check, and evidence that the check was successfully negotiated (i.e., cancelled check). If the mortgage applicant fails to cash the check, the mortgage company must comply with requirements of §56.304 of this title (relating to Unclaimed Funds);

(3) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the mortgage applicant's verified bank account. The mortgage company must capture and maintain records evidencing the payment, including any transaction receipt, confirmation page, or similar, reflecting:

(A) name of the sender and any relevant contact information;

(B) sender's bank information (institution, routing number, and account number);

(C) name of the recipient and any relevant contact information;

(D) recipient's bank information (routing number and account number); and

(E) the transaction reference number or confirmation code; or

(4) Credit Against Indebtedness. If the mortgage company is the lender or holds the mortgage servicing rights to the residential mortgage loan related to the refund, the mortgage company may issue a credit against the indebtedness equal to the refund; however, if the refund is related to an improper charge or proceeds improperly held by the mortgage company on which interest was charged, the credit must be applied to the unpaid principal balance as of the date of such improper charge or the date the mortgage company began improperly holding the proceeds (typically inception of the residential mortgage loan). The mortgage company must capture and maintain records evidencing application of the credit, including the payment history reflecting application of the credit and any subsequent adjustments to principal and interest as a result of the credit being applied.

§56.304 Unclaimed Funds

(a) Escheat Suspense Account; Escheat Log. Funds owed to or held for the benefit of a mortgage applicant or other customer of the mortgage company for more than one year (i.e., unclaimed funds) must be transferred to an escheat suspense account. The mortgage company must maintain a log of all transfers made to the escheat suspense account, including, at a minimum:

(1) date of transfer to the escheat suspense account;

(2) date the obligation to pay the funds arose;

(3) full name and last known contact information of the mortgage applicant or other customer to whom funds are owed; and

(4) amount of unclaimed funds.

(b) Required Records. The mortgage company must maintain records reflecting bona fide attempts to pay the funds to the mortgage applicant or customer.

(c) Escheat to State. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts as provided by Property Code §72.101, or as provided by such other state law governing the unclaimed funds.

(d) Records Retention. Records required by this section must be retained for 10 years beginning on the date the obligation to pay the unclaimed funds arose.

§56.310 Appeals

(a) Purpose. Finance Code Chapter 156 provides that certain decisions of the Commissioner adverse to a mortgage company or other person may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which a mortgage company or other person must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) License Denials. A license denial under Finance Code §156.209 must be appealed within 10 days after the date notice of the Commissioner's decision is received by the person seeking the license.

(2) Notice of Administrative Penalty for Violation of Final Cease and Desist Order. A notice of administrative penalty issued under Finance Code §156.303(e) must be appealed within 10 days after the date the notice is issued.

(3) Order of Suspension for Violation of Final Order. An order of suspension issued by the Commissioner under Finance Code §156.303(g) must be appealed within 15 days after the date the order is issued.

(4) Order of Suspension for Criminal Offense Involving Fraud, Theft, or Dishonesty. An order of suspension issued by the Commissioner under Finance Code §156.303(j) must be appealed within 15 days after the date the order is issued.

(5) Notice of Disciplinary Action. A notice of disciplinary action issued under Finance Code §§ 156.302(a), 156.303(a), or 156.303(a-1) must be appealed within 30 days after the date the notice is issued.

(6) Order for Disciplinary Action (Order to Take Affirmative Action or Order to Cease and Desist). An order of the Commissioner issued under Finance Code §156.303(b) or §156.406(c) must be appealed within 30 days after the date the order is issued. This deadline does not apply to an order for disciplinary action issued by the Commissioner under Finance Code §§ 156.302(a), 156.303(a), or 156.303(a-1) that was preceded by notice issued under paragraph (5) of this subsection.

(7) Other Deadlines. Any appeal not otherwise addressed by this section must be made within 30 days after the date notice or order is issued.

(c) Requests for Appeal. An appeal must be made in writing and received by SML on or before the appeal deadline. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (enforcement@sml.texas.gov).

(d) Effect of Not Appealing. A mortgage company or other person that does not timely appeal the Commissioner's decision is deemed to have irrevocably waived any right it had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to it for purposes of judicial review of the Commissioner's decision under Government Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner's decision means the Commissioner can issue a final, non-appealable order at any time without further notice or opportunity for a hearing to the mortgage company or other person.

§56.311 Hearings

(a) Adjudicative hearings conducted under Finance Code Chapter 156 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.

(b) Hearing Costs for License Denials. Hearing costs assessed against a person under Finance Code §156.209(f) include:

(1) filing fees;

(2) the costs of a court reporter;

(3) the costs of the administrative law judge (ALJ) or hearings officer presiding over the hearing and any ancillary proceedings;

(4) the expense of SML's staff to prepare for and attend the hearing or any ancillary proceedings, and any related travel expenses;

(5) the cost of any outside counsel retained to represent SML; and

(6) the cost of any expert witness retained by SML.

(c) Determination of Hearing Costs for License Denials. Unless the ALJ makes more specific findings of fact or conclusions of law concerning the hearing costs described by subsection (b)(3) of this section, such costs are deemed to be \$500. Hearing costs described by subsection (b)(4) of this section are measured based on the diversion of productivity of such staff away from their normal duties and toward the hearings process and are calculated by multiplying the number of hours spent by each staff member in furtherance of the hearings process (measured in increments of 1/10 of an hour) by their current hourly compensation rate. The Commissioner may rely on affidavit testimony of such staff members to make appropriate findings of fact and conclusions of law concerning the hearing costs described by subsection (b)(4) of this section.

TEXAS MORTGAGE COMPANY DISCLOSURE

Pursuant to Texas Finance Code Section 156.004, you are notified of the following:

- We will either submit your loan application to a participating lender or make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.
- We will be compensated in compliance with the federal Truth in Lending Act and Regulation Z (see 12 C.F.R. § 1026.36(d)) (if applicable).

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE COMPANY OR RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS, OR TO FILE A CLAIM AGAINST A RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS SHOULD SEND A COMPLETED COMPLAINT FORM OR CLAIM APPLICATION TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING (SML): 2601 N. LAMAR BLVD., SUITE 201, AUSTIN, TEXAS 78705; TEL: 1-877-276-5550. INFORMATION AND FORMS ARE AVAILABLE ON SML'S WEBSITE: SML.TEXAS.GOV.

ISSUED BY:

Mortgage Company
Legal Name: _____
NMLS ID: _____
Residential Mortgage Loan Originator
Name: _____
NMLS ID: _____
Method of Transmission
<input type="checkbox"/> Email: _____
<input type="checkbox"/> Fax: _____
<input type="checkbox"/> Mail: _____
<input type="checkbox"/> Hand Delivered

Signature

Date

Figure: 7 TAC §56.200(b)

ACKNOWLEDGMENT BY MORTGAGE APPLICANT(S):

Signature

Date

Printed Name

Signature

Date

Printed Name

Form A

Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s)/ Applicant(s):

Mortgage Company:

NMLS ID #:

Loan Details

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage company ___ has ___ has not reviewed the prospective applicant's/ applicant's credit report and credit score

The prospective applicant(s) /applicant(s) have provided the mortgage company with the following information:

Income ___ Yes ___ No ___ Not applicable

Available cash to close ___ Yes ___ No ___ Not applicable

Debts ___ Yes ___ No ___ Not applicable

Assets ___ Yes ___ No ___ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) have provided, the mortgage company has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section.

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested;

Figure: 7 TAC §56.201(a)

2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided;
3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes;
4. The collateral for the loan to satisfy the lender's requirements;
5. The loan, as described, to remain available in the market;
6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires;
7. The following additional items (list):

This conditional pre-qualification expires on: _____

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Company:

NMLS ID #:

Loan Details:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

Has a subject property been identified? ____Yes ____No

Mortgage company has:

Reviewed prospective applicant's / applicant's credit report and credit score ____Yes ____Not applicable

Verified prospective applicant's / applicant's income ____Yes ____Not applicable

Verified prospective applicant's / applicant's available cash to close ____Yes ____Not applicable

Verified prospective applicant's / applicant's debts and other assets ____Yes ____Not applicable

Prospective applicant(s) / applicant(s) is **approved** for the loan provided that creditworthiness and financial position do not materially change prior to closing and **provided that**:

1. The subject property is appraised for an amount not less than \$_____
2. The lender receives an acceptable title commitment
3. The lender receives an acceptable survey
4. The subject property's condition meets lender's requirements

Figure: 7 TAC §56.201(b)

5. The subject property is insured in accordance with lender's requirements
6. The prospective applicant(s) / applicant(s) executes all the documents lender requires and
7. The following additional conditions are complied with (list):

This conditional approval expires on _____

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 57 MORTGAGE BANKERS

{{All existing rules affecting mortgage bankers in Chapter 81 will be repealed and replaced with new rules in Chapter 57 (the rules in Chapter 81 affecting residential mortgage loan originators will be replaced with new rules in Chapter 55)}}}

SUBCHAPTER A GENERAL PROVISIONS

§57.1 Purpose and Applicability

This chapter governs SML's administration and enforcement of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act (other than Subchapter D), concerning the registration, and operations of mortgage bankers. This chapter applies to persons registered with SML as a mortgage banker or those required to be registered.

§57.2 Definitions

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 157 (other than Subchapter D), the following definitions apply, unless the context clearly indicates otherwise:

(1) "Application," as used in Finance Code §157.002(6) and paragraphs (8) and (20) of this section means a request, in any form, for an offer (or a response to a solicitation of 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, or the mortgage loan amount.

(2) "Commissioner" means the savings and mortgage commissioner appointed under Finance Code, Chapter 13.

(3) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(4) "Control person" means an individual that directly or indirectly exercises control over a mortgage banker. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage banker, 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 a limited liability company, is a manager or managing member; or

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

(5) "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.

(6) "E-Sign Act" refers to the federal Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001 et seq.).

(7) "Making a residential mortgage loan," or any similar derivative or variation of that term, means when a person determines the credit decision to provide the residential mortgage loan, or the act of funding the residential mortgage loan or transferring money to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the residential mortgage loan.

(8) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a mortgage banker or originator in response to a solicitation) to obtain a residential mortgage loan, and includes 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) "Mortgage banker" has the meaning assigned by Finance Code §157.002.

(10) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as is defined by Finance Code §157.002.

(11) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §157.002 in defining "Nationwide Mortgage Licensing System and Registry."

(12) "Offers or negotiates the terms of a residential mortgage loan," as used in Finance Code §157.002(6) 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.

(13) "Originator" has the meaning assigned by Finance Code §157.002 in defining "residential mortgage loan originator." Paragraphs (12) and (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 Finance 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 Finance Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Finance Code §180.051.

(14) "Person" has the meaning assigned by Finance Code §180.002.

(15) "Residential mortgage loan" has the meaning assigned by Finance Code §157.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan 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) "Residential real estate" has the meaning assigned by Finance Code §180.002 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) "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage banker 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 banker or sponsored originator posts commercial messages or other content designed to solicit business.

(18) "SML" means the Department of Savings and Mortgage Lending.

(19) "State Examination System" or "SES" means an online, digital examination system developed by the Conference of State Bank Supervisors that securely connects regulators and regulated entities on a nationwide basis to facilitate the examination process.

(20) "Takes a residential mortgage loan application," as used in Finance Code §157.002(6) 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.

(21) "Trigger Lead" means information concerning a consumer's credit worthiness (consumer report) compiled by a credit reporting agency (consumer reporting agency), obtained in accordance with the federal Fair Credit Reporting Act (15 U.S.C. §1681b(c)(1)(B)), that is not initiated by the consumer but, instead, instead triggered by an inquiry to a consumer reporting agency in response to an application for credit initiated by the consumer in a separate transaction. The term does not include a consumer report obtained by a mortgage company licensed by SML or a mortgage banker registered with SML in response to an application for credit made by a consumer with that mortgage company or mortgage banker or that is otherwise authorized by the consumer.

(22) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.

(23) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(24) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

§57.3 Formatting Requirements for Notices

Any notice or disclosure (notice) required by Finance Code Chapter 157, or this chapter, must be made in at least 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 157 or this chapter prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

(1) Arial;

(2) Aptos;

(3) Calibri;

(4) Century Schoolbook;

(5) Garamond;

(6) Georgia;

(7) Lucinda Sans;

(8) Times New Roman;

(9) Trebuchet; and

(10) Verdana.

§57.4 Electronic Delivery and Signature of Notices

Any notice or disclosure required by Finance Code Chapter 157, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

§57.5 Computation of Time

The calculation of any time period measured in days by Finance Code Chapter 157, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

§57.6 Enforceability of Liens

A violation of Finance Code Chapter 157, or this chapter, does not render an otherwise lawfully taken lien invalid or unenforceable.

SUBCHAPTER B REGISTRATION

§57.100 Registration Requirements

(a) Registration Required. A person, unless exempt as provided by Finance Code §157.004, is required to be registered with SML as a mortgage banker under Finance Code Chapter 157 if the person engages in or conducts the business of a mortgage banker or advertises or holds that person out to the public as engaging in or conducting the business of a mortgage banker concerning a loan or prospective loan secured or designed to be secured by residential real estate located in Texas, including, but not limited to:

(1) representing or holding that person out to the public through advertising or other means of communication as a mortgage banker; and

(2) receiving compensation for engaging in or conducting the business of a mortgage banker (a person must be registered at the time it receives compensation even if the compensation relates to services provided when the person was registered).

(b) Branch Office Registration Required. A mortgage banker must register each office constituting a branch office of the mortgage banker for purposes of §57.206 of this title (relating to Office Locations; Remote Work).

§57.101 Applications for Registration

(a) NMLS. Applications for registration must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation as deemed necessary or appropriate to determine that the registration requirements of Finance Code Chapter 157 have been met.

(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.

§57.102 Fees

(a) Registration Fees. The registration fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §157.006, exclusive of fees charged by NMLS, as described in subsection (b) of this section. The Commissioner may establish different fee amounts for a new registration versus renewal of the registration versus reinstatement of the registration. The current fee is set in NMLS and posted on SML's website (sml.texas.gov). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The registration fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges a separate fee to process the application. Such fee is determined by NMLS and must be paid by the applicant at the time it files the application. The current fee is set in NMLS and posted on the NMLS website (nationwidelicensingsystem.org).

(c) All fees are nonrefundable and nontransferable.

§57.103 Renewal of the Registration

(a) A registration may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees; and

(2) a determination by SML that the mortgage banker continues to meet the minimum requirements for registration, including the requirements of Finance Code §157.003(b).

(b) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in her or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the mortgage banker to continue conducting regulated activities while the mortgage banker works diligently to resolve the deficiencies. A renewal request approved by the Commissioner under this subsection will be assigned the NMLS license status "Approved - Deficient." Approval under this subsection does not relieve the mortgage banker of the obligation to resolve the deficiencies. A mortgage banker approved under this subsection must resolve the deficiencies within 30 days after the date the license is approved, unless an extension of time is granted by the Commissioner.

Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the registration.

(c) Reinstatement. This section applies to a person seeking reinstatement of an expired registration (bearing the registration status "Terminated - Failed to Renew") described by Finance Code §157.0062 and must be construed accordingly. A mortgage banker registration cannot be renewed beyond the reinstatement period; instead, the person must apply for a new registration and comply with all current requirements and procedures governing issuance of a new registration.

§57.104 NMLS Records; Notices Sent to the Mortgage Banker

(a) NMLS Registration Status. SML is required to assign a status to the registration in NMLS. The registration status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the registration status options available in NMLS. The NMLS Resource Center website (nationwidelicensingsystem.org) describes the available registration status options and their meaning.

(b) Amendments to NMLS Records Required. A mortgage banker must amend its NMLS registration records (MU1 filing) within 10 days after the date of any material change affecting any aspect of the MU1 filing, including, but not limited to:

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

(2) the addition or elimination of an assumed name (also known as a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);

(3) the contact information under "Identifying Information";

(4) the contact information under "Resident/Registered Agent";

(5) the contact information under "Contact Employee Information"; and

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

(c) Amendments to MU2 Associations Required. A mortgage banker must cause the individuals who are required to register an association with the mortgage banker (control persons) to make the proper filings in NMLS using the current form prescribed by NMLS (MU2 filing) and must ensure such associations are amended within 10 days after the date of any material change affecting such associations.

(d) Notices Sent to the Mortgage Banker. Any correspondence, notification, alert, message, official notice or other written communication from SML will be sent to the mortgage banker in accordance with this subsection using the mortgage banker's current contact information of record in NMLS unless another method is required by other applicable law.

(1) Service by Email. Service by email is made using the email address the mortgage banker has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by email is complete on transmission of the email to mortgage banker's email service provider; provided, SML does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. A mortgage banker must monitor such email account and ensure that emails sent by SML are not lost in a "spam" or similar folder, or

undelivered due to intervention by a "spam filter" or similar service. A mortgage banker is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. A mortgage banker is further deemed to have constructive notice of any NMLS system notifications sent to it by email.

(2) Service by Mail. Service by mail is made using the address the mortgage banker has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is made using the address the mortgage banker has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage banker by mail and the document communicates a deadline by or a time during which the mortgage banker must perform some act, such deadline or time period for action is extended by 3 days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

§57.106 Surrender of the Registration

(a) Surrender Request. A mortgage banker may seek surrender of the registration by filing a registration surrender request (request) in NMLS. The request must be made using the current form prescribed by NMLS. SML will review the request and determine whether to grant it. SML may not grant the request if, among other reasons:

(1) the mortgage banker is the subject of a pending or contemplated investigation or enforcement action;

(2) the mortgage banker is in violation of an order of the Commissioner;

(3) the mortgage banker has failed to pay any fee, charge, or other indebtedness owed to SML; or

(4) the mortgage banker has failed to file mortgage call reports required by §57.205 of this title (relating to Mortgage Call Reports).

(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses. During this time, the mortgage banker's registration will be assigned the license status "Approved - Inactive" in NMLS.

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

(a) Sponsorship Required. A mortgage banker conducts origination activity through one or more originators who must be sponsored by the mortgage banker in NMLS. To sponsor an originator, the mortgage banker must first register a relationship with the originator in NMLS. When a relationship has been registered, the mortgage banker may then file a request in NMLS to establish sponsorship of the originator. An originator must make filings in NMLS to establish such sponsorship. Sponsorship is not effective until the sponsorship request has been reviewed and approved by SML. A mortgage banker must not allow an individual to act on its behalf in the capacity of an originator until such sponsorship has been established and is effective. Information about how to file for sponsorship is available on the NMLS Resource Center website (nationwidelicensingsystem.org).

(b) Responsibility for Originator's Actions. By sponsoring an originator, or otherwise allowing an individual to act on its behalf in the capacity of an originator, the mortgage banker assumes responsibility for the actions of such originator or individual acting in the capacity of an originator. All violations of law by an originator or individual acting in the capacity of an originator are deemed to be attributable and imputed to the mortgage banker sponsoring the originator or for which the individual acting as an originator was allowed

to act, and the Commissioner may take action against the mortgage banker under Finance Code §157.009 and seek disciplinary action against the originator simultaneously for the same conduct giving rise to the violation. As a result, a mortgage banker is charged with knowledge of and must ensure compliance by their sponsored originators with the requirements of Finance Code Chapters 157 and 180, and of SML's rules in Chapter 55 of this title (relating to Residential Mortgage Loan Originators).

(c) Termination of Sponsorship. Sponsorship may be terminated by either the sponsoring mortgage banker or the sponsored originator. If sponsorship is terminated, the party terminating the sponsorship must immediately notify SML of the termination by making a filing in NMLS to terminate the sponsorship, as provided by Finance Code §157.019.

(d) Failure to Maintain Sponsored Originator; Inactive Status. If a mortgage banker does not have any licensed and sponsored originators, the license will be assigned the status "Approved - Inactive," during which time the mortgage banker must not conduct regulated activities.

SUBCHAPTER C DUTIES AND RESPONSIBILITIES

§57.200 Required Disclosures

(a) Purpose. This section clarifies and establishes requirements related to the disclosures a mortgage banker is required to make under Finance Code §157.0021.

(b) Specific Notice to Applicant (Origination Notice). A mortgage banker must send written notice to a mortgage applicant concerning SML's regulatory oversight. The notice must be sent at the time the mortgage banker and its sponsored originator receives the initial application for a residential mortgage loan. The notice must be signed by the mortgage banker's sponsored originator that took the application and the mortgage applicant. The notice must in the following form:

Figure: 7 TAC §57.200(b)

(c) Posted Notice on Websites. A mortgage banker must post a notice concerning SML's regulatory oversight on each website of the mortgage banker, other than a social media site, that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business or from which the mortgage banker advertises to solicit such business, as provided by §57.203 of this title (relating to Advertising). The notice must be in the current form prescribed by SML and posted on its website (sml.texas.gov). The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked webpage with the link to such webpage displayed on the initial or home page.

(d) Disclosures in Correspondence. All correspondence sent to a mortgage applicant or borrower must include:

- (1) the mortgage banker's name and NMLS ID; and
- (2) the mortgage banker's website address, if it has a website.

(e) Specific Notice to Borrower (Servicing Notice). A mortgage banker that acts as a residential mortgage loan servicer must send written notice to the borrower concerning SML's regulatory oversight within 30 days after the date it begins servicing a residential mortgage loan. The notice must be in the current form prescribed by the SML and posted on its website. The notice must be included in the first notice sent to the borrower that notifies the borrower of the mortgage banker's role in servicing the loan, including any notice required by Regulation X (12 C.F.R. §1024.33(b)). This subsection applies to the servicing of residential mortgage loans secured by real property located in Texas. Mortgage bankers servicing a residential

mortgage loan not secured by real property located in Texas must not provide the notice described by this subsection.

§57.201 Conditional Pre-Qualification and Conditional Approval Letters

(a) Conditional Pre-Qualification Letter. Except as provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant, written confirmation of conditional pre-qualification (conditional pre-qualification letter) must include the information in Form A, Figure: 7 TAC §57.201(a). The information must be provided using Form A or an alternate form approved by the mortgage banker that includes all of the information found on Form A. There is no requirement to issue a conditional pre-qualification letter. Form A or an alternate form may be modified by adding any of the following as needed:

Figure: 7 TAC §57.201(a)

- (1) Any additional aspects of the loan as long as not misleading;
- (2) Any additional items that the originator has reviewed in determining conditional qualifications; or
- (3) Any additional terms, conditions, and requirements.

(b) Conditional Approval Letter. When provided to a mortgage applicant or prospective mortgage applicant, written notification of conditional loan approval on the basis of credit worthiness, but not on the basis of collateral (conditional approval letter), must include the information in Form B, Figure 7: TAC §57.201(b). The information can be provided using Form B or an alternate form approved by the mortgage banker that includes all of the information found on Form B. There is no requirement to issue a conditional approval letter. Form B or an alternate form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, a or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations. A conditional approval letter must not be issued unless the mortgage banker or its sponsored originator has verified that, absent any material changes prior to closing, the mortgage applicant or prospective mortgage applicant has satisfied all loan requirements related to credit, income, assets, and debts. Verification may be conducted manually or by electronic means.

Figure: 7 TAC §57.201(b)

(c) Firm Offers of Credit. Subsection (a) of this section does not apply to "firm offers of credit," as is defined by 15 U.S.C. §1681a(l).

(d) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the mortgage banker's sponsored originator acting on behalf of the mortgage banker to originate the prospective residential mortgage loan.

§57.202 Fraudulent, Misleading, or Deceptive Practices and Improper Dealings

(a) Fraudulent, Misleading, or Deceptive Practices. The following conduct by a mortgage banker or its sponsored originators constitutes fraudulent and dishonest dealings for purposes of Finance Code §157.009(d):

- (1) knowingly misrepresenting the mortgage banker's or sponsored originator's relationship to a mortgage applicant or any other party to a residential mortgage loan transaction or prospective residential mortgage loan transaction;

(2) knowingly misrepresenting or understating any cost, fee, interest rate, or other expense to a mortgage applicant or prospective mortgage applicant in connection with a residential mortgage loan;

(3) knowingly overstating, inflating, altering, amending or disparaging any source or potential source of residential mortgage loan funds in a manner which disregards the truth or makes any knowing and material misstatement or omission;

(4) knowingly misrepresenting the lien position of a residential mortgage loan or prospective residential mortgage loan;

(5) knowingly participating in or permitting the submission of false or misleading information of a material nature to any person in connection with a decision by that person whether to make or acquire a residential mortgage loan;

(6) as provided by Regulation X (12 C.F.R. §1024.14), brokering, arranging, or making a residential mortgage loan for which the mortgage banker or sponsored originator receives compensation for services not actually performed or where the compensation received bears no reasonable relationship to the value of the services actually performed;

(7) recommending or encouraging default or delinquency or the continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;

(8) altering any document produced or issued by SML, unless otherwise permitted by statute or a rule of SML;

(9) allowing a licensed originator to act on behalf of the mortgage banker when the originator is not sponsored by the mortgage banker or otherwise holds his or her license in an inactive status (which is deemed to constitute unlicensed activity);

(10) using the services of mortgage company or mortgage banker to provide loan processing services when the mortgage company or mortgage banker providing the services holds its license in an inactive status (which is deemed to constitute unlicensed activity);

(11) using a trigger lead in misleading or deceptive manner by, among other things:

(A) failing to state in the initial communication with the consumer:

(i) the mortgage banker's name;

(ii) a brief explanation of how the mortgage banker obtained the consumer's contact information to make the communication (i.e., an explanation of trigger leads);

(iii) that the mortgage banker is not affiliated with the creditor to which the consumer made the credit application that resulted in the trigger lead; and

(iv) that the purpose of the communication is to solicit new business for the mortgage banker;

(B) contacting a consumer who has opted out of prescreened offers of credit under the federal Fair Credit Reporting Act (FCRA; 12 U.S.C. §1681b(e)); or

(C) failing in the initial communication with the consumer to make a firm offer of credit as provided by the FCRA (12 U.S.C. §1681a(l) and §1681b(c));

(12) engaging in any other practice which the Commissioner, by published interpretation, has determined is fraudulent, misleading, or deceptive.

(b) Improper or Unfair Dealings. The following conduct by a mortgage banker or its sponsored originators constitutes improper dealings for purposes of Finance Code §157.009(d):

(1) acting negligently in performing an act requiring a registration under Finance Code Chapter 157 or a license under Finance Code Chapters 157 and 180;

(2) violating any provision of a local, State of Texas, or federal constitution, statute, rule, ordinance, regulation, or final court decision that governs the same or a closely related activity, transaction, or subject matter that is governed by the provisions of Finance Code Chapters 156, 157 or 180, including, but not limited to:

(A) Consumer Credit Protection Act, Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) and Regulation B (12 C.F.R. §1002.1 et seq.);

(B) Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.);

(C) Regulation N (12 C.F.R. §1014.1 et seq.);

(D) Gramm-Leach-Bliley Act (GLBA; 15 U.S.C. §6801 et seq.), Regulation P (12 C.F.R. §1016.1 et seq.), and the Federal Trade Commission's (FTC) Privacy of Consumer Financial Information rules (16 C.F.R. §313.1 et seq.);

(E) Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(F) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. 1024.1 et seq.);

(G) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.);

(H) the FTC's Standards for Safeguarding Customer Information rule (16 C.F.R. §314.1 et seq.);

(I) Finance Code Chapter 158 and Chapter 58 of this title;

(J) Finance Code Chapter 159 and Chapter 59 of this title; and

(K) Texas Constitution, Article XVI, §50 and Chapter 153 of this title;

(3) soliciting by phone a consumer who has placed his or her contact information on the national do-not-call registry maintained by the Federal Trade Commission (FTC), unless otherwise allowable under the FTC's Telemarketing Sales Rule (16 C.F.R. §310.4(b)(iii)(B));

(4) Issuing a conditional pre-qualification letter or conditional approval letter under §57.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters) that does not comply with the required form for the letter or is inaccurate, erroneous, or negligently-issued;

(5) Representing to a mortgage applicant that a charge or fee which is payable to the mortgage banker or sponsored originator is a "discount point" or otherwise confers a financial benefit on the mortgage

applicant unless the loan closes and:

(A) the mortgage banker is making the residential mortgage loan (lender); or

(B) the mortgage banker is not the lender but demonstrates by clear and convincing evidence that the lender has charged or collected discount points or other fees which the mortgage banker has actually paid to the lender on behalf of the mortgage applicant to buy down the interest rate on the residential mortgage loan.

(6) Failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant concerning the scope and nature of the mortgage banker's services and any costs.

(c) Related Transactions. A mortgage banker engages in fraudulent and dishonest dealings for purposes of Finance Code §157.009(d) when, in connection with the origination of a residential mortgage loan:

(1) The mortgage banker or sponsored originator:

(A) offers other goods or services to a mortgage applicant in a separate but related transaction; and

(B) the mortgage banker or sponsored originator engages in fraudulent, misleading, or deceptive acts in the related transaction; or

(2) The mortgage banker or its sponsored originator:

(A) affiliates with another person that provides goods or services to a mortgage applicant in a separate but related transaction;

(B) the affiliated person engages in fraudulent, misleading, or deceptive acts in that transaction;

(C) the mortgage banker or sponsored originator knew or should have known of the fraudulent, misleading, or deceptive acts of the affiliated person; and

(D) the mortgage banker or sponsored originator failed to take appropriate steps to prevent or limit the fraudulent, misleading, or deceptive acts.

(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage banker and its sponsored originators must not offer or agree to share or split any loan origination fees with a mortgage applicant, rebate all or a part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing residential mortgage loan origination services unless otherwise allowable under Regulation X (12 C.F.R. §1024.14) and Regulation Z (12 C.F.R. §1026.36(d)). A sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent licensed under Occupations Code Chapter 1101 may rebate his or her fees legitimately earned and derived from his or her real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described by this subsection occurs as a part of closing and is properly reflected in the closing disclosure. If a payment or other transfer described by this subsection occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the originator's fees for residential mortgage loan origination services and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable presumption may only be overcome by clear and convincing evidence established by the mortgage banker or sponsored originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection is deemed to constitute improper dealings for purposes of Finance Code §157.009(d).

§57.203 Advertising

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) “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 banker or its sponsored originators. The term includes “flyers,” business cards, or other handouts, and messages or posts made on a social media site. The term does not include:

(A) any advertisement which indirectly promotes a residential mortgage loan transaction and contains only the name of the mortgage banker or sponsored originator and not any contact information with the exception of a website address, such as on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value;

(B) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or

(C) signs located on or adjacent to the mortgage banker’s registered office as provided by §57.206 of this title (relating to Office Locations; Remote Work).

(2) “Team logo” means a logo, symbol, or other graphic used to identify the group using a team name.

(3) “Team name” means a name other than the mortgage banker’s legal name or a properly registered assumed name typically used by a geographically or administratively distinct group of employees working for the mortgage banker as a division or team within the larger organization (e.g., the employees of a branch office).

(b) Compliance with Federal Law. A mortgage banker or sponsored originator that advertises rates, terms, or conditions must comply with the requirements of Regulation N (12 C.F.R. §1014.1 et seq.) and Regulation Z (12 C.F.R. §1026.24).

(c) Required Content. Except as provided by subsections (d) and (e) of this section, an advertisement must contain:

(1) the mortgage banker’s name and NMLS ID;

(2) the mortgage banker’s website address, if it has a website; and

(3) the sponsored originator’s name and NMLS ID.

(d) Advertising Directly by a Mortgage Banker. A mortgage banker may advertise directly to the public and is not required to advertise through a sponsored originator. The requirements of subsection (c)(3) of this section do not apply to an advertisement made directly by a mortgage banker.

(e) Advertising on Social Media Sites. If the mortgage banker or sponsored originator is advertising on a social media site, the requirements of subsection (c) of this section may be met by prominently displaying the required information on the home page, profile page, or similar, on such social media site so that the viewer can quickly discern the information without reviewing various historical content posted by the mortgage banker or sponsored originator on the social media site.

(f) Use of Team Names and Team Logos. A mortgage banker and its sponsored originators may use team

names and team logos in advertisements if the following requirements are met:

(1) Team names and team logos are permitted for advertising purposes only. A team name or team logo may not be used to conduct residential mortgage loan origination business. For clarity, a team name or team logo may not appear on any documentation sent to the mortgage applicant in connection with a residential mortgage loan or on any documentation in the residential mortgage loan file a mortgage banker is required to maintain under §57.204(c)(2) of this title (relating to Books and Records).

(2) The mortgage banker's legal name or an assumed name of the mortgage banker and its NMLS ID must be used with the team name or team logo, in substantially equivalent prominence, and must be connected with an explanatory word or phrase that clearly links the two (e.g., "(team name) of (mortgage banker name and NMLS ID)" or "(team name) powered by (mortgage banker name and NMLS ID)"). The information must be presented in a manner that makes it readily apparent to the viewer what mortgage banker is making the advertisement. The mortgage banker may not obscure the information by, among other things, using graphics, shading, or coloration to deemphasize or mask the appearance of the mortgage banker's name and NMLS ID. If the advertisement is made on a social media site, the requirements of this paragraph may be met by prominently displaying the information on the home page, profile page, or similar, on such social media site so that the viewer can quickly discern the information without reviewing various historical content posted by the mortgage banker or sponsored originator on the social media site.

(3) If a team logo is used, it must be used with the team name, unless the team name is contained in the team logo, and if so, the team logo may be used without the team name.

§57.204 Books and Records

(a) Purpose and Applicability. This section clarifies and establishes requirements related to the books and records a mortgage banker and its sponsored originators are required to keep under Finance Code §157.021. Subsection (c) of this section applies to a mortgage banker and its sponsored originators in connection with the origination of residential mortgage loans. Subsection (d) of this section applies to a mortgage banker and its sponsored originators in connection with the provision of third-party loan processing or underwriting services.

(b) Maintenance of Records, Generally. In order to ensure a mortgage banker and its sponsored originators have all records necessary to facilitate an inspection (including an examination) by SML of the mortgage banker's sponsored originators, enable SML to investigate complaints against a mortgage banker or its sponsored originators, and otherwise ensure compliance with the requirements of Finance Code Chapter 157, and this chapter, a mortgage banker and its sponsored originators must maintain records as prescribed by this section in connection with the mortgage banker's origination of residential mortgage loans or the provision of third-party loan processing or underwriting services by the mortgage banker.

(1) Format. The records required by this section may be maintained using a physical, electronic, or digitally-imaged recordkeeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.

(2) Location. A mortgage banker and its sponsored originators must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage banker or the location the mortgage banker has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section "main office" has the meaning assigned by §57.206 of this title (relating to Office Locations; Remote Work.)

(3) Production of Records; Disciplinary Action. All records required by this section must be maintained in good order and produced to SML upon request. Failure by a mortgage banker's sponsored originator to

produce records upon request after a reasonable time for compliance may result in disciplinary action against the originator, including, but not limited to, suspension or revocation of the originator's license. Failure by a mortgage banker to produce records upon request after a reasonable time for compliance in response to a complaint investigation conducted by SML may be treated as a failure by the mortgage banker to provide evidence in violation of the requirements of Finance Code §157.0022(b).

(4) Retention Period. All records required by this section must be maintained for 3 years or such longer period as may be required by other applicable law. If a mortgage banker terminates operations, the mortgage banker, within 10 days after the date the mortgage banker terminates operations, must provide SML with written notice of where the records required by this section will be maintained for the required period. If such records are transferred to another mortgage banker registered with SML, the transferee must provide SML with written notice within 10 days after the date it receives such records.

(5) Maintenance by the Mortgage Banker. A mortgage banker is required to maintain records on behalf of the originators it sponsors in connection with work performed by the originator for that mortgage banker.

(6) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage banker or its sponsored originators differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.

(c) Required Records (Origination). A mortgage banker and its sponsored originators are required to maintain the following items in connection with the origination of residential mortgage loans by the mortgage banker:

(1) Mortgage Transaction Log. A mortgage transaction log maintained on a current basis (meaning all entries must be made within 7 days after the date on which the events they relate to occurred, and updated as the information changes) setting forth, at a minimum (the log may include additional information, provided, the information is readily sortable as required by subsection (b)(1) of this section):

(A) full name of each mortgage applicant (last name, first name);

(B) application/loan identification number assigned by the mortgage banker;

(C) loan identification number assigned by the lender, if different than subparagraph (B) of this paragraph;

(D) date of the initial loan application;

(E) address of the subject property (street address, city, state, zip code);

(F) interest rate;

(G) description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);

(H) loan product (conventional, FHA, VA, reverse, etc.);

(I) full name of the lender that initially funded or acquired the loan and their NMLS ID, if applicable;

(J) full name of the originator who took the initial loan application and his or her NMLS ID;

(K) closing date;

(L) lien position (e.g., first lien, second lien, or wrap mortgage);

(M) description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence)); and

(N) description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied);

(2) Residential Mortgage Loan File. For each residential mortgage loan transaction or prospective residential mortgage loan transaction, a residential mortgage loan file containing, at a minimum:

(A) All Transactions. For all transactions, the following records:

(i) the initial and any final loan application (including any attachments, supplements, or addendum thereto), signed and dated by each mortgage applicant and the sponsored originator, and any other written or recorded information used in evaluating the application, as required by Regulation B (12 C.F.R. §1002.4(c));

(ii) the initial and any revised good faith estimate (Regulation X, 12 C.F.R. §1024.7), integrated loan estimate disclosure (Regulation Z, 12 C.F.R. §1026.37), or similar, provided to the mortgage applicant;

(iii) the final settlement statement (Regulation X, 12 C.F.R. §1024.8), closing statement, or integrated closing disclosure (Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38);

(iv) the disclosure statement required by Finance Code §157.0021 and §57.200(b) of this title (relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored originator;

(v) if provided to a mortgage applicant or prospective mortgage applicant, the conditional pre-qualification letter, or similar, as specified by Finance Code §157.02012 and §57.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters);

(vi) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Approval Letter, or similar, as specified by Finance Code §156.105 and §57.201 of this title;

(vii) each item of correspondence, all evidence of any contractual agreement or understanding, and all notes and memoranda of conversations or meetings with a mortgage applicant or any other party in connection with the loan application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);

(viii) if the loan is a "home loan" as defined by Finance Code §343.001, the notice of penalties for making a false or misleading written statement required by Finance Code §343.105, signed at closing by each mortgage applicant;

(ix) if the transaction is a purchase money or wrap mortgage loan transaction, the real estate sales contract or real estate purchase agreement for the sale of the residential real estate;

(x) consumer reports or credit reports obtained in connection with the residential mortgage loan or prospective residential mortgage loan, and if a fee is paid by or imposed on the mortgage applicant for such consumer report or credit report, invoices and proof of payment for the purchase of the consumer

report or credit report;

(xi) appraisal reports or written valuation reports used to determine the value of the residential real estate secured or designed to be secured by the loan, and if a fee is paid by or imposed on the mortgage applicant for such appraisal report or written valuation report, invoices and proof of payment for the appraisal report or written valuation report;

(xii) invoices and proof of payment for any third-party fees paid by or imposed on the mortgage applicant;

(xiii) refund checks issued to the mortgage applicant;

(xiv) if applicable, the risk-based pricing notice required by Regulation V (12 C.F.R. §1022.72);

(xv) if applicable, invoices for independent loan processors or underwriters;

(xvi) if the mortgage banker or sponsored originator acts in a dual capacity as the loan originator and real estate broker, sales agent, or attorney in the transaction, the disclosure of multiple roles in a consumer real estate transaction, signed and dated by each mortgage applicant, as required by Finance Code §157.024(a)(10);

(xvii) the initial privacy notice required by Regulation P (12 C.F.R. §1016.4) or the Federal Trade Commission's Privacy of Consumer Financial Information rules (16 C.F.R. §313.4);

(xviii) the written authorization to receive electronic documents as required by the E-Sign Act and Regulation Z (12 C.F.R. §1026.17(a)(1));

(xix) records reflecting compensation paid to employees or independent contractors in connection with the transaction;

(xx) any other agreements, notices, disclosures, or affidavits required by federal or state law in connection with the transaction; and

(xxi) any written agreements or other records governing the origination of the residential mortgage loan or prospective residential mortgage loan;

(B) Lender Transactions. For transactions where the mortgage banker made the loan (lender), the following records:

(i) the promissory note, loan agreement, or repayment agreement, signed by the borrower (mortgage applicant);

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document, signed by the borrower (mortgage applicant);

(iii) any verifications of income, employment, or deposits obtained in connection with the loan;

(iv) copies of any title insurance policies with endorsements or title search reports obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such title insurance policies or title search reports, invoices and proof of payment for the title insurance policy or title search report; and

(v) if applicable, the flood determination certificate obtained in connection with the loan, and if a

fee is paid by or imposed on the mortgage applicant for such flood certificate, invoices and proof of payment for the flood determination certificate;

(C) Truth in Lending Act (TILA). For transactions that are subject to the requirements of TILA (15 U.S.C. §1601 et seq.) and Regulation Z (12 C.F.R. §1026.1 et seq.), the following records:

(i) the initial Truth-in-Lending statement for home equity line of credit and reverse mortgage transactions required by Regulation Z (12 C.F.R. §1026.19);

(ii) if the transaction is an adjustable rate mortgage transaction, the adjustable rate mortgage program disclosures;

(iii) records relating to the mortgage applicant's ability to repay the loan, as required by Regulation Z (12 C.F.R. §1026.43(c));

(iv) if the mortgage applicant is permitted to shop for a settlement service, the written list of providers required by Regulation Z (12 C.F.R. §1026.19(e)(1)(vi)(C));

(v) the notice of intent to proceed with the transaction required by Regulation Z (12 C.F.R. §1026.19(e)(2)(i)(A));

(vi) if applicable, records related to a changed circumstance required by Regulation Z (12 C.F.R. §1026.19(e)(3)(iv));

(vii) the notice of right to rescission required by Regulation Z (12 C.F.R. §1026.15 or §1026.23);

(viii) for high-cost mortgage loans, the disclosures required by Regulation Z (12 C.F.R. §1026.32(c));

(ix) for high-cost mortgage loans, the certification of counseling required by Regulation Z (12 C.F.R. §1026.34(a)(5)(i));

(x) for home equity line of credit transactions:

(I) the account-opening disclosure required by Regulation Z (12 C.F.R. §1026.6(a));

(II) the early disclosure statement required by Regulation Z (12 C.F.R. §1026.40(d));

(III) the Home Equity Line of Credit Brochure required by Regulation Z (12 C.F.R. §1026.40(e)); and

(xi) any other notice or disclosure required by TILA or Regulation Z;

(D) Real Estate Settlement Procedures Act (RESPA). For transactions that are subject to the requirements of RESPA (12 U.S.C. §2601 et seq.) and Regulation X (12 C.F.R. §1024.1 et seq.), the following records:

(i) records reflecting delivery of the special information booklet required by Regulation X (12 C.F.R. §1024.6);

(ii) any affiliated business arrangement disclosure statement provided to the mortgage applicant in accordance with Regulation X (12 C.F.R. §1024.15);

(iii) records reflecting delivery of the list of homeownership counseling organizations required by Regulation X (12 C.F.R. §1024.20); and

(iv) any other notice or disclosure required by RESPA or Regulation X;

(E) Equal Credit Opportunity Act - Transactions Not Resulting in Approval. For residential mortgage loan applications where a notice of incompleteness is issued, a counteroffer is made, or adverse action is taken, as provided by Regulation B (12 C.F.R. §1002.1 et seq.), the following records, as applicable:

(i) the notice of incompleteness required by Regulation B (12 C.F.R. §1002.9(c)(2));

(ii) the counteroffer letter sent to the mortgage applicant in accordance with Regulation B (12 C.F.R. §1002.9); and

(iii) the adverse action notification (a/k/a turndown letter) required by Regulation B (12 C.F.R. §1002.9(a));

(F) Home Equity Transactions. For home equity loan transactions or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 refer to Article XVI, Section 50, Texas Constitution; see also subparagraph (C)(x) of this paragraph):

(i) the preclosing disclosures required by Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii); as provided by such section, the closing disclosure or account-opening disclosures required by Regulation Z fulfills this requirement);

(ii) the consumer disclosure required by Section 50(g) and §153.51 of this title (relating to Consumer Disclosure: Section 50(g));

(iii) if an attorney-in-fact executes the closing documents on behalf of the owner or owner's spouse, a copy of the executed power of attorney and any other documents evidencing execution of such power of attorney at the permanent physical address of an office of the lender, an attorney at law, or a title company, as required by §153.15 of this title (relating to Location of Closing: Section 50(a)(6)(N));

(iv) if the borrower (mortgage applicant) uses the proceeds of the loan to pay off a non-homestead debt with the same lender, a written statement, signed by the mortgage applicant, indicating the proceeds of the home equity loan were voluntarily used to pay such debt (see Section 50(a)(6)(Q)(i));

(v) notice of the right of rescission, as required by Section 50(a)(6)(Q)(viii) (as provided by §153.25 of this title (relating to Right of Rescission: Section 50(a)(6)(Q)(viii)), the notice of right of rescission required by TILA and Regulation Z fulfills this requirement);

(vi) the written acknowledgement as to the fair market value of the homestead property, as required by Section 50(a)(6)(Q)(ix) and §153.26 of this title (relating to Acknowledgement of Fair Market Value: Section 50(a)(6)(Q)(ix));

(vii) any discount point acknowledgement form used by the lender to substantiate that the discount points are bona fide as required by §153.5 of this title (relating to Two Percent Fee Limitation: Section 50(a)(6)(E));

(viii) the Texas Home Equity Affidavit and Agreement (Fannie Mae Form 3185), or similar;

(ix) for home equity lines of credit, the Texas Home Equity Line of Credit Agreement or repayment agreement;

(x) if the home equity loan is refinanced into a non-home equity loan, the Texas Notice Concerning Refinance of Existing Home Equity to Non-Home Equity Loan, as required by Section 50(f)(2)(D) and §153.45 of this title (relating to Refinance of an Equity Loan: Section 50(f));

(G) Wrap Mortgage Loans. For wrap mortgage loan transactions subject to the requirements of Finance Code Chapter 159, the following records:

(i) the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), signed and dated by each mortgage applicant, and any foreign language disclosure statement required by Finance Code §159.102;

(ii) the disclosure statement required by Property Code §5.016 provided to each existing lienholder (the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure) referenced in clause (i) of this subparagraph fulfills this requirement if it was provided to each existing lienholder); and

(iii) documents evidencing that the wrap mortgage loan was closed by an attorney or a title company, as required by Finance Code §159.105;

(H) Home Improvement Loans. For home improvement transactions (including repair, renovation, and new construction), the following records:

(i) the mechanic's lien contract;

(ii) documents evidencing the transfer of lien from the contractor to the lender;

(iii) the residential construction contract;

(iv) notice of the right of rescission required by Section 50(a)(5)(C) (the notice of right of rescission required by TILA and Regulation Z fulfills this requirement); and

(v) any other notice or disclosure required by Texas Property Code Chapter 53;

(I) Reverse Mortgages. For reverse mortgage transactions, the following records:

(i) the disclosure required by Section 50(k)(9);

(ii) the certificate of counseling required by Section 50(k)(8);

(iii) the servicing disclosure statement required by Regulation X (12 C.F.R. §1024.33(a));

(iv) the disclosures required by Regulation Z (12 C.F.R. §1026.33(b)); and

(v) any other notice or disclosure required by federal or state law to originate a reverse mortgage;

(d) Required Records (Loan Processing and Underwriting). A mortgage banker and its sponsored originators must maintain the following items in connection with the provision of third-party loan processing and underwriting services by the mortgage banker to a mortgage company licensed by SML or a mortgage banker registered with SML:

(1) Loan Processing and Underwriting Log. A loan processing and underwriting log, maintained on a current basis (meaning all entries must be made within 7 days after the date on which the events they relate to occurred, and updated as the information changes) setting forth, at a minimum (the log may include

additional information, provided, the information is readily sortable as required by subsection (b)(1) of this section):

(A) full name of each mortgage applicant (last name, first name):

(B) application/loan identification number assigned by the mortgage banker:

(C) application/loan identification number assigned by the mortgage company or mortgage banker to which the mortgage banker is providing loan processing or underwriting services, if different than subparagraph (B) of this paragraph;

(D) loan identification number assigned by the lender, if different than subparagraphs (B) or (C) of this paragraph;

(E) address of the subject property (street address, city, state, zip code):

(F) full name and NMLS ID of the mortgage company or mortgage banker to which the mortgage banker is providing loan processing or underwriting services;

(G) the name, NMLS ID, and employment status (e.g., W-2 or 1099) of each individual loan processor or underwriter performing loan processing or underwriting services on behalf of the mortgage banker;

(H) closing date;

(I) description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence));

(J) description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied);

(K) dollar amount invoiced, assessed, charged, collected, or paid for the loan processing or underwriting services provided by the mortgage banker; and

(L) description of whether the fee for the loan processing or underwriting services was included on the Closing Disclosure as a fee paid directly to the mortgage banker at closing (e.g., on CD, or not on CD).

(e) Other Records Required by Federal Law. A mortgage banker and its sponsored originators must maintain such other books and records as may be required to evidence compliance with applicable federal laws and regulations, including, but not limited to:

(1) Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);

(2) Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and the regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.);

(3) Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. §5101 et seq.) and Regulation H (12 C.F.R. §1008.1 et seq.); and

(4) Regulation N (12 C.F.R. §1014.1 et seq.).

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

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

(2) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant;

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

(4) all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(5) all contractual agreements or understandings with third parties in any way relating to a residential mortgage loan transaction including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, investor contracts, or employment agreements;

(6) all reports of audits, examinations, inspections, reviews, investigations, or similar, performed by any third party, including any regulatory or supervisory authorities;

(7) all advertisements in the medium (e.g., recorded audio, video, Internet or social media site posting, or print) in which they were published or distributed; and

(8) policies and procedures related to the origination of residential mortgage loans by the mortgage banker and its sponsored originators, including, but not limited to:

(A) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));

(B) anti-money laundering program (31 C.F.R. §1029.210);

(C) information security program (16 C.F.R. §314.3(a));

(D) ability-to-repay underwriting policies, if any, under Regulation Z (12 C.F.R. §1026.43(c));

(E) quality control policy, if any;

(F) compliance manual, if any; and

(G) personnel administration/employee policies, if any;

(g) Records Concerning Administrative Offices. A mortgage banker must maintain a list reflecting any office constituting an "administrative office" of the mortgage banker for purposes of §57.206 of this title (relating to Office Locations; Remote Work);

(h) Records Concerning Remote Work. A mortgage banker must maintain records reflecting its compliance with the requirements for remote work, as provided by §57.206 of this title;

(i) Records Concerning Voluntary Corrective Action. A mortgage banker must maintain records showing compliance with §57.304 of this title (relating to Voluntary Corrective Action);

(j) Records Concerning Unclaimed Funds. A mortgage banker must maintain records showing compliance with §57.305 of this title (relating to Unclaimed Funds);

(k) Other Records Designated by SML. A mortgage banker and its sponsored originators must maintain such other books and records as SML may, from time to time, specify in writing.

§57.205 Mortgage Call Reports

(a) Purpose. This section clarifies and establishes requirements related to the mortgage call reports a mortgage banker is required to file under Finance Code §157.020.

(b) NMLS Filing Requirements. Mortgage call reports must be filed in NMLS by the deadlines established by NMLS. The mortgage call report must be filed using the current form prescribed by NMLS. Information about how to file the mortgage call report and applicable filing deadlines is available on the NMLS Resource Center website (nationwidelicensingsystem.org).

(c) Components. The mortgage call report consists of three components, all of which must be completed:

(1) Residential Mortgage Loan Activity (RMLA);

(2) State-Specific Supplemental Form (SSSF); and

(3) Statement of Financial Condition.

(d) Partial Reporting Periods; Periods of Inactivity. A mortgage call report must be filed for all reporting periods during which the mortgage banker is registered, including partial periods, and periods during which the mortgage banker has no reportable activity.

(e) Extensions of Time. The Commissioner, in his or her sole discretion, may grant an extension of time to file the mortgage call report. A request for an extension of time must be made in writing and approved by the Commissioner or the Commissioner's designee.

(f) Duty to File Complete and Accurate Reports. The mortgage call report must contain complete and accurate information at the time it is filed. A mortgage call report containing incomplete or inaccurate information is deemed to be a failure to file the report. A mortgage banker must act diligently to compile the information necessary to complete the mortgage call report in advance of the deadline to file the mortgage call report. For clarity, the filing of incomplete or inaccurate information, even on a temporary basis with the intent to amend the filing with complete and accurate information, constitutes a violation of Finance Code §157.020, and this section, and may result in disciplinary action as described by subsection (g) of this section.

(g) Failure to File; Disciplinary Action. Failure to file a mortgage call report may result in disciplinary action, including, but not limited to, denial, suspension, or revocation of the license, or the imposition of an administrative penalty.

§57.206 Office Locations; Remote Work

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Administrative office" means any office of a mortgage banker that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage banker 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 banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Finance Code §180.002;

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

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees solely perform activities relating to residential mortgage loan servicing, including:

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

(iv) administering or enforcing the terms of a residential mortgage loan; or

(v) administering the terms of an investor servicing agreement for a residential mortgage loan; or

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

(2) "Branch office" means any office a mortgage banker 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 banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Finance Code §180.002;

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

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees solely perform activities relating to residential mortgage loan servicing, including:

(i) collection of the residential mortgage loan;

(ii) the administration of escrow accounts;

(iii) loss mitigation;

(iv) administering or enforcing the terms of a residential mortgage loan; or

(v) administering the terms of an investor servicing agreement for a residential mortgage loan;

(D) an office or location which conducts any combination of activities described by subparagraphs

(A) - (C) of this paragraph; or

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

(3) "Main office" means the office the mortgage banker has listed in its NMLS registration (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore registered with SML.

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

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

(b) Office Requirements. A mortgage banker must register any office constituting the main office or a branch office of the mortgage banker. A mortgage banker must also register any office or location it advertises or promotes to the general public as an office or location at which the mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A registered office must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage banker. 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. A branch office must be registered with SML prior to conducting operations.

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

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

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

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

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

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

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

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

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

§57.207 Periodic Statements

A mortgage banker that acts a residential mortgage loan servicer and 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.

§57.210 Reportable Incidents

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Catastrophic event" means an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations (e.g., the destruction of a principal office or data center).

(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage banker's operations or its customers. A reportable incident includes the following items, provided, it presents a material risk:

(A) a "catastrophic event" as defined by this subsection

(B) a "security event" as defined by this subsection;

(C) the termination or curtailment of a line of credit or funding source; or

(D) the termination or curtailment of a service provided to the mortgage banker by a third-party service provider.

(3) "Root cause analysis report" means a written report concerning the results or findings of an audit or investigation to determine the origin or root cause of a security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event.

(4) "Security event" means an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form. It includes information that is encrypted, if the person with unauthorized access to the information can decrypt the data.

(b) Incident Report. Except as provided by subsection (c) of this section, a mortgage banker must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage banker becomes aware of the reportable incident. The report must include:

(1) a detailed description of the nature and circumstances of the reportable incident;

(2) the number of Texas residents affected or potentially affected by the reportable incident;

(3) the measures taken by the mortgage banker to resolve or address the reportable incident;

(4) the measures the mortgage banker plans to take to resolve or address the reportable incident; and

(5) the point of contact designated by the mortgage banker for inquires by SML about the reportable

incident.

(c) Incidents Reported to Other Agencies. A mortgage banker must provide SML with a copy of the following notifications sent to other agencies at the time it makes the notification. Except as provided by subsection (d) of this section, a notification provided to SML under this subsection satisfies the requirement to file a report under subsection (b) of this section:

(1) the notification to the Federal Trade Commission (FTC) required by Section 314.4(j) of the FTC's Standards for Safeguarding Customer Information rules (16 C.F.R. §314.4(j)); and

(2) the notification to the Office of the Attorney General of Texas required by Business and Commerce Code §521.053(i).

(d) Root Cause Analysis for Data Breaches. For any security event triggering a notification described by subsection (c) of this section (data breach), the mortgage banker must provide SML with a root cause analysis report within 120 days after the date the mortgage banker becomes aware that the data breach occurred.

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. Information reported under subsection (b) or (d) of this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §157.021 and §57.302 of this title (relating to Confidentiality of Examination, Investigation, and Inspection Information).

SUBCHAPTER D SUPERVISION AND ENFORCEMENT

§57.300 Examinations

(a) Purpose. This section clarifies and establishes requirements related to examinations of a mortgage banker's sponsored originators conducted by SML under Finance Code §157.021.

(b) State Examination System (SES). Examinations are conducted in SES. A mortgage banker must use SES to facilitate the examination.

(c) Examinations by Other State Agencies. SML may participate in, leverage, or accept an examination conducted by another state agency or regulatory authority if that state agency's or regulatory authority's mortgage regulation program is accredited by the Conference of State Bank Supervisors.

(d) Notice of Examination. Except when SML determines that giving advance notice would impair the examination, SML will give the primary contact person of the mortgage banker sponsoring the originator 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 mailing address or email address of record with NMLS and will specify the date on which SML's examiners are scheduled to begin the examination. Failure to 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 available to facilitate the examination.

(e) Examinations will be conducted to determine compliance with Finance Code Chapters 157 and 180, and this chapter, and will specifically address whether:

(1) all persons are properly licensed and sponsored;

(2) all office locations are properly registered, as provided by §57.206 of this title (relating to Office Locations; Remote Work);

(3) all required books and records are being maintained in accordance with §57.204 of this title (relating to Books and Records);

(4) legal and regulatory requirements applicable to the mortgage banker's sponsored originators are being properly followed (including, but not limited to, the requirements described in §57.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings)); and

(5) other matters as SML and its examiners deem necessary or advisable to carry out the purposes of Finance Code Chapters 157 and 180.

(f) The examiners will review a sample of residential mortgage loan files identified by the examiners from the mortgage banker's mortgage transaction log required by §57.204(c)(1) of this title or the loan processing or underwriting log required by §57.204(d)(1) of this title. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(g) The examiners may require a mortgage banker, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate.

(h) Failure to Cooperate; Disciplinary Action. Failure by a mortgage banker or sponsored originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in action against the mortgage banker under Finance Code §157.009 and disciplinary action against the originator including, but not limited to, imposition of an administrative penalty.

(i) Reimbursement for Costs. When SML must travel outside of Texas to conduct an examination of a mortgage banker's sponsored originators because the required records are maintained at a location outside of Texas, SML will require reimbursement for the actual costs incurred by SML in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs. Costs assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.

§57.301 Investigations

(a) Purpose. This section clarifies and establishes requirements related to investigations SML conducts of a mortgage banker and its sponsored originators under Finance Code §157.009 and §157.021.

(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has not reason to believe is other than credible indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate an action taken by SML to address a violation found during the course of an investigation.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. An investigation may include:

(1) review of documentary evidence;

(2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;

(3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;

(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and

(5) other lawful investigative methods SML deems necessary or appropriate.

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

(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §157.021.

(b) Confidential Information. All information obtained by SML during an examination, investigation, or inspection is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §157.021 (list is not exhaustive):

(1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or created during an examination, investigation, or inspection;

(2) information that is derived from or is the product of the confidential information described by paragraph (1) of this subsection, including any reports or other information chronicling or summarizing the results, conclusions, or other findings of an examination, investigation, or inspection, including assertions of an actual or apparent violation of law or any directives, mandates, or recommendations for action by the mortgage banker to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection; including, but not limited to, any corrective or remedial action directed by SML or taken by the mortgage banker under §57.303 of this title (relating to Corrective Action);

(3) information that is derived from or is the product of the confidential information described by paragraphs (1) and (2) of this subsection, including any communications, documentary evidence, or other information concerning the mortgage banker's compliance with any directives, mandates, or recommendations for action by the mortgage banker and any corrective or remedial action taken by the mortgage banker to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the examination, investigation, or inspection.

(c) Loss of Confidentiality. Subsection (b) of this section notwithstanding, information described by that subsection is not confidential to the extent the information becomes publicly available in a disciplinary or enforcement action that is a contested case (i.e., information made part of the administrative record during an adjudicative hearing that is open to the public).

§57.303 Corrective Action

(a) Corrective Action, Generally; Purpose. During an examination, investigation, or inspection, SML may determine that violations, deficiencies, or compliance issues (collectively, violations) occurred. Within the confidential environment of the examination, investigation, or inspection, and typically in lieu of possible disciplinary or enforcement action against the mortgage banker or its sponsored originators that is not confidential, SML may direct the mortgage banker to take corrective action to address the violations identified during the examination, investigation, or inspection. This section clarifies and establishes requirements related to such corrective action.

(b) Internal Reviews. If SML determines during an examination, investigation, or inspection that a violation may be systemic, SML may direct the mortgage banker to conduct its own internal review to self-identify any other violations, compile information concerning such violations, and report its findings to SML. SML may direct the mortgage banker to take corrective action for any violations identified during the review.

(c) Policies and Procedures and Internal Controls. SML may direct the mortgage banker to develop and adopt policies and procedures and institutional controls designed to prevent or mitigate future violations.

(d) Refunds to Consumers. SML may direct the mortgage banker to make refunds to consumers affected by the violation. Any refund must comply with this subsection. The Commissioner, in his or her sole discretion, may waive or modify the requirements of this subsection to achieve appropriate, practical, and workable results. A refund must be made by one of the following methods:

(1) Certified Funds. The refund may be made by certified funds (cashier's check or money order) sent to the mortgage applicant or borrower at his or her last known address. The mortgage banker must use reasonable diligence to determine the last known address of the mortgage applicant or borrower. The payment must be sent in a manner that includes tracking information and confirmation of delivery (e.g., certified mail return receipt requested, or commercial delivery service with tracking). The mortgage banker must capture and maintain records evidencing the payment, including a copy of the payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation;

(2) Corporate Check. The refund may be made by issuing a check to the mortgage applicant or borrower. The check must be drawn on a bank account owned by the mortgage banker. The check must be sent to the mortgage applicant or borrower at his or her last known address. The mortgage banker must use reasonable diligence to determine the last known address of the mortgage applicant or borrower. The mortgage banker must capture and maintain records evidencing the payment, including a copy of the check, any correspondence accompanying the check, and evidence that the check was successfully negotiated (i.e., cancelled check). If the mortgage applicant or borrower fails to cash the check, the mortgage banker must comply with requirements of §57.304 of this title (relating to Unclaimed Funds);

(3) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the mortgage applicant's or borrower's verified bank account. The mortgage banker must capture and maintain records evidencing the payment, including any transaction receipt, confirmation page, or similar, reflecting:

(A) name of the sender and any relevant contact information;

(B) sender's bank information (institution, routing number, and account number);

(C) name of the recipient and any relevant contact information;

(D) recipient's bank information (routing number and account number); and

(E) the transaction reference number or confirmation code; or

(4) Credit Against Indebtedness. If the mortgage banker is the lender or holds the mortgage servicing rights to the residential mortgage loan related to the refund, the mortgage banker may issue a credit against the indebtedness equal to the refund; however, if the refund is related to an improper charge or proceeds improperly held by the mortgage banker on which interest was charged, the credit must be applied to the unpaid principal balance as of the date of such improper charge or the date the mortgage banker began improperly holding the proceeds. The mortgage banker must capture and maintain records evidencing application of the credit, including the payment history reflecting application of the credit and any subsequent adjustments to principal and interest payments as a result of the credit being applied.

§57.304 Unclaimed Funds

(a) Escheat Suspense Account; Escheat Log. Funds owed to or held for the benefit of a mortgage applicant, borrower, or other customer of the mortgage banker for more than one year (i.e., unclaimed funds) must be transferred to an escheat suspense account. The mortgage banker must maintain a log of all transfers made to the escheat suspense account, including, at a minimum:

(1) date of transfer to the escheat suspense account;

(2) date the obligation to pay the funds arose;

(3) full name and last known contact information of the mortgage applicant, borrower, or other customer to whom funds are owed; and

(4) amount of unclaimed funds.

(b) Required Records. The mortgage banker must maintain records reflecting bona fide attempts to pay the funds to the mortgage applicant, borrower, or customer.

(c) Escheat to State. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts as provided by Property Code §72.101, or as provided by such other state law governing the unclaimed funds.

(d) Records Retention. Records required by this section must be retained for 10 years beginning on the date the obligation to pay the unclaimed funds arose.

§57.310 Appeals

(a) Purpose. Finance Code Chapter 157 provides that certain decisions of the Commissioner adverse to the mortgage banker or other person may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which a mortgage banker or other person must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) Registration Denials. A registration denial under Finance Code §157.003(e) must be appealed within 10 days after the date notice of the Commissioner's decision is received by the person seeking the registration.

(2) Notice of Revocation. A notice of revocation issued under Finance Code §157.009 must be appealed within 30 days after the date the notice is issued.

(3) Other Deadlines. Any appeal not otherwise addressed by this section must be made within 30 days after the date notice or order is issued.

(c) Requests for Appeal. An appeal must be made in writing and received by SML on or before the appeal deadline. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (enforcement@sml.texas.gov).

(d) Effect of Not Appealing. A mortgage banker or other person that does not timely appeal the Commissioner's decision is deemed to have irrevocably waived any right it had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to it for purposes of judicial review of the Commissioner's decision under Government

Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner's decision means the Commissioner can issue a final, non-appealable order at any time without further notice or opportunity for a hearing to the mortgage banker or other person.

§57.311 Hearings

Adjudicative hearings conducted under Finance Code Chapter 157 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also be governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings will be held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.

TEXAS MORTGAGE BANKER DISCLOSURE

Pursuant to Texas Finance Code Section 157.0021, you are notified of the following:

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS, OR TO FILE A CLAIM AGAINST A RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSED IN TEXAS SHOULD SEND A COMPLETED COMPLAINT FORM OR CLAIM APPLICATION TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING (SML): 2601 N. LAMAR BLVD., SUITE 201, AUSTIN, TEXAS 78705; TEL: 1-877-276-5550. INFORMATION AND FORMS ARE AVAILABLE ON SML'S WEBSITE: SML.TEXAS.GOV.

ISSUED BY:

Mortgage Banker
Legal Name: _____
NMLS ID: _____
Residential Mortgage Loan Originator
Name: _____
NMLS ID: _____
Method of Transmission
<input type="checkbox"/> Email: _____
<input type="checkbox"/> Fax: _____
<input type="checkbox"/> Mail: _____
<input type="checkbox"/> Hand Delivered

Signature

Date

Figure: 7 TAC § 57.200(b)

ACKNOWLEDGMENT BY MORTGAGE APPLICANT(S):

Signature

Date

Printed Name

Signature

Date

Printed Name

Form A

Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage banker ___ has ___ has not reviewed the prospective applicant's / applicant's credit report and credit score

The prospective applicant(s) / applicant(s) has provided the mortgage banker with the following information:

Income ___ Yes ___ No ___ Not applicable

Available cash to close ___ Yes ___ No ___ Not applicable

Debts ___ Yes ___ No ___ Not applicable

Assets ___ Yes ___ No ___ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) has provided, the mortgage banker has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section.

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested

Figure: 7 TAC §57.201(a)

2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided

3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes

4. The collateral for the loan to satisfy the lender's requirements

5. The loan, as described, to remain available in the market

6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires

7. The following additional items (list):

This conditional pre-qualification expires on _____

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

Has a subject property been identified? Yes No

Mortgage banker has:

Reviewed prospective applicant's / applicant's credit report and credit score: Yes Not applicable

Verified prospective applicant's / applicant's income: Yes Not applicable

Verified prospective applicant's / applicant's available cash to close: Yes Not applicable

Verified prospective applicant's / applicant's debts and other assets: Yes Not applicable

Prospective applicant(s) / applicant(s) is **approved** for the loan provided that creditworthiness and financial position do not materially change prior to closing and **provided that**:

1. The subject property is appraised for an amount not less than \$ _____
2. The lender receives an acceptable title commitment
3. The lender receives an acceptable property survey
4. The subject property's condition meets lender's requirements

Figure: 7 TAC §57.201(b)

5. The subject property is insured in accordance with lender's requirements
6. The prospective applicant(s) / applicant(s) executes all the documents the lender requires and
7. The following additional conditions are complied with (list):

This conditional approval expires on _____.

Residential Mortgage Loan Originator Name

Mailing address

e-mail address

NMLS ID #

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 58 RESIDENTIAL MORTGAGE LOAN SERVICERS

{{All existing rules affecting residential mortgage loan servicers in Chapter 79 will be repealed and replaced with new rules in Chapter 59}}

SUBCHAPTER A GENERAL PROVISIONS

§58.1 Purpose and Applicability

This chapter governs SML's administration and enforcement of Finance Code Chapter 158, the Residential Mortgage Loan Servicer Registration Act, concerning the registration and operations of residential mortgage loan servicers. This chapter applies to persons registered with SML as a residential mortgage loan servicer or those required to be registered.

§58.2 Definitions

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 158, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(2) "Control person" means an individual that directly or indirectly exercises control over a mortgage servicer. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage servicer, 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 a limited liability company, is a manager or managing member; or

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

(3) " 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 a manufactured home, if it is used as a residence.

(4) "E-Sign Act" refers to the federal Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001 et seq.).

(5) "Mortgage servicer" has the meaning assigned by Finance Code §158.002 in defining "residential mortgage loan servicer."

(6) "Mortgage servicing rights" means the contractual obligation to service a mortgage loan and the right to receive compensation for such services in accordance with the contract.

(7) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §180.002 in defining "Nationwide Mortgage Licensing System and Registry."

(8) "Person" has the meaning assigned by Finance Code §158.002.

(9) "Residential mortgage loan" has the meaning assigned by Finance Code §158.002 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 used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.

(10) "Residential real estate" has the meaning assigned by Finance Code §158.002 and includes 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.

(11) "SML" means the Department of Savings and Mortgage Lending.

(12) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.

§58.3 Formatting Requirements for Notices

Any notice or disclosure (notice) required by Finance Code Chapter 158, or this chapter, must be made in at least 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 158, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (this list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

(1) Arial;

(2) Aptos;

(3) Calibri;

(4) Century Schoolbook;

(5) Garamond;

(6) Georgia;

(7) Lucinda Sans;

(8) Times New Roman;

(9) Trebuchet; and

(10) Verdana.

§58.4 Electronic Delivery and Signature of Notices

Any notice or disclosure required by Finance Code Chapters 158, or this chapter, may be provided and

signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

§58.5 Computation of Time

The calculation of any time period measured in days by Finance Code Chapter 158, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

SUBCHAPTER B REGISTRATION

§58.100 Registration Requirements

(a) Registration Required. A person, unless exempt as provided by Finance Code §158.052, is required to be registered with SML as a mortgage servicer under Finance Code Chapter 158 if the person:

(1) acts as a mortgage servicer or engages in or conducts the business of a mortgage servicer, concerning a residential mortgage loan secured by residential real estate in Texas; or

(2) advertises or holds that person out to the public as engaging in or conducting the business of a mortgage servicer in Texas.

(b) Wrap Mortgage Servicing. A "wrap lender," as defined by Finance Code §158.001, that holds the mortgage servicing rights for a wrap mortgage loan must be registered under Finance Code Chapter 158 and comply with the requirements of Finance Code Chapter 159, Subchapter F and Chapter 58 of this title (relating to Wrap Mortgage Loans).

(c) 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 owner 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").

§58.101 Applications for Registration

(a) NMLS. Applications for registration must be submitted through NMLS and must be made using the current form prescribed by NMLS. SML has published a application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.

(b) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation as deemed necessary or appropriate to determine that the registration requirements of Finance Code Chapter 158 have been met.

(c) Incomplete Filings; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection.

§58.102 Fees

(a) Registration Fees. The registration fee is determined by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §158.053(b), exclusive of fees charged by NMLS, as described in subsection (b) of this section. The Commissioner may establish different fee amounts for a new registration versus renewal of the registration. The current fee is set in NMLS and posted on SML's website (sml.texas.gov). The Commissioner may change the fee at any time; provided, any fee increase is not effective until notice has been posted on SML's website for at least 30 days. The registration fee must be paid in NMLS.

(b) NMLS Fees. NMLS charges a separate fee to process the application. Such fee is determined by NMLS and must be paid by the applicant at the time it files the application. The current fee is set in NMLS and posted on the NMLS website (nationwidelicensingsystem.org).

(c) All fees are nonrefundable and nontransferable.

§58.103 Renewal of Registration

(a) A registration may be renewed on:

(1) timely submission of a completed renewal application (renewal request) in NMLS together with payment of all required fees; and

(2) a determination by SML that the mortgage servicer continues to meet the minimum requirements for registration, including the requirements of Finance Code §158.058(c).

(b) Application of §58.101. A renewal request is a license application subject to the requirements of §58.101 of this title (relating to Applications for Registration). A renewal request withdrawn under §58.101(c) of this title will be rejected in NMLS.

(c) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in his or her sole discretion, approve a renewal request with one or more deficiencies the Commissioner deems to be relatively minor and allow the mortgage servicer to continue conducting regulated activities while the mortgage servicer works diligently to resolve the deficiencies. A renewal request approved by the Commissioner under this subsection will be assigned the NMLS registration status "Approved - Deficient." Approval under this subsection does not relieve the mortgage servicer of the obligation to resolve the deficiencies noted. A mortgage servicer approved under this subsection must resolve the deficiencies within 30 days after the date the license is approved, unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies constitutes grounds for the Commissioner to suspend or revoke the registration.

(d) 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 license 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.

§58.104 NMLS Records; Notices Sent to the Mortgage Servicer

(a) NMLS Registration Status. SML is required to assign a status to the registration in NMLS. The registration status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the registration status options available in NMLS. The NMLS Resource Center website (nationwidelicensingsystem.org) describes the available registration status options and their meaning.

(b) Amendments to NMLS Records Required. A mortgage servicer must amend its NMLS registration records (MU1 filing) within 10 days after the date of any material change affecting any aspect of the MU1 filing, including, but not limited to:

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

(2) the addition or elimination of an assumed name (also known as a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);

(3) the contact information under "Identifying Information";

(4) the contact information listed under "Resident/Registered Agent";

(5) the contact information listed under "Contact Employee Information"; and

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

(c) Amendments to MU2 Associations Required. A mortgage servicer must cause the individuals who are required to register an association with the mortgage servicer (control persons) to make the proper filings in NMLS using the current form prescribed by NMLS (MU2 filing) and must ensure such associations are amended within 10 days after the date of any material change affecting such associations.

(d) Notices Sent to the Mortgage Servicer. Any correspondence, notification, alert, message, official notice or other written communication from SML will be sent to the mortgage servicer in accordance with this subsection using the mortgage servicer's current contact information of record in NMLS unless another method is required by other applicable law.

(1) Service by Email. Service by email is made using the email address the mortgage servicer has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by email is complete on transmission of the email to mortgage servicer's email service provider; provided, SML does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. A mortgage servicer must monitor such email account and ensure that emails sent by SML are not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage servicer is deemed to have constructive notice of any emails sent by SML to the email address described by this paragraph. A mortgage servicer is further deemed to have constructive notice of any NMLS system notifications sent to it by email.

(2) Service by Mail. Service by mail is made using the address the mortgage servicer has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is made using the address the mortgage servicer has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage servicer by mail and the document communicates a deadline by or a time during which the mortgage servicer must perform some act, such deadline or time period for action is extended by 3 days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

§58.106 Surrender of the Registration

(a) Surrender Request. A mortgage servicer may seek surrender of the registration by filing a surrender request (request) in NMLS. The filing must be made using the current form prescribed by NMLS. SML will review the request and determine whether to grant it. SML may not grant the request if, among other reasons:

(1) the mortgage servicer is the subject of a pending or contemplated investigation or enforcement action;

(2) the mortgage servicer is in violation of an order of the Commissioner; or

(3) the mortgage servicer has failed to pay any fee, charge, or other indebtedness owed to SML.

(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses. During this time, the mortgage servicer's registration will be assigned the license status "Approved - Inactive" in NMLS.

§58.107 Surety Bond Requirement

(a) Purpose and Applicability. This section clarifies and establishes requirements related to the surety bond certain mortgage servicers are required to have under Finance Code §158.055. This section does not apply to a mortgage servicer excepted from the surety bond requirement under Finance Code §158.055(h).

(b) NMLS Electronic Surety Bond Required. The surety bond must be submitted electronically through NMLS and must be made using the current form prescribed by NMLS. The NMLS Resource Center website (nationwidelicensingsystem.org) explains how to file the electronic surety bond in NMLS.

(c) Required Parties. The surety bond must be payable to the Commissioner as the sole payee. The name of the principal insured on the bond must match exactly the name filed with the Texas Secretary of State, if applicable.

(d) Authorized Surety Provider. The surety bond must be issued by a surety company authorized to transact business in Texas and comply with the applicable requirements of the Insurance Code.

(e) Minimum Bond Amount. Except as provided by paragraph (4) of this subsection, the minimum amount for the surety bond is determined based on the mortgage servicer's volume of loans serviced in Texas. The loan volume is calculated by adding the total unpaid principal balance of all residential mortgage loans serviced by the mortgage servicer secured by real property located in Texas as of October 31 of the year preceding the calendar year of the mortgage servicer's registration. The minimum amount for the surety bond is:

(1) New Applicants for Registration. If the applicant has never been registered with the Department as a mortgage servicer or was not registered within the 12 months preceding the date of application, the minimum amount for the surety bond is \$25,000. If the mortgage servicer was registered within the Department within the 2 years preceding the date of application, the minimum amount for the surety bond is determined based on the mortgage servicer's loan volume on the day the mortgage servicer's registration lapsed.

(2) Volume less than or equal to \$25,000,000. If the mortgage servicer's volume of loans is less than or equal to \$25,000,000, the minimum amount for the surety bond is \$25,000.

(3) Volume greater than \$25,000,000. If the mortgage servicer's volume of loans is greater than \$25,000,000, the minimum amount for the surety bond is \$50,000.

(4) Servicers of Unimproved Real Property or Foreclosed Properties. Paragraphs (2) and (3) of this subsection notwithstanding, and as provided by Finance Code §158.055(c), if a mortgage servicer services only residential mortgage loans secured by unimproved real property or services only residential mortgage loans secured by foreclosed properties with a dwelling, or both, the minimum amount for the surety bond is \$25,000, regardless of the cumulative value of sales of property by the mortgage servicer.

(f) Duty to Maintain and Update Surety Bond. The surety bond must remain active for as long as the mortgage servicer's registration is active. The mortgage servicer must recalculate the minimum amount for the surety bond before requesting renewal of the registration during the annual renewal period (November 1 to December 31). If the mortgage servicer is required to increase the amount of the surety bond as provided by this section, the new surety bond reflecting the higher surety bond amount must be active before the registration will be renewed.

SUBCHAPTER C DUTIES AND RESPONSIBILITIES [HEARINGS AND APPEALS]

§58.200 Required Disclosures

(a) Purpose. This section clarifies and establishes requirements related to the disclosure a mortgage servicer is required to make under Finance Code §158.101.

(b) Specific Notice to Borrower. A mortgage servicer must send written notice to the borrower concerning SML's regulatory oversight within 30 days after the date it begins servicing a residential mortgage loan. The notice must be in the current form prescribed by SML and posted on its website (sml.texas.gov). The notice must be included in the first notice sent to the borrower that notifies the borrower of the mortgage servicer's role in servicing the loan, including any notice required by Regulation X (12 C.F.R. §1024.33(b)). This subsection applies to the servicing of residential mortgage loans secured by real property located in Texas. Mortgage servicers servicing a residential mortgage loan not secured by real property located in Texas must not provide the notice described by this section.

(c) Posted Notice on Websites. A mortgage servicer must post the notice required by subsection (b) of this section on each website of the mortgage servicer, other than a social media site, that is accessible by a borrower. The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked page with the link to such page displayed on the initial or home page.

(d) Disclosures in Correspondence. All correspondence sent to the borrower must include:

- (1) the mortgage servicer's name and NMLS ID; and
- (2) the mortgage servicer's website address, if it has a website.

§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.

§58.210 Reportable Incidents

(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Catastrophic event" means an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations (e.g., the destruction of a principal office or data

center).

(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage servicers' operations or its customers. A reportable incident includes the following items, provided, it presents a material risk:

(A) a "catastrophic event" as defined by this subsection

(B) a "security event" as defined by this subsection;

(C) the termination or curtailment of a line of credit or funding source; or

(D) the termination or curtailment of a service provided to the mortgage servicer by a third-party service provider.

(3) "Root cause analysis report" means a written report concerning the results or findings of an audit or investigation to determine the origin or root cause of a security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event.

(4) "Security event" means an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form. It includes information that is encrypted, if the person with unauthorized access to the information can decrypt the data.

(b) Incident Report. Except as provided by subsection (c) of this section, a mortgage servicer must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage servicer becomes aware of the reportable incident. The report must include:

(1) a detailed description of the nature and circumstances of the reportable incident;

(2) the number of Texas residents affected or potentially affected by the reportable incident;

(3) the measures taken by the mortgage servicer to resolve or address the reportable incident;

(4) the measures the mortgage servicer plans to take to resolve or address the reportable incident; and

(5) the point of contact designated by the mortgage servicer for inquires by SML about the reportable incident.

(c) Incidents Reported to Other Agencies. A mortgage servicer must provide SML with a copy of the following notifications sent to other agencies at the time it makes the notification. Except as provided by subsection (d) of this section, a notification provided to SML under this subsection satisfies the requirement to file a report under subsection (b) of this section:

(1) the notification to the Federal Trade Commission (FTC) required by Section 314.4(j) of the FTC's Standards for Safeguarding Customer Information rules (16 C.F.R. §314.4(j)); and

(2) the notification to the Office of the Attorney General of Texas required by Business and Commerce Code §521.053(i).

(d) Root Cause Analysis for Data Breaches. For any security event triggering a notification described by subsection (c) of this section (data breach), the mortgage servicer must provide SML with a root cause analysis report within 120 days after the date the mortgage servicer becomes aware that the data breach

occurred.

(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.

(f) Confidentiality. Information reported under subsection (b) or (d) of this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §158.102 and §58.302 of this title (relating to Confidentiality of Investigation Information).

SUBCHAPTER D SUPERVISION AND ENFORCEMENT

§58.301 Investigations

(a) Purpose. This section clarifies and establishes requirements related to investigations of a mortgage servicer conducted by SML under Finance Code §158.102.

(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has not reason to believe is other than credible indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate an action taken by SML to address a violation found during the course of an investigation.

(c) Investigation Methods. Investigations will be conducted as SML deems appropriate based on the relevant facts and circumstances then known. Such investigation may include:

(1) review of documentary evidence;

(2) interviews with complainants, respondents, and third parties, and the taking of sworn written statements;

(3) obtaining information from other state or federal agencies, regulatory authorities, or self-regulatory organizations;

(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and

(5) other lawful investigative methods as SML deems necessary or appropriate.

(d) Investigation Fee. The Commissioner may collect a fee for conducting an investigation on a mortgage servicer. The amount of the fee is determined by the Commissioner not to exceed \$975 per complaint. The investigation fee, if any, is assessed at the time SML closes the complaint. The investigation fee, if any, will be invoiced in NMLS and must be paid in NMLS.

§58.302 Confidentiality of Investigation Information.

(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an investigation, as provided by Finance Code §158.102.

(b) Confidential Information. All information obtained by SML during an investigation is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §158.102 (list is not exhaustive):

(1) any documents, data, data compilations, work papers, notes, memoranda, summaries, recordings, or other information, in whatever form or medium, obtained, compiled, or generated during an investigation;

(2) information that is derived from or is the product of the confidential information described by subparagraph (1), including any reports or other information chronicling or summarizing the results, conclusions, or other findings of an investigation, including assertions of an actual or apparent violation of law or any directives, mandates, or recommendations for action by the mortgage servicer to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the investigation;

(3) information that is derived from or is the product of the confidential information described by paragraphs (1) and (2) of this subsection, including any communications, documentary evidence, or other information concerning the mortgage servicer's compliance with any directives, mandates, or recommendations for action by the mortgage servicer and any corrective or remedial action taken by the mortgage servicer to address, correct, or remediate the violations, deficiencies, issues, or other findings identified during the investigation.

(c) Loss of Confidentiality. Subsection (b) notwithstanding, information described by that subsection is not confidential to the extent the information becomes publicly available in a disciplinary or enforcement action that is a contested case (i.e., information made part of the administrative record during an adjudicative hearing that is open to the public).

§57.303 Corrective Action

(a) Corrective Action, Generally; Purpose. During an investigation, SML may determine that violations, deficiencies, or compliance issues (collectively, violations) occurred. Within the confidential environment of the investigation, and typically in lieu of possible enforcement action against the mortgage servicer that is not confidential, SML may direct the mortgage servicer to take corrective action to address the violations identified during the investigation. This section clarifies and establishes requirements related to such corrective action.

(b) Internal Reviews. If SML determines during an investigation that a violation may be systemic, SML may direct the mortgage servicer to conduct its own internal review to self-identify any other violations, compile information concerning such violations, and report its findings to SML. SML may direct the mortgage servicer to take corrective action for any violations identified during the review.

(c) Policies and Procedures and Internal Controls. SML may direct the mortgage servicer to develop and adopt policies and procedures and institutional controls designed to prevent or mitigate future violations.

(d) Refunds to Consumers. SML may direct the mortgage servicer to make refunds to consumers affected by the violation. Any refund must comply with this subsection. The Commissioner, in his or her sole discretion, may waive or modify the requirements of this subsection to achieve appropriate, practical, and workable results. A refund must be made by one of the following methods:

(1) Certified Funds. The refund may be made by certified funds (cashier's check or money order) sent to the borrower at his or her last known address. The mortgage servicer must use reasonable diligence to determine the last known address of the borrower. The payment must be sent in a manner that includes tracking information and confirmation of delivery (e.g., certified mail return receipt requested, or commercial delivery service with tracking). The mortgage servicer must capture and maintain records evidencing the payment, including a copy of the payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation;

(2) Corporate Check. The refund may be made by issuing a check to the borrower. The check must be drawn on a bank account owned by the mortgage servicer. The check must be sent to the borrower at his

or her last known address. The mortgage servicer must use reasonable diligence to determine the last known address of the borrower. The mortgage servicer must capture and maintain records evidencing the payment, including a copy of the check, any correspondence accompanying the check, and evidence that the check was successfully negotiated (i.e., cancelled check). If the borrower fails to cash the check, the mortgage servicer must comply with requirements of §58.304 of this title (relating to Unclaimed Funds);

(3) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the borrower's verified bank account. The mortgage servicer must capture and maintain records evidencing the payment, including any transaction receipt, confirmation page, or similar, reflecting:

(A) name of the sender and any relevant contact information;

(B) sender's bank information (institution, routing number, and account number);

(C) name of the recipient and any relevant contact information;

(D) recipient's bank information (routing number and account number); and

(E) the transaction reference number or confirmation code; or

(4) Credit Against Indebtedness. If, at the time of the refund, the mortgage servicer holds the mortgage servicing rights to the residential mortgage loan related to the refund, the mortgage servicer may issue a credit against the indebtedness equal to the refund; however, if the refund is related to an improper charge or proceeds improperly held by the mortgage servicer on which interest was charged, the credit must be applied to the unpaid principal balance as of the date of such improper charge or the date the mortgage servicer began improperly holding the proceeds. The mortgage servicer must capture and maintain records evidencing application of the credit, including the payment history reflecting application of the credit and any subsequent adjustments to principal and interest payments as a result of the credit being applied.

§57.304 Unclaimed Funds

(a) Escheat Suspense Account; Escheat Log. Funds owed to or held for the benefit of a borrower or other customer of the mortgage servicer for more than one year (i.e., unclaimed funds) must be transferred to an escheat suspense account. The mortgage servicer must maintain a log of all transfers made to the escheat suspense account, including, at a minimum:

(1) date of transfer to the escheat suspense account;

(2) date the obligation to pay the funds arose;

(3) full name and last known contact information of the borrower other customer to whom funds are owed; and

(4) amount of unclaimed funds.

(b) Required Records. The mortgage servicer must maintain records reflecting bona fide attempts to pay the funds to the borrower or customer.

(c) Escheat to State. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts as provided by Property Code §72.101, or as provided by such other state law governing the unclaimed funds.

(d) Records Retention. Records required by this section must be retained for 10 years beginning on the

date the obligation to pay the unclaimed funds arose.

§58.310 Appeals

(a) Purpose. Finance Code Chapter 158 provides that certain decisions of the Commissioner adverse to a mortgage servicer or other person may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which a mortgage servicer or other person must appeal the decision before it becomes final and non-appealable.

(b) The following appeal deadlines apply:

(1) Registration Denials. A registration denial under Finance Code §158.058(c), or otherwise, must be appealed on or before 10 days after the date notice of the Commissioner's decision is received by the person seeking the registration.

(2) Order to Take Affirmative Action or Order to Cease and Desist. An order issued by the Commissioner under Finance Code §§158.103(a), 158.105(a), or 158.106 must be appealed within 30 days after the date the order is issued.

(3) Notice of Revocation. A notice of revocation issued under Finance Code §158.059 must be appealed on or before 30 days after the date the notice is issued.

(4) Other Deadlines. Any appeal not otherwise addressed by this section must be made on or before 30 days after the date notice or order is issued.

(c) Requests for Appeal. An appeal must be made in writing and received by SML on or before the appeal deadline. An appeal may be sent by mail (Attn: Legal Division, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705) or by email (enforcement@sml.texas.gov).

(d) Effect of Not Appealing. A mortgage servicer or other person that does not timely appeal the Commissioner's decision is deemed to have irrevocably waived any right it had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to it for purposes of judicial review of the Commissioner's decision under Government Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner's decision means the Commissioner can issue a final, non-appealable order at any time without further notice or opportunity for a hearing to the mortgage servicer or other person.

§58.311 Hearings

Adjudicative hearings conducted under Finance Code Chapter 158 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas.

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 59 WRAP MORTGAGE LOANS

{{All existing rules concerning wrap mortgage loans in Chapter 78 will be repealed and replaced with new rules in Chapter 59}}

SUBCHAPTER A GENERAL PROVISIONS

§59.1 Purpose and Applicability

This chapter governs the Commissioner's administration and enforcement of Finance Code Chapter 159, governing wrap mortgage loans concerning residential real estate located in Texas. This chapter applies to wrap mortgage lenders, borrowers, and any person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including servicers of a wrap mortgage loan.

§59.2 Definitions

For purposes of this chapter, and in SML's administration and enforcement of Finance Code Chapter 159, the following definitions apply, unless the context clearly indicates otherwise:

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation of an offer) of wrap 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, or the mortgage loan amount.

(2) "Attorney" has the meaning assigned by Insurance Code §2501.003.

(3) "Commissioner" means the savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(4) "E-Sign Act" refers to the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. §7001 et seq.).

(5) "Inspection" includes examination.

(6) "Legal holiday" means the federal legal public holidays specified in 5 U.S.C. §6103(a).

(7) "Make a wrap mortgage loan," means when a person determines the credit decision to provide the wrap mortgage loan, or the act of funding the wrap mortgage loan or transferring money to the wrap borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the wrap mortgage loan.

(8) "Nationwide Multistate Licensing System" or "NMLS" has the meaning assigned by Finance Code §180.002 in defining "Nationwide Mortgage Licensing System and Registry."

(9) "Residential mortgage loan" has the meaning assigned by Finance Code §159.001. The term does not include a loan which is secured by 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.

(10) "Residential mortgage loan originator" has the meaning assigned by Finance Code §180.002.

(11) "Residential mortgage loan servicer" has the meaning assigned by Finance Code §158.002.

(12) "Residential real estate" has the meaning assigned by Finance Code §159.001. For purposes of Finance Code §159.002(b)(1), the term does not include "unimproved residential estate," as that term is defined by Finance Code §159.002(a).

(13) "SML" means the Department of Savings and Mortgage Lending.

(14) "Superior lien" refers to any lien described by Finance Code §159.001(7)(A).

(15) "Superior lienholder" means the holder of any lien described by Finance Code §159.001(7)(A).

(16) "Third-party servicer" means a person other than the wrap lender acting as residential mortgage loan servicer for a wrap mortgage loan.

(17) "Title company" means a "title insurance company" as that term is defined by Insurance Code §2501.003.

(18) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.

(19) "Wrap borrower" has the meaning assigned by Finance Code §159.001.

(20) "Wrap lender" has the meaning assigned by Finance Code §159.001.

(21) "Wrap lender registrant" means a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

(22) "Wrap mortgage applicant" means an applicant for a wrap mortgage loan or a person who is solicited (or contacts a wrap lender in response to a solicitation) to obtain a wrap mortgage loan, and includes 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 Mortgage Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.

(23) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.

§59.3 Formatting Requirements for Notices

Any notice or disclosure (notice) required by Finance Code Chapter 159, or this chapter, must be made in at least 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 159, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice or disclosure must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):

(1) Arial;

(2) Aptos;

(3) Calibri;

(4) Century Schoolbook;

(5) Garamond;

(6) Georgia;

(7) Lucinda Sans;

(8) Times New Roman;

(9) Trebuchet; and

(10) Verdana.

§59.4 Electronic Delivery and Signature of Notices

Any notice or disclosure required by Finance Code Chapter 156, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.

§59.5 Computation of Time

The calculation of any time period measured in days by Finance Code Chapter 159, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.

SUBCHAPTER B LENDER REQUIREMENTS AND RESPONSIBILITIES

§59.100 Purpose and Applicability

The purpose of this subchapter is to clarify and establish requirements related to a wrap lender's requirements and responsibilities under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter C, and §159.105.

§59.101 Required Disclosure

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the written disclosure a wrap lender is required to provide the wrap borrower in accordance with Finance Code §159.101 (disclosure).

(b) Model Disclosure Form. In accordance with Finance Code §159.101(c), the following form (Figure: 7 TAC §59.101(b)(3); model disclosure form) is deemed to satisfy the substantive requirements of Finance Code §159.101(a). Interested persons should visit the Department's website (sml.texas.gov) for a form-fillable version of the model disclosure form and an editable version in Word format (including for purposes of attaching additional sheets to supplement the form with additional information, as necessary). A wrap lender may modify and customize the model disclosure form; provided, the form:

(1) contains all substantive information contained in the model disclosure form that is applicable to the person issuing the disclosure;

(2) conforms to the formatting requirements of subsection (c) of this section; and

(3) otherwise fulfills the requirements of Finance Code §159.101(a).

Figure: 7 TAC §59.101(b)(3)

(c) Effective Date. The disclosure is deemed to be provided by the wrap lender and received by the wrap borrower for purposes of Finance Code §159.101 on the date the disclosure is dated and signed by the wrap borrower, as provided by Finance Code §159.101(b).

(d) Foreign Language Requirement. The wrap borrower must be provided an English-language version of the disclosure in addition to and contemporaneously with the foreign-language version required by Finance Code §159.102, if applicable. A wrap lender may provide the English-language and foreign-language disclosure in a single, combined disclosure. A wrap borrower receiving a foreign-language version of the disclosure may, but is not required to, date and sign the foreign-language disclosure. A wrap borrower receiving a foreign-language version of the disclosure must date and sign the English-language version of the disclosure, which determines the effective date the disclosure is received by the wrap borrower, as provided by subsection (d) of this section. A Spanish-language version of the model disclosure form is available on the Department's website (sml.texas.gov) and is deemed to satisfy the substantive requirements of Finance Code §159.101(a) and §159.102, with respect to negotiations with a wrap borrower conducted primarily in Spanish.

(e) Computation of Time. Computation of the time period for a wrap lender to provide the disclosure required by Finance Code §159.101(a) is made using calendar days, irrespective of any Saturdays, Sundays, or legal holidays.

§59.102 Closing Requirements

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement that a wrap mortgage loan be closed by an attorney or title company, as provided by Finance Code §159.105.

(b) Closing by Title Company. For purposes of Finance Code §159.105, a wrap mortgage loan may only be closed by a title company issuing an owner's title insurance policy to the wrap borrower for the residential real estate secured or designed to be secured by the wrap mortgage loan.

SUBCHAPTER C BORROWER'S RIGHTS AND RESPONSIBILITIES

§59.200 Purpose and Applicability

The purpose of this subchapter is to clarify and establish requirements related to a wrap borrower's rights under a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter E.

§59.201 Right to Deduct; Notice of Deduction

(a) Purpose. The purpose of this section is to clarify and establish requirements related to a wrap borrower's right to make deductions from the amounts the wrap borrower owes to the wrap lender under the terms of a wrap mortgage loan, as provided by Finance Code §159.202.

(b) Notice of Deduction. To the extent the wrap borrower seeks to exercise its right to deduct amounts owed to the wrap lender pursuant to Finance Code §159.202, the wrap borrower must, at the time the wrap borrower makes the deduction, provide the wrap lender or its third-party servicer notice of the amounts deducted including:

(1) an itemized list of the deductions made, describing in detail the amounts paid by the wrap borrower

on behalf of the wrap lender;

(2) the dates on which such payments were made; and

(3) supporting documentation evidencing paragraphs (1) and (2) of this subsection.

SUBCHAPTER D WRAP LENDER AND SERVICER REQUIREMENTS

§59.300 Purpose and Applicability

The purpose of this subchapter is to clarify and establish requirements applicable to persons who collect or receive a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code Chapter 159, Subchapter D. The rules in this subchapter apply to a wrap lender or any other person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, including a third-party servicer servicing a wrap mortgage loan.

§59.301 Fiduciary Duties; Required Accounting

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the fiduciary duties owed to a wrap borrower by a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage loan, as provided by Finance Code §159.152.

(b) Non-Delegation of Duties. A wrap lender or other person collecting or receiving a payment from a wrap borrower under the terms of a wrap mortgage loan may not delegate or assign its fiduciary duties owed under Finance Code §159.152 to another person except as a result of the wrap lender selling, assigning, transferring, or conveying the wrap mortgage loan. Any sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan is deemed to include an assignment of the fiduciary duties owed by the wrap lender to the wrap borrower under Finance Code §159.152. A sale, assignment, transfer, or conveyance by a wrap lender of a wrap mortgage loan does not extinguish the assigning wrap lender's fiduciary duties to the wrap borrower in connection with amounts collected or received by the wrap lender from the wrap borrower prior to the effective date of the sale, assignment, transfer, or conveyance of the wrap mortgage loan.

(c) Required Accounting. The wrap lender must, either directly, or through use of a third-party servicer it has contracted with, maintain, on a current basis, separate written accountings for each wrap mortgage loan made by the wrap lender sufficient to account for, track, and retrospectively trace all payments received from the wrap borrower under the terms of the wrap mortgage loan, and all disbursements, transfers, or assignments of such funds, including, but not limited to, disbursements made to a superior lienholder, taxing authority, or insurance company in connection with the residential real estate secured by the wrap mortgage loan. The accounting required by this subsection must be maintained by the wrap lender or its successor-in-interest until the limitations period for the wrap borrower to bring any cause of action against the wrap lender arising from a violation of law in connection with the wrap mortgage loan transaction has lapsed. To the extent the wrap lender uses the services of a third-party servicer, a wrap lender must establish and maintain policies and procedures that are reasonably designed to acquire from the third-party servicer any information or supporting documentation necessary or prudent to ensure the wrap lender satisfies the accounting required by this subsection. The accounting required by this subsection may be accomplished through administration of and the retention of records in connection with a trust account as provided by §59.302 of this title (relating to Trust Account; Maintenance of Funds Held in Trust).

§59.302 Trust Account; Maintenance of Funds Held in Trust

(a) Purpose. The purpose of this section is to clarify and establish requirements related to the requirement of a person who collects or receives a payment from a wrap borrower under the terms of a wrap mortgage

loan to hold such funds in trust, as provided by Finance Code §159.151.

(b) Definitions. The following terms in this section have the following meanings, unless the context clearly indicates otherwise:

(1) "Financial institution" has the meaning assigned by Finance Code §201.101(1).

(2) "Trust account" means a custodial, trust, or escrow account managed by one person for the benefit of another person.

(3) "Trust funds" means the funds collected or received from a wrap borrower under the terms of a wrap mortgage loan.

(4) "Receiver" means a wrap lender or other person collecting or receiving trust funds.

(c) Trust Account Required. Unless otherwise agreed to in writing by the wrap borrower and wrap lender in connection with the wrap mortgage loan, trust funds must be placed in a trust account meeting the requirements of this section, and maintained or disbursed in accordance with this section.

(d) Trust Account Requirements.

(1) The trust account must be clearly identified as such at the financial institution.

(2) The receiver may, but is not required to, maintain separate trust accounts for each wrap mortgage loan or wrap borrower. To the extent the receiver maintains separate trust accounts for each wrap mortgage loan or wrap borrower, the same trust account may also be used for purposes of administering an escrow account for the wrap mortgage loan or wrap borrower.

(3) Funds in the trust account must be capable of being disbursed by the receiver on-demand or in an amount of time sufficient to timely effect disbursements reasonably anticipated from the trust account.

(4) A receiver, in addition to depositing trust funds, may deposit and maintain a limited amount of money in the trust account necessary to avoid or cover potential fees imposed by the financial institution in connection with the trust account including account maintenance fees or fees charged for insufficient funds.

(e) A receiver may not:

(1) commingle trust funds with non-trust funds;

(2) deposit or maintain trust funds in a personal account or any form of business account; or

(3) pay operating expenses or otherwise make withdrawals or disbursements from a trust account for any purpose other than the proper disbursement of trust funds.

(f) Disbursement of Trust Funds.

(1) A receiver may only disburse money from a trust account in accordance with the terms of the wrap mortgage loan or such other agreement as may be entered into with the wrap borrower to govern the disbursement of trust funds.

(2) If a receiver is unable to reasonably determine to which party or parties trust funds should be disbursed, the receiver may tender trust funds into the registry of a court of competent jurisdiction and interplead the relevant party or parties.

§59.303 Use of a Third-Party Servicer

(a) Purpose. The purpose of this section is to clarify and establish requirements concerning a wrap lender's use of a third party to act as a residential mortgage loan servicer of wrap mortgage loan.

(b) Use of a Third-Party Servicer. A wrap lender is authorized to use the services of a third party to act as the residential mortgage loan servicer of a wrap mortgage loan (also known as a "subservicer").

(c) Handling of Payments and Disbursements. To the extent a wrap lender uses the services of a third-party servicer, the handling of payments and disbursement of funds received by the third-party servicer is governed by the agreement between the wrap lender and third-party servicer, including:

(1) whether or not and on what terms the third-party servicer makes disbursements to the superior lienholder;

(2) disbursements made to the wrap lender; and

(3) how payments by the wrap borrower in excess of the current amount due under the terms of the wrap mortgage loan are handled, applied, or disbursed.

(d) No Limitation on Liability. As provided by Finance Code §159.107, any agreement between a wrap lender and a third-party servicer may not seek to waive or limit the wrap lender's or third-party servicer's liability to the wrap borrower arising from the fiduciary duties owed to the wrap borrower pursuant to Finance Code §159.152. However, an agreement between a wrap lender and third-party servicer may contain an indemnification agreement concerning potential liability arising from the fiduciary duties owed to the wrap borrower under Finance Code §159.152.

SUBCHAPTER E SUPERVISION AND ENFORCEMENT

§59.400 Purpose and Applicability

The purpose of this subchapter is to clarify and establish requirements related to the Commissioner's authority to conduct inspections of, and investigations on, a wrap lender who is required to register as a residential mortgage loan servicer under Finance Code Chapter 158 (wrap mortgage registrant), as provided by Finance Code Chapter 159, Subchapter F. This subchapter further clarifies and establishes requirements concerning the Commissioner's authority to seek enforcement action against a wrap mortgage registrant under Finance Code Chapter 159, Subchapter G.

§59.401 Required Books and Records by a Wrap Lender Registrant

(a) Purpose. This section clarifies and establishes requirements related to the wrap lender's requirement to maintain information and records necessary to facilitate the Commissioner's inspection of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252(d)(1). The requirements of this section are in addition to and supplement the requirements a wrap lender registrant or other person is required to maintain as a licensee or registrant under Finance Code Chapters 156, 157, 158, or 342, as applicable.

(b) Maintenance of Records, Generally. Each wrap lender registrant must maintain records with respect to each wrap mortgage loan under Finance Code Chapter 159 and make those records available for examination under Finance Code §159.252. The records required by this section may be maintained using a paper, manual, electronic, or digitally-imaged recordkeeping system, or a combination thereof, unless otherwise specified by other applicable law. The records must be accurate, complete, current, legible, and readily accessible and sortable. If the requirements of other applicable law governing recordkeeping by the

wrap loan registrant differ from the requirements of this section, such other applicable law prevails only to extent this section conflicts with the requirements of this section.

(c) Required Records. A wrap lender registrant must maintain the following items:

(1) Wrap Mortgage Servicing Log. A wrap mortgage servicing log for each wrap mortgage loan serviced by a wrap lender registrant, maintained on a current basis (which means that all entries must be made within seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the loan or account number, or other unique identifier assigned by the wrap lender registrant to the wrap mortgage loan;

(B) the name and contact information of each wrap borrower; and

(C) the date the wrap mortgage loan was entered into by the wrap lender and wrap borrower.

(2) Wrap Borrower Index. The current alphabetical index or a report of outstanding wrap mortgage loans of the wrap lender registrant, regardless of whether or not it services the wrap mortgage loan, reflecting the name of each wrap borrower and the loan or account number, or other unique identifier assigned by the wrap lender to the wrap mortgage loan. A wrap lender registrant may maintain the wrap borrower index as a part of other records maintained by the wrap lender registrant; provided, the wrap lender registrant is able to sort, generate, and print, as a separate record, the wrap borrower index in strict alphabetical order.

(3) Wrap Mortgage Transaction File. A wrap lender registrant must maintain a wrap mortgage transaction file for each wrap mortgage loan or be able to produce the same information within a reasonable time upon request. The wrap mortgage transaction file must contain documents demonstrating the wrap lender registrant's compliance with applicable law, including Finance Code Chapter 159, and any applicable state and federal statutes, rules, or regulations. The wrap mortgage loan transaction file must include the following records or documents:

(A) for all wrap mortgage loan transactions:

(i) the promissory note, loan agreement, or repayment agreement, signed by the wrap borrowers;

(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document signed by the wrap borrower(s);

(iii) the title insurance policy or abstract of title;

(iv) the initial and final mortgage application (including any attachments, supplements, or addenda thereto), signed and dated by the mortgage applicant and the residential mortgage loan originator, and any other written or recorded information used to evaluate the mortgage application, as required by Regulation B (12 C.F.R. §1002.4(c));

(v) the real estate contract documenting the sale of the residential real estate securing the wrap mortgage loan;

(vi) the disclosure statement requirement by Finance Code §159.101 and §59.101 of this title (relating to Required Disclosure), including any foreign-language disclosure required by Finance Code §159.102;

(vii) the initial and any revised integrated loan estimate disclosure required by Regulation Z (12 C.F.R. §1026.37);

(viii) the initial, revised, and final closing disclosure as required by Regulation Z (12 C.F.R. §1026.38);

(ix) any rate lock agreements, or similar document;

(x) the records relating to the ability-to-repay the wrap mortgage loan required by Regulation Z (12 C.F.R. §1026.25 and §1026.43);

(xi) copies of any appraisal reports or written valuation reports used to determine the value of the residential real estate;

(xii) the privacy notice required by Regulation P (12 C.F.R. §1016.5); and

(xiii) the wrap borrower's authorization and consent to receive electronic documents as required by the E-Sign Act and Regulation Z (12 C.F.R. §1026.17(a)(1));

(B) with respect to servicing the wrap mortgage loan, the following additional records are required to be maintained:

(i) any payoff requests received from the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(ii) any payoff statements issued to the wrap borrower, agent of the wrap borrower, another lender, or a title company;

(iii) if the wrap mortgage loan is paid off or otherwise satisfied, a copy of the release of lien;

(iv) receipts or invoices along with proof of payment for any attorneys' fees assessed, charged, or collected in the collection of a delinquent wrap mortgage loan;

(v) if collateral protection insurance is acquired or purchased, a copy of the insurance policy or certificate of insurance and the notice required by Finance Code §307.052;

(vi) any periodic statements or billing invoices sent to the wrap borrower;

(vii) copies of any collection letters or notices sent by the wrap lender registrant or its agent to the wrap borrower;

(viii) any modification, reinstatement, or settlement agreement that is proposed or entered into between the wrap borrower and the wrap lender registrant;

(ix) any records related to a consumer inquiry, complaint, or error resolution;

(x) any records or documents relating to a request for protection under the Servicemembers Civil Relief Act (50 U.S.C. §3901 et seq.); and

(xi) any other servicing notice, disclosure, or record required by federal or state law;

(C) for wrap mortgage loan transactions involving a foreclosure or attempted foreclosure, the following records:

(i) for transactions involving judicial foreclosure:

(I) any records pertaining to a judicial foreclosure including records from the wrap lender registrant's attorneys, the court, or the wrap borrower or the wrap borrower's agent;

(II) any notice to cure the default sent to the wrap borrower and each superior lienholder as required by Property Code §51.002(d), including verification of delivery of the notice;

(III) any notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(IV) any notice of acceleration sent to the wrap borrower and each superior lienholder; and

(V) any records related to receipt of the foreclosure proceeds;

(ii) for transactions involving non-judicial foreclosure:

(I) the notice to cure the default sent to the wrap borrower and each superior lienholder as required by Property Code §51.002(d), including verification of delivery of the notice;

(II) the notice of intent to accelerate sent to the wrap borrower and each superior lienholder, including verification of delivery of the notice;

(III) the notice of acceleration sent to the wrap borrower and each superior lienholder;

(IV) the notice of sale required by Property Code §51.002(b) including verification of delivery of the notice;

(V) any records related to the foreclosure sale by the trustee including the person purchasing the property, and the dollar amount of the proceeds received from the foreclosure sale;

(VI) any records related to a short sale, deed-in-lieu of foreclosure, or similar disposition;

(VII) proof of payment of reasonable fees or charges paid by the trustee in connection with the deed of trust or similar instrument including fees for enforcing the lien against or posting for sale, selling, or releasing the residential real estate secured by the deed of trust; and

(VIII) the foreclosure deed upon sale of the property;

(D) for wrap mortgage loan transactions where the wrap borrower provided an actionable notice of rescission and the wrap lender registrant did not avoid the rescission, a copy of the notice of rescission and documentation reflecting that the wrap lender registrant refunded to the wrap borrower all amounts required by Finance Code §159.104(c);

(E) for wrap mortgage loan transactions where the wrap lender avoided the rescission, documentation reflecting that the wrap lender:

(i) paid the outstanding balance due on the debt owed on the residential real estate to the superior lienholders;

(ii) paid any due and unpaid taxes or other governmental assessments owed on the residential real estate;

(iii) paid to the wrap borrower as damages for noncompliance the sum of \$1,000 and any reasonable attorneys' fees incurred by the wrap borrower; and

(iv) evidence of compliance with clause (i) or (ii) above provided to the wrap borrower;

(F) for wrap mortgage loan transactions where the wrap borrower has deducted from the amount owed to the wrap lender under the terms of the wrap mortgage loan as authorized by Finance Code §159.202, any records related to this action including the written notice from the wrap borrower required by §59.201 of this title (relating to Right to Deduct; Notice of Deduction), and any actions taken to address the deductions;

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

(A) all servicing and sub-servicing agreements entered into by the wrap lender registrant as a residential mortgage loan servicer;

(B) policies and procedures related to the origination and servicing of wrap mortgage loans by the wrap lender registrant, including, but not limited to, Quality Control Policy / Compliance Manual, Identify Theft Prevention Program / Red Flags Rule required by 16 C.F.R. §681 et seq., Anti-Money Laundering Program required by Title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Personnel Administration / Employee Policies, Ability-to-Repay Underwriting Policies, and an information security program required by 16 C.F.R. §314.1 et seq.;

(C) records reflecting the disbursement of money to pay the superior lienholders and payment of taxes and insurance for which the wrap lender registrant has received from the wrap borrower;

(D) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to disbursements made in connection with wrap mortgage loans by the wrap lender registrant;

(E) complete records (including invoices and supporting documentation) for all expenses and fees paid in connection with the wrap mortgage loan, including the date and amount of all such payments;

(F) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(G) copies of all contractual agreements or understandings with third parties in any way relating to a wrap mortgage loan transaction;

(H) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(I) copies of all advertisements in the medium (e.g., recorded audio, video, and print) in which they were published or distributed;

(5) Record of the wrap borrower's account (payment and collection history). A separate record must be maintained for the servicing account of each wrap borrower and the record must contain at least the following information on each wrap mortgage loan serviced by the wrap lender registrant:

(A) loan identification number;

(B) loan repayment schedule and terms, itemized to reflect:

(i) the date of the loan;

(ii) the number of installments;

(iii) the due date of installments;

(iv) the amount of each installment; and

(v) the maturity date;

(C) name, address, and phone number of the wrap borrower(s);

(D) legal description of the residential real estate;

(E) principal amount;

(F) total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(G) amount of official fees for recording or releasing a security interest that are collected at the time the loan is made;

(H) individual payment entries, itemized to show:

(i) the date payment was received (dual postings are acceptable if the date of posting is other than the date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(I) individual entries for disbursements of funds from a wrap borrower under the terms of wrap mortgage loan to superior lienholders, taxing authorities, insurance companies, or other payees, itemized to show:

(i) the actual date of disbursement; and

(ii) the actual amounts disbursed;

(J) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to the wrap borrower(s), with refund amounts itemized to show interest charges refunded, including the refund of any unearned points; and

(K) collection contact history, including a record of each contact made by a wrap lender registrant with the wrap borrower or any other person and each contact made by the wrap borrower with the wrap lender registrant, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(d) A wrap lender registrant must maintain such other books and records as may be required to evidence compliance with applicable state and federal laws, rules, and regulations, including, but not limited to: the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(e) A wrap lender registrant must maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(f) Production of Records. All books and records required by this section must be maintained in good order and must be produced for the Commissioner or the Commissioner's designee upon request.

(g) Records Retention Period. All books and records required by this section must be maintained for three years or such longer period(s) as may be required by applicable state or federal laws, rules, and regulations.

(h) Records Retention After Dissolution. Within ten days of termination of operations, a wrap lender registrant must provide the Department with written notice of where the required records will be maintained for the prescribed periods. If such records are transferred to another wrap lender registrant, the transferee must provide the Department with written notice within ten days after receiving such records.

§59.402 Examination of Wrap Lender Registrants

(a) Purpose. This section clarifies and establishes requirements related to the Commissioner's authority to make inspections of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158, as provided by Finance Code §159.252.

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person of the wrap lender registrant 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 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 available to facilitate the examination.

(c) Scope. Examinations will be conducted to determine compliance with Finance Code Chapter 159, and this chapter, and will specifically address whether:

(1) all required books and records are being maintained in accordance with §59.401 of this title (relating to Required Books and Records by a Wrap Lender Registrant);

(2) all legal and regulatory requirements applicable to the wrap lender registrant are being properly followed; and

(3) other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code Chapter 159.

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

(e) The examiners may require a wrap lender registrant, at its own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.

(f) Confidentiality. The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, will be maintained as confidential except as permitted or required by law.

(g) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of a wrap lender registrant because the required records are maintained at a location outside of Texas, 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.

§59.403 Investigation of Wrap Lender Registrants

(a) Purpose. The purpose of this section is to implement the requirements of Finance Code §159.252 concerning the Commissioner's authority to conduct an investigation of a wrap lender required to register as a residential mortgage loan servicer under Finance Code Chapter 158.

(b) Reasonable Cause for Investigation. Pursuant to Finance Code §159.252(b), the Commissioner may, upon a finding of reasonable cause, examine a wrap lender registrant to determine whether the wrap lender registrant is complying with Finance Code Chapter 159, and this chapter. Reasonable cause will be deemed to exist if the Commissioner has received information from a source the Commissioner has no reason to believe to be other than reliable, including documentary or other evidence, or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code Chapter 159, or this chapter.

(c) Investigations will be conducted as deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(1) review and consideration of any complaints received by the Department against a wrap lender registrant;

(2) review of documentary evidence;

(3) interviews with complainants, licensees, and third parties;

(4) obtaining reports, advice, and other comments and assistance from other state and/or or federal regulatory, enforcement, or oversight bodies; and

(5) other lawful investigative techniques as the Commissioner deems necessary or appropriate, including, but not limited to, requesting that complainants or other parties that are the subject of a complaint provide explanatory, clarifying, or supplemental information.

Figure: 7 TAC §59.101(b)(3)

**NOTICE OF WRAP-AROUND MORTGAGE FINANCING ENCUMBERED BY
SUPERIOR LIEN PURSUANT TO TEXAS FINANCE CODE SECTION 159.101 AND
TEXAS PROPERTY CODE SECTION 5.016**

WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THE PROPERTY REFERENCED BELOW AND WILL BE IN A SUPERIOR POSITION TO ANY LIEN CREATED BY THE FINANCING YOU ARE SEEKING. THIS NOTICE CONTAINS INFORMATION CONCERNING WHETHER OR NOT THE SUPERIOR LIENHOLDER(S) HAVE CONSENTED TO THE PROPERTY BEING TRANSFERRED TO YOU. IF A SUPERIOR LIEN HAS NOT BEEN RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE SUPERIOR LIENHOLDER, IT IS POSSIBLE THE SUPERIOR LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE SECURED BY THE SUPERIOR LIEN AND MAY AFFECT YOUR RIGHTS AS BUYER OF THE PROPERTY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION OR DISCUSS THIS MATTER WITH AN ATTORNEY.

IMPORTANT NOTICE REGARDING PROPERTY INSURANCE: ANY INSURANCE MAINTAINED BY A SELLER, LENDER, OR OTHER PERSON WHO IS NOT THE BUYER OF THE PROPERTY MAY NOT PROVIDE COVERAGE TO THE BUYER IF THE BUYER SUFFERS A LOSS OR INCURS LIABILITY IN CONNECTION WITH THE PROPERTY. TO ENSURE YOUR INTERESTS ARE PROTECTED, YOU SHOULD PURCHASE YOUR OWN PROPERTY INSURANCE POLICY TO INSURE THE PROPERTY. BEFORE PURCHASING THIS PROPERTY, YOU MAY WISH TO CONSULT WITH AN INSURANCE AGENT LICENSED BY THE TEXAS DEPARTMENT OF INSURANCE REGARDING THE INSURANCE COVERAGE OPTIONS AVAILABLE TO YOU AS BUYER OF THE PROPERTY.

PROPERTY INFORMATION:

Physical Address		
Street:		
City:	State:	Zip:
Legal Description		

NOTICE OF WRAP-AROUND MORTGAGE FINANCING

ISSUED BY:

Lender		
Legal Name:		
Date of Issuance		
Date:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Loan Originator (Company) License/Registration Information (if applicable)		
Legal Name:		
NMLS ID:		

LIENHOLDER(S) AND LIEN INFORMATION (list by order of the date the lien was perfected, from oldest to newest; attach additional sheets as necessary):

<u>Lien 1:</u>		
Lienholder		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Lien Information		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
Consent		
Has the Lienholder Consented to the Transfer?	YES	NO

NOTICE OF WRAP-AROUND MORTGAGE FINANCING

Lien 2:		
Lienholder		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Lien Information		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
Consent		
Has the Lienholder Consented to the Transfer?	YES	NO

INSURANCE INFORMATION (attach additional sheets as necessary):

Policy 1:		
Insurer		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Policy Information		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

NOTICE OF WRAP-AROUND MORTGAGE FINANCING

Policy 2:		
Insurer		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Policy Information		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

PROPERTY TAX INFORMATION:

Property Taxes Due on the Property	
Amount:	
Annual Property Tax Estimate	
Amount:	Tax Year:

ACKNOWLEDGMENT BY BUYER(S):

Signature

Date

Printed Name

Signature

Date

Printed Name