



DERIVATION TABLE AND REDLINE DRAFT

MORTGAGE REGULATION RULE REVIEW (JUNE 2024)

TITLE 7 BANKING AND SECURITIES

PART 4 DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 55 RESIDENTIAL MORTGAGE LOAN ORIGINATORS

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55.1	81.1	<p><u>Purpose and Applicability Scope</u></p> <p>This chapter governs <u>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</u> the licensing, registration, and conduct of residential mortgage loan originators <u>and mortgage bankers under Finance Code Chapter 157 and Chapter 180, except for individuals engaged in authorized activity subject to the authority of a regulatory official under Tex. Fin. Code §180.251(c). 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).</u></p>
55.2	81.2	<p><u>Definitions</u></p> <p><u>For purposes of As used in this chapter, and in SML's the Commissioner's administration and enforcement of Finance Code Chapters Chapter 157 (other than Subchapter C) and 180, the following definitions apply, unless the context clearly indicates otherwise terms have the meanings indicated:</u></p> <p class="list-item-l1">(1) "Application," as used in <u>Finance Tex. Fin. Code §§157.002(6) and §180.002(19), and paragraphs (7) and (18) paragraph (16)</u> of this section means a request, in any form, for an offer (or a response to a solicitation <u>of for</u> an offer)</p>

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		<p>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, <u>or and/or</u> the mortgage loan amount.</p> <p>(2) "Commissioner" means the <u>savings and mortgage lending commissioner</u> Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.</p> <p>(3) "<u>Commissioner's designee</u>" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.</p> <p>(3) (4) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.</p> <p>(5) "<u>Department</u>" means the Department of Savings and Mortgage Lending.</p> <p>(4) (6) "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.</p> <p>(5) "<u>E-Sign Act</u>" refers to the federal Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001 et seq.).</p> <p>(6) "<u>Making a residential mortgage loan</u>," 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.</p> <p>(7) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a mortgage banker or an 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., <u>the Fannie Mae Mae's</u> Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.</p> <p>(8) "Mortgage banker" has the meaning assigned by <u>Finance Tex. Fin.</u> Code §157.002.</p> <p>(9) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company." as that</p>

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		<p>term is defined by Finance Code §157.002.</p> <p>(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."</p> <p>(11) "Offers or negotiates the terms of a residential mortgage loan," as used in <u>Finance Tex. Fin.</u> Code §157.002(6) and §180.002(19), means, among other things, when an individual:</p> <ul style="list-style-type: none"> (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. <p>(12) "Originator" has the meaning assigned by <u>Finance Tex. Fin.</u> Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (11) and <u>(18) (16)</u> of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by <u>Finance Tex. Fin.</u> 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 <u>Finance Tex. Fin.</u> Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by <u>Finance Tex. Fin.</u> Code §180.051.</p> <p><u>(13) "Person" has the meaning assigned by Finance Code §180.002.</u></p> <p><u>(14) (13) "Residential mortgage loan"</u> has the meaning assigned by <u>Finance Tex. Fin.</u> 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 which is secured by a structure that is suitable for occupancy as a dwelling but is used for a commercial purpose such as a professional office, salon, or other non-residential use, and is not used as a residence.</p> <p><u>(15) (14) "Residential real estate"</u> has the meaning assigned by <u>Finance Tex. Fin.</u> 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.</p>

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		<p>(16) "SML" means the Department of Savings and Mortgage Lending.</p> <p>(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.</p> <p>(18) (16) "Takes a residential mortgage loan application," as used in <u>Finance Tex. Fin.</u> 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.</p> <p>(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.</p> <p>(20) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.</p>
55.3	New	<p><u>Formatting requirements for Notices</u></p> <p>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):</p> <p>(1) Arial;</p> <p>(2) Aptos;</p>

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		<p>(3) Calibri;</p> <p>(4) Century Schoolbook;</p> <p>(5) Garamond;</p> <p>(6) Georgia;</p> <p>(7) Lucinda Sans;</p> <p>(8) Times New Roman;</p> <p>(9) Trebuchet; and</p> <p>(10) Verdana.</p>
55.4	New	<p><u>Electronic Delivery and Signature of Notices</u></p> <p><u>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.</u></p>
55.5	New	<p><u>Computation of Time</u></p> <p><u>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.</u></p>
55.6	81.4	<p><u>Enforceability of Liens</u></p> <p>A violation of <u>Finance Code Chapters 157 or 180, or this chapter</u>, <u>does shall</u> not render an otherwise lawfully taken lien <u>invalid or</u> unenforceable.</p>
55.100	81.100(a)	<p><u>Licensing Requirements – General</u></p> <p>(a) <u>License Required.</u> An individual, unless exempt as provided by Finance Code §157.0121 or §180.003, or acting</p>

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		<p><u>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:</u></p> <p class="list-item-l1">(1) <u>Engages in the business of residential mortgage loan origination on real property located in the state of Texas;</u></p> <p class="list-item-l1">(1) <u>(2) representing or holding that individual Represents or holds himself out to the public through advertising or other means of communication as a "loan officer," "mortgage consultant," "mortgage broker," "loan modification/refinance consultant," or "residential mortgage loan originator," or otherwise representing represents that the individual can or will perform residential mortgage loan origination services as an the activities of a residential mortgage loan originator;</u></p> <p class="list-item-l1">(2) <u>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);</u></p> <p class="list-item-l1">(3) <u>providing Provides disclosures to a mortgage applicant or prospective borrower mortgage applicant or discussing or explaining discusses or explains 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: Disclosures include but are not limited to the residential mortgage loan originator disclosure form; truth in lending disclosures; the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as a residential mortgage loan originator and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed residential mortgage loan originator, but who does not discuss the disclosure with the prospective borrower shall not be deemed to have provided a disclosure for purposes of this paragraph</u></p> <p class="list-item-l2">(A) <u>the disclosures required by Finance Code §156.004 or §157.0021, and §55.200(a) of this title (relating to Required Disclosures);</u></p> <p class="list-item-l2">(B) <u>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</u></p> <p class="list-item-l2">(C) <u>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);</u></p> <p class="list-item-l1">(4) <u>determining Determines the lender lender(s) or investor investor(s) to which whom the prospective residential</u></p>

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		<p><u>mortgage</u> loan will be submitted;</p> <p>(5) <u>issuing issues or signing signs a conditional</u> pre-qualification letter or <u>conditional approval preapproval</u> letter, <u>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 or</u></p> <p>(6) <u>being Is</u> a loan processor or underwriter who is an independent contractor, <u>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.</u></p>
55.101	81.100(b), (f), and (h)	<p><u>Applications for Licensure</u></p> <p>(a) <u>NMLS. Applications for licensure a company registration or an originator license</u> must be submitted through <u>NMLS the Nationwide Mortgage Licensing System and Registry</u> and must be <u>made using the current form</u> prescribed <u>by NMLS application forms. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage)</u> which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.</p> <p>(b) <u>Supplemental Information. SML The Commissioner</u> may require <u>such additional, clarifying, or supplemental information or documentation from any applicant for the issuance or renewal of any license pursuant to Finance Code Chapter 157 as is</u> deemed necessary or <u>appropriate advisable</u> to determine that the <u>licensing</u> requirements of Finance Code, <u>Chapters Chapter 157 and 180 are have been met and maintained.</u></p> <p>(c) <u>Incomplete Filings; Deemed Withdrawal. An application, notice, or any other filing with the department will only be deemed submitted if it is complete. An application A filing</u> is complete only if all required information and supporting documentation is included and <u>only if</u> all required fees <u>are have been</u> received <u>by the department</u>. 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 <u>and any fee paid will be forfeited</u> if <u>the an</u> applicant fails to provide <u>the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection to the department, within 30 days from the</u></p>

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		date of the request, any information or supplemental documentation.
55.102	81.105(a)-(c)	<p>Fees</p> <p>(a) <u>License Fees.</u> The license fee is determined Fees relating to a license or registration will be established by the Commissioner in an amount not to exceed the maximum amount specified by accordance with 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) Chapter 157. 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 amount of the fees may be modified upon not less than 30 days' advance notice posted on the Department's website. The license fee must be paid in NMLS.</p> <p>(b) <u>NMLS Fees.</u> 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:</p> <ul style="list-style-type: none"> (1) <u>application processing fee;</u> (2) <u>credit report fee; and</u> (3) <u>criminal background check fee.</u> <p>(c) (b) All fees are nonrefundable and nontransferable.</p> <p>(d) (e) <u>Insufficient Funds Fee.</u> The Commissioner may, in addition to any disciplinary action, 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.</p>
55.103	81.106(a), (b), and (d)	<p>Renewal of the License Renewals</p> <p>(a) A license may be renewed on upon:</p> <ul style="list-style-type: none"> (1) timely submission of a completed <u>renewal</u> application (<u>renewal request</u>) in for renewal through NMLS together

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		<p>with payment of all required fees the applicable renewal application fee;</p> <p>(2) a determination <u>by SML</u> that the <u>originator applicant</u> continues to meet the minimum requirements for licensure, <u>including the requirements of Finance Code §§157.012(c), 157.015(g), and 180.055</u>; and</p> <p>(3) completion of satisfactory evidence provided to the Department that the license holder has completed the continuing education <u>required by requirements of</u> Finance Code §180.060 <u>and §55.108 of this title (relating to Required Education) as reflected in NMLS.</u></p> <p>(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 <u>NMLS</u>.</p> <p>(c) (b) Commissioner's Discretion to Approve with a Deficiency; <u>Conditional License</u>. The Commissioner may, in his or her sole discretion, approve a renewal <u>request application</u> with <u>one or more deficiencies a deficiency</u> the Commissioner deems to be <u>relatively</u> minor <u>and in nature so as to</u> allow the <u>originator licensee</u> to continue conducting <u>regulated activities licensed activity</u> while the <u>originator works diligently to resolve the deficiencies deficiency is resolved</u>. A renewal <u>request application</u> approved by the Commissioner <u>under this subsection with a pending deficiency</u> will be assigned <u>the in NMLS the</u> license status <u>code</u> "Approved - Deficient." Approval <u>under this subsection of the application by this method</u> does not relieve the <u>originator licensee</u> of the obligation to resolve the <u>deficiencies deficiency noted</u>. <u>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 such deficiency constitutes is grounds for the Commissioner to suspend or revoke take disciplinary action against the licensee, including suspension or revocation of</u> the license.</p> <p>(d) Reinstatement. <u>This The provisions of this section applies also apply</u> to an individual seeking reinstatement of <u>an expired a recently expired</u> license; <u>(assigned the license status "Terminated - Failed to Renew") during the reinstatement period described by Finance Code §157.016 as provided by Tex. Fin. Code §157.016, and must should</u> be construed accordingly. <u>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.</u></p>
55.104	81.100(c), 81.107	<p>NMLS Records; Notices Sent to the Originator Notice to the Licensee</p> <p>(a) NMLS License Status. SML is required to assign a status to the license in NMLS. The license status is displayed in <u>NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org)</u>. <u>SML The Department is limited to the</u> <u>these specific</u> license <u>and registration</u> status <u>options codes</u> available <u>in NMLS through the Nationwide Mortgage</u></p>

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		<p>Licensing System and Registry. The <u>NMLS Resource Center website (nationwidelicensingsystem.org)</u> describes the available license status options and their meaning Nationwide Mortgage Licensing System and Registry maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the department are reflected in the licensee's record on the Nationwide Mortgage Licensing System and Registry and on the Nationwide Mortgage Licensing System and Registry Consumer Access Website.</p> <p>(b) Amendments to License Records Required. Unless <u>Finance Tex. Fin.</u> Code §157.019 applies and requires additional notice, an originator licensed by the Department must amend his or her NMLS license <u>records record</u> (MU4 filing) within 10 days after <u>the date of</u> any material change occurs affecting any aspect of the MU4 filing, including, but not limited to:</p> <ul style="list-style-type: none"> (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). <p>(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 <u>SML the Department</u> to retrieve a current copy of his or her credit report, as provided by <u>Finance Tex. Fin.</u> Code §157.0132 and <u>§55.111 §81.108</u> 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 <u>in NMLS, within the NMLS system if requested by SML</u>.</p> <p>(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 <u>SML the Department</u> to perform an additional criminal background check in accordance with <u>Finance Tex. Fin.</u> §157.0132 and <u>§55.111 §81.108</u> of this title <u>(relating to Background</u></p>

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		<p>Checks) and, the originator must further amend his or her MU4 filing to formally consent to and request such criminal background check <u>in NMLS, within the NMLS system if requested by SML..</u></p> <p>(d) <u>Notices Sent to the Originator Notice to Licensee.</u> Any Service of any correspondence, notification, alert, message, official notice, or other written communication <u>from SML issued by the Department</u> will be <u>sent to served on</u> the <u>originator licensee</u> in accordance with this subsection <u>using utilizing the originator's licensee's</u> current contact information of record in NMLS unless another method is <u>required prescribed</u> by other applicable law (notice to the originator in a matter referred to the State Office of Administrative Hearings for an adjudicative hearing will be performed in accordance with 1 Texas Administrative Code §155.105).</p> <p>(1) Service by Email. Service by email <u>is will be</u> made <u>using utilizing</u> 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 <u>originator's license holder's</u> email service provider; provided, <u>SML the Department</u> does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. An originator <u>must has an ongoing duty and a continuing obligation to</u> monitor the email account designated as <u>his or her their</u> NMLS account email address <u>and including to</u> ensure that <u>emails correspondence</u> from <u>SML the Department</u> or system notifications from NMLS are not lost in a "<u>spam folder" or similar, "spam" or similar folder</u>", or undelivered due to intervention by a "spam filter" or similar service. An originator is deemed to have constructive notice of any <u>emails email correspondence or NMLS system notifications</u> sent <u>by SML</u> to the email address <u>described by this paragraph he or she has designated as his or her NMLS account email address. An originator is further deemed to have constructive notice of any NMLS system notifications sent to him or her by email.</u></p> <p>(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 <u>3 three</u> 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.</p>
55.105	81.100(i)	<p><u>Conditional License Licensing – General</u></p> <p>(a) (i) <u>Conditional License; Terms and Conditions.</u> The Commissioner <u>or the Commissioner's designee may, in his or her sole discretion, may at their discretion, after reviewing the circumstances of each situation,</u> issue a license on a conditional basis. <u>A conditional license will be assigned the license status "Approved - Conditional" in NMLS. Reasonable terms and conditions for a conditional license include:</u></p> <p><u>(1) requiring the originator to undergo additional credit checks or provide evidence of satisfaction concerning a debt,</u></p>

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		<p><u>judgment, lien, child support obligation, or other financial delinquency affecting his or her financial condition;</u></p> <p><u>(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;</u></p> <p><u>(3) requiring the originator to take other specific action or provide other specified information to address a known deficiency; and</u></p> <p><u>(4) requiring the originator to surrender the license upon the occurrence of an event that would render the originator ineligible for the license.</u></p> <p><u>(b) Probated Suspensions and Revocations. A license subject to a probated suspension or revocation is deemed to be a conditional license.</u></p> <p><u>(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.</u></p>
55.106	New	<p><u>Surrender of the License</u></p> <p><u>(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:</u></p> <p><u>(1) the originator is the subject of a pending or contemplated examination, inspection, investigation, or disciplinary action;</u></p> <p><u>(2) the originator is in violation of an order of the Commissioner; or</u></p> <p><u>(3) the originator has failed to pay any administrative penalty, fee, charge, or other indebtedness owed to SML</u></p> <p><u>(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the</u></p>

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		<u>request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses.</u> <u>During this time, the originator's license will be assigned the license status "Approved - Inactive" in NMLS.</u>
55.107	81.101, 81.100(d) and (e)	<p>Sponsorship of Originator</p> <p>(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 <u>by SML under Finance Code Chapter 156</u> or a mortgage banker registered <u>with SML under Finance Code Chapter 157</u>. <u>To in order to</u> establish sponsorship by a mortgage company or mortgage banker, the originator must amend his or her NMLS license <u>records record</u> (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 <u>filings license record amendments</u> in NMLS <u>in order</u> to establish such sponsorship <u>as provided by this section, including a request to establish such sponsorship</u>. Sponsorship is not effective until the mortgage company's or mortgage banker's sponsorship request has been reviewed and approved by <u>SML the Department</u>. <u>An originator A licensee</u> 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. <u>Information about how to file for sponsorship is available on the NMLS Resource Center website (nationwidelicensingsystem.org).</u></p> <p><u>(b) Number of Sponsorships. An originator may be sponsored by more than one mortgage company or mortgage banker if:</u></p> <ul style="list-style-type: none"> <u>(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;</u> <u>(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;</u> <u>(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;</u> <u>(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;</u>

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		<p>(5) the originator discloses to his or her sponsoring entities the existence the originator's multiple sponsorships;</p> <p>(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</p> <p>(7) the originator is only compensated for services actually performed and does not share or split any fee.</p> <p><u>(c) Inactive License Status Pending Sponsorship.</u> An applicant may be issued a license in an inactive status if the applicant <u>has met</u> completes the required application form and complies with all requirements for of licensure except for the requirement that the originator be sponsored by an appropriate entity, as provided by Finance Code §157.012(a)(1) of an approved sponsorship. 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. Upon submission and approval of a sponsorship the license may be changed to active status.</p> <p><u>(d) Termination of Sponsorship.</u> 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, make a license record amendment in NMLS notifying the Department that the sponsorship has been terminated, as provided by Finance Code §156.211 and §157.019.</p> <p><u>(e) Failure to Maintain Sponsorship; Inactive Status.</u> 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. An originator, through written notice to the department, may place his or her license in an inactive status at any time during the license term. While in an inactive status an originator must not engage in the origination of residential mortgage loans as defined in §81.2(6) of this chapter, and must continue to meet the statutory requirements of the license. Upon submission and approval of a sponsorship, the license may be changed to active status.</p>
55.108	81.104	<p>Required Education</p> <p>(a) Pre-Licensing Education and Examination. As provided by Finance Code §180.056, Chapter 180, an individual applying for an originator's license (applicant) licensure 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 three 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</p>

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		<p><u>applicant must pass a written test prescribed by the federal SAFE Act and approved by NMLS.</u></p> <p>(b) Lapsing of Pre-Licensing Education <u>and Examination</u>. An <u>applicant</u> individual applying for licensure other than a current license holder seeking renewal <u>under §55.103 of this title (relating to Renewal of the License; i.e., an individual seeking a new license) or the holder of a recently expired license seeking reinstatement as provided by Tex. Fin. Code §157.016 (an individual seeking an original license)</u> must have completed the required pre-licensing education and coursework described by subsection (a) within the <u>3 three</u> years preceding the date of application; otherwise, <u>the applicant such individual must take retake</u> the pre-licensing education and coursework approved and offered at the time of the application. <u>Additionally, if an applicant for a new license did not pass the National Component with Uniform State Content examination approved by NMLS on or after April 1, 2013, the applicant must pass the current pre-licensing examination approved by NMLS in order to satisfy the requirements of Finance Code §180.057 (examinations taken prior to April 1, 2013, will not satisfy such requirements).</u></p> <p>(c) Recognition of Pre-Licensing Education Taken in Another Jurisdiction. As provided by <u>Finance Tex. Fin.</u> Code §180.056, <u>SML the Department</u> will recognize pre-licensing education <u>and</u> 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, <u>SML the Department</u> will not recognize those hours of pre-licensing education <u>and coursework</u> taken in another jurisdiction the content of which was <u>dedicated to education</u> specific to that jurisdiction and that comprised the <u>12-hour twelve hour</u> undefined electives portion of such pre-licensing education and coursework. An <u>applicant individual</u> 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 <u>and coursework</u> taken in another jurisdiction, as provided by this <u>subsection section</u>.</p> <p>(d) Continuing Education. As provided by <u>Finance Tex. Fin.</u> Code §180.060 and <u>§55.103 §81.106</u> of this title (<u>relating to Renewals</u>), an originator must complete, on an annual basis, continuing education and coursework approved by NMLS in order to renew the license.</p>
55.109	81.102	<p>Temporary Authority</p> <p>(a) Purpose <u>and Applicability</u>. The purpose of this section is to specify how an <u>originator individual</u> licensed in another jurisdiction or by a different licensing authority <u>as an originator</u>, or who is a "registered mortgage loan originator" (as defined by Finance Code §180.002(16)), 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 <u>SML the Department</u>, as provided by <u>Finance Tex. Fin.</u> Code §180.0511.</p> <p>(b) Application Required. An individual seeking to act under temporary authority must comply with the requirements of Finance Code §180.0511. Among other requirements, <u>Finance Tex. Fin.</u> Code §180.0511 requires that the individual</p>

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		<p>file an application with <u>SML the Department</u> seeking licensure <u>in order</u> 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 <u>code</u> by <u>SML the Department</u> recognizing such temporary authority (<u>see §55.104 of this title (relating to NMLS License Records; Notices Sent to the Originator)</u>). <u>Several status codes reflect and recognize such temporary authority.</u> An individual may confirm his or her temporary authority <u>status</u> by reviewing his or her <u>license</u> status <u>in NMLS</u> or on the NMLS Consumer Access website (nmlsconsumeraccess.org).</p> <p>(c) Incomplete Applications. The requirements of <u>§55.101(c)</u> <u>§81.100(h)</u> of this title (relating to <u>Applications for Licensure Licensing—General</u>), providing for the deemed withdrawal of an application that is not complete, <u>do not apply</u> <u>are inapplicable</u> to an application for which temporary authority status is conferred.</p> <p>(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.</p>
55.110	81.103	<p>Licensing of Military Service Members, Military Veterans, and Military Spouses</p> <p>(a) Purpose. This section specifies licensing requirements for military service members, military veterans, and military spouses, in accordance with Occupations Code Chapter 55.</p> <p>(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings assigned by <u>Occupations Tex. Occ.</u> Code §55.001.</p> <p>(c) Late Renewal (Reinstatement). As provided by <u>Occupations Tex. Occ.</u> 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 <u>specified prescribed</u> by <u>Finance Tex. Fin.</u> 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 (<u>see §55.103 of this title (relating to Renewal of the License)</u>).</p> <p>(d) Expedited Review and Processing. <u>Occupations Tex. Occ.</u> 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 <u>current</u></p>

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		<p>form prescribed by <u>SML the Commissioner</u> and posted on <u>it's the Department's</u> website (sml.texas.gov), including providing the supporting documentation specified in the form, to enable <u>SML the Department</u> to verify the individual's status as a military service member, military veteran, or military spouse. <u>SML, within The Department, on or before</u> 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:</p> <ul style="list-style-type: none"> (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. <p>(e) Temporary Authority for Military Service Member or Military Spouse. <u>Occupations Tex. Occ.</u> 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 <u>applicable</u> license if the <u>military service</u> member or <u>military</u> 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 (<u>the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act)</u>, 12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)). <u>Occupations Tex. Occ.</u> 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 <u>Occupations Tex. Occ.</u> Code §55.0041 must apply for and seek temporary authority in accordance with <u>Finance Tex. Fin.</u> Code §180.0511 and <u>§55.109 §81.102</u> of this title (relating to Temporary Authority).</p> <p>(f) Substantial Equivalency. For purposes of this section and <u>Occupations Tex. Occ.</u> 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 <u>federal SAFE S.A.F.E. Mortgage Licensing</u> Act (12 U.S.C. §§5501-5117). <u>SML the Department</u> will verify a license issued in another jurisdiction <u>in through</u> NMLS.</p> <p>(g) Credit for Military Experience. As provided by <u>Occupations Tex. Occ.</u> Code §55.007, with respect to an applicant who is a military service member or military veteran, <u>SML the Department</u> 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:</p> <ul style="list-style-type: none"> (1) the pre-licensing <u>education and coursework specified by Finance Code §180.056 and §55.108(a) of this title (relating to Required Education) examination, as provided by Tex. Fin. Code §180.057;</u>

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		<p>(2) the required pre-licensing examination specified by Finance Code §180.057 and §55.108(a) education and coursework, as provided by Tex. Fin. Code §180.056 and §81.104 of this title (relating to Required Education); and</p> <p>(3) continuing education and coursework, specified by Finance Code §180.060 and §55.108(c) as provided by Tex. Fin. Code §180.060 and §81.104 of this title.</p>
55.111	81.108	<p>Background Checks</p> <p>(a) NMLS Background Check; Fingerprints Required. An individual applying for an originator originator's license (applicant) must provide authorization and fingerprints as prescribed by NMLS in order to facilitate conduct a criminal background history check through the Federal Bureau of Investigation. Additionally, an applicant must amend his or her license records (MU4 filing) to provide authorization for SML to obtain the criminal background check in NMLS.</p> <p>(b) Background Checks by SML the Commissioner. Pursuant to Finance Tex. Fin. Code §157.0132 and Government Tex. Gov't Code §411.1385, SML the Commissioner is authorized to separately conduct a criminal background history check through the Texas Department of Public Safety (DPS) as determined in the sole discretion of the Commissioner, and may require the. If requested by SML, applicant must submit to the DPS to provide fingerprints in order to conduct a fingerprint based criminal background history check process, including providing fingerprints and paying any applicable fees to DPS or its designated third-party fingerprint processor to complete the criminal background check process.</p> <p>(c) NMLS Credit Check. An applicant must amend his or her individual applying for an originator's license records (MU4 filing) to provide authorization for SML in the NMLS system for the Department 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.</p> <p>(d) Supplemental Information. An applicant individual applying for an originator's license must provide to the Department, through NMLS, information related to any administrative, civil, or criminal findings or proceedings by a governmental jurisdiction, including any information required by §55.112 §81.109 of this title (relating to Procedures for Review of Background Checks) to SML. The information must be uploaded to NMLS.</p>
55.112	81.109	<p>§55.112 Procedures for Review of Background Checks</p> <p>(a) Purpose and Applicability. This section establishes procedures used utilized by SML to perform the Commissioner and Department staff in performing background checks and review reviewing an individual's criminal background and credit history to determine his or her fitness and eligibility for licensure in accordance with Finance Tex. Fin. Code §157.0132.</p>

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		<p>(b) Supporting Information/Documentation for Criminal Background Check. An In order to facilitate his or her review by the Department, an individual applying for an originator license (applicant) with a criminal history seeking to be licensed by the Department, when requested by SML Department staff, must provide the following information concerning in support of his or her application for each conviction or other criminal proceeding identified by SML Department staff:</p> <p style="margin-left: 40px;">(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</p> <p style="margin-left: 40px;">(2) copies of court records or other documentation reflecting:</p> <p style="margin-left: 80px;">(A) the nature of the criminal offense (including the statutory provisions violated, and the severity or classification of the offense);</p> <p style="margin-left: 80px;">(B) the individual's plea (including any terms or other arrangements for the plea);</p> <p style="margin-left: 80px;">(C) the conviction (judgment or court order);</p> <p style="margin-left: 80px;">(D) the sentence imposed;</p> <p style="margin-left: 80px;">(E) any probation or community supervision imposed (including evidence of compliance); and</p> <p style="margin-left: 80px;">(F) any other action in the proceeding causing final disposition of the case to be deferred.</p> <p>(c) Supporting Information/Documentation for Credit History Check. An applicant In order to facilitate his or her review by the Department, an individual seeking to be licensed by the Department, when requested by SML Department staff, must provide the following information concerning for each financial disclosure made in his or her application for licensure and each credit account on his or her credit report identified by SML Department staff:</p> <p style="margin-left: 40px;">(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;</p> <p style="margin-left: 40px;">(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 together with the financial schedules filed in the proceeding;</p>

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		<p>(3) if a judgment or lien is disclosed, a copy of such judgment or lien filing; and</p> <p>(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.</p> <p>(d) Effect of Providing Supporting Documentation. By providing documentation to <u>SML the Department</u> in accordance with subsections (b) and (c) of this section, the <u>applicant individual</u> 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 <u>SML the Department</u> may rely on in making a decision on the application. By providing such supporting documentation, the <u>applicant individual</u> consents to such documentation being admissible at an adjudicative hearing if the Commissioner seeks to deny the <u>individual's</u> application <u>for licensure</u>, resulting in a contested case, and the <u>applicant is deemed to have waived individual waives</u> any objections concerning the admissibility of such documentation into the administrative record at such adjudicative hearing.</p> <p>(e) Certified Documents. Notwithstanding subsection (d) of this section, the <u>applicant, at his or her own cost, individual seeking to be licensed by the Department</u> must obtain and provide <u>SML the Department</u> with certified or exemplified copies of any documents described in subsections (b) and (c) of this section, upon written request by <u>SML Department staff</u>.</p>
55.113	81.110	<p>Criminal Conviction Guidelines</p> <p>(a) Purpose <u>and Applicability</u>. This section establishes the criteria <u>used utilized</u> by <u>SML to review the Commissioner and Department staff in reviewing</u> an <u>individual's individual with a</u> criminal history to determine his or her eligibility and fitness to be licensed by <u>SML the Department</u> as an originator. This section implements the requirements of <u>Occupations Tex. Occ.</u> Code §53.025, requiring <u>SML the Department</u> to establish guidelines related to such reviews, including designating particular crimes and offenses <u>SML the Department</u> 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.</p> <p>(b) Ineligibility by Operation of Law. The following individuals are ineligible for licensure by operation of law due to his or her criminal history:</p> <p>(1) an individual who, within the <u>7 seven</u> years preceding the date of the application, has been convicted of, or pled guilty or nolo contendere (<u>no contest</u>) to, a felony in a court of this state, another state or territory of the United States,</p>

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		<p>a federal court of the United States, or other foreign, or military court, in accordance with <u>Finance Tex. Fin.</u> Code §180.055(a); and</p> <p>(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 <u>Finance Tex. Fin.</u> 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 <u>Finance Tex. Fin.</u> Code §180.055(a).</p> <p>(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 <u>lender or</u> underwriter <u>that who ultimately</u> 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 <u>completing making</u> 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 <u>a conditional pre-qualification letter prequalification documents</u> 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 <u>interest prevailing</u> 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 <u>to and</u> 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, <u>surveyors</u>, insurance providers, closing/settlement agents, and <u>the</u> 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.</p> <p>(d) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission of Texas and the <u>Department's</u> Commissioner <u>have has</u> determined the following categories of criminal offenses are directly related</p>

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		<p>to the duties and responsibilities of acting as an originator:</p> <ul style="list-style-type: none"> (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. <p>(e) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission of Texas and the Department's Commissioner have has 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 <u>SML</u> the Department 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 <u>SML</u> the Department 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 (<u>10 U.S.C. §801 et seq.</u>), 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.</p> <p>Figure: 7 TAC <u>§55.113(e)</u></p> <p>(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 <u>SML</u> the Department to act as an originator, the Commissioner will consider:</p> <ul style="list-style-type: none"> (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

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		<p>activity of the same type as that in which the individual has previously been involved;</p> <p>(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</p> <p>(5) any correlation between the elements of the crime and the duties and responsibilities of licensed originator.</p> <p>(g) In addition to the factors listed in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Finance Tex. Fin. Code §157.0131 and subsection (h) of this section) is unfit and ineligible for licensure, will consider:</p> <p>(1) the extent and nature of the individual's past criminal activity;</p> <p>(2) the age of the individual when the crime was committed;</p> <p>(3) the amount of time that has elapsed since the individual's criminal activity;</p> <p>(4) the amount of time that has elapsed since the individual's release from incarceration;</p> <p>(5) the conduct and work activity of the individual before and after the criminal activity;</p> <p>(6) evidence of the individual's rehabilitation or rehabilitative efforts;</p> <p>(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 the Department; and</p> <p>(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.</p> <p>(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 Tex. Fin. Code §157.0131, which states that an individual is considered to have been convicted of a criminal offense if:</p>

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		<p>(1) a sentence is imposed on the individual;</p> <p>(2) the individual received probation or community supervision, including deferred adjudication or community service; or</p> <p>(3) the court deferred final disposition of the individual's case.</p> <p>(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 <u>SML the Department</u>, 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.</p> <p>(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 <u>Finance Tex. Fin.</u> Code §180.055(a)(3), and honesty, trustworthiness and integrity in accordance with <u>Finance Tex. Fin.</u> Code §157.012(c)(1).</p>
55.114	81.111	<p>Request for Criminal History Eligibility Determination</p> <p>(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 <u>SML the Department</u> with respect to his or her criminal history prior to formally applying with <u>SML the Department</u> for licensure, as authorized by <u>Occupations Tex. Oce.</u> Code Chapter 53. Pursuant to Occupations Code §53.102, <u>the evaluation contemplated by</u> this section <u>applies is available</u> 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 <u>SML the Department</u>. The Commissioner will not offer advisory opinions concerning criminal convictions or sentences that have not actually occurred.</p> <p>(b) Request for Preliminary Eligibility Determination; Supporting Documentation. The request must be made <u>using on</u> the <u>current</u> form prescribed by <u>SML the Department</u> and <u>posted published</u> on its website (<u>sml.texas.gov</u>). The fee to make a request under this section is <u>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</u></p>

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		<p><u>on SML's website for at least 30 days \$75.</u></p> <p>(c) Review of Request for Preliminary Evaluation. A request made under this section will be reviewed by <u>SML the Commissioner and Department staff</u> to determine the requestor's eligibility <u>using utilizing</u> the same procedures for review of an individual's criminal history when making an application for licensure and is subject to <u>SML's the Department's</u> criminal conviction guidelines <u>set forth in §55.113 §81.110</u> 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 <u>Finance Tex. Fin.</u> Code §157.0131 and <u>§55.113 §81.113</u> of this title (<u>relating to Criminal Conviction Guidelines</u>). The requestor's incarcerated status that would render the individual ineligible for licensure pursuant to <u>Occupations Tex. Occ.</u> Code §53.021(b) will be disregarded; however, <u>SML the Department</u> will consider the implications of the requestor's anticipated release from incarceration in making its determination.</p> <p>(d) Determination of Eligibility. Within 90 days <u>after the date of receipt of</u> the fully-completed request <u>is received, SML</u> will notify the requestor of his or her eligibility to receive a license issued under Finance Code Chapters 157 and 180.</p> <p>(e) Effect of Determination. In the absence of new evidence known but not disclosed by the requestor, or not reasonably available to <u>SML the Department</u> 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 <u>SML the Department</u> 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 <u>Finance Tex. Fin.</u> Code §180.055(a) and <u>§55.113 §81.110</u> of this title (<u>relating to Criminal Conviction Guidelines</u>).</p>
55.200	81.200	<p>§55.200 Required Disclosures</p> <p>(a) Specific Notice to Applicant <u>by Mortgage Banker</u>. <u>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)</u>. An originator sponsored by a mortgage banker <u>registered with SML must provide a mortgage applicant with the notice required by §57.200(b) of this title (relating to Required Disclosures)</u>. 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. <u>under Finance Code, Chapter 157 must provide the following notice to a residential mortgage loan applicant with an initial application for a residential mortgage loan, and the mortgage banker and its sponsored</u></p>

New Section	Old Section	Redline
		<p>originator must maintain in their records, evidence of timely delivery of such disclosure:</p> <p>Figure: §81.200(a)</p> <p>(b) Specific Notice to Applicant by Mortgage Company. An originator sponsored by a mortgage company under Finance Code, Chapter 156 must provide a residential mortgage loan applicant with the notice required by §80.200(a) of this title at the time of the initial application for a residential mortgage loan and must maintain or otherwise ensure the mortgage company maintains in its records, evidence of timely delivery of such disclosure.</p> <p>(c) Posted Notice on Mortgage Banker Websites and Social Media Sites. A mortgage banker or its sponsored originator must post in conspicuous fashion the following notice on each website and social media site of the mortgage banker or sponsored originator that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business by the mortgage banker or sponsored originator, or from which the mortgage banker or sponsored originator advertises to solicit such business, and provided by §81.203 of this title:</p> <p>Figure: 7 TAC §81.200(c)</p> <p>(b) (d) Posted Notice on Mortgage Company Websites and Social Media Sites. An originator sponsored by a mortgage company licensed by SML under Finance Code, Chapter 156 must comply with the requirements of §56.200(c) §80.200(b) 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.</p> <p>(c) (e) Disclosures in Correspondence. An originator must provide the following information on all correspondence sent to a mortgage applicant:</p> <p class="list-item-l1">(1) the name of the <u>mortgage company or mortgage banker or</u> mortgage banker sponsoring the originator <u>and, followed by</u> its NMLS <u>ID</u> identification number; and</p> <p class="list-item-l1">(2) the <u>mortgage company's or mortgage banker's website address, if it has a website;</u> and</p> <p class="list-item-l1">(3) (2) the name of the originator <u>and, followed by the originator's his or her</u> NMLS <u>ID</u> identification number.</p> <p>(f) The determination of what constitutes a mortgage application for purposes of triggering the notice required by subsections (a) and (b) of this section will be made in accordance with federal law determining what constitutes an application for purposes of the Truth in Lending Act, as implemented by the Consumer Financial Protection Bureau in</p>

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		<p>Regulation Z (12 C.F.R. §1026.2).</p> <p>(g) The notice under subsection (c) of this section is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base level domain name), or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. The notice under subsection (c) of this section is deemed to be conspicuously posted on a social media site when it is readily apparent or otherwise easily accessible to the mortgage applicant or prospective mortgage applicant upon visiting the home page, profile page, account page, or similar, on such social media site, without the necessity to review various historical content posted by the mortgage banker or sponsored originator in order to derive the information required by the notice, which may include an interactive link to the information with such link prominently displayed on such home page, profile page, account page, or similar.</p>
55.201	81.201	<p><u>Conditional Pre-Qualification and Conditional Approval Letters Loan Status Forms</u></p> <p>(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). Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant written conformation of conditional pre-qualification shall include the information in Form A, Figure: 7 TAC §81.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. There is no requirement to issue a written confirmation of conditional pre-qualification. Form A or an alternate form may be modified by adding any of the following as needed:</p> <p>Figure: 7 TAC §81.201(a)</p> <p>(1) Any additional aspects of the loan as long as not misleading;</p> <p>(2) Any additional items that the originator has reviewed in determining conditional qualifications; or</p> <p>(3) Any additional terms, conditions, and requirements.</p> <p>(b) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the originator 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, shall include the information in Form B, Figure 7: TAC §81.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. There is no requirement to issue a written notification of conditional loan approval. Form B or an alternate form may be modified by adding the additional information permitted</p>

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		<p>by subsection (a)(1)–(3) of this section, 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 loan approval should not be issued unless the company or 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.</p> <p>Figure: 7 TAC §81.201(b)</p> <p>(c) <u>Duty to Issue Accurate Letters; Caution.</u> 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 a recovery claim under Finance Code Chapter 156, Subchapter F Subsection (a) of this section does not apply to “firm offers of credit,” as that term is defined in 15 U.S.C. §1681a(1).</p>
55.202	81.202	<p><u>Fraudulent, Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings</u></p> <p>(a) <u>Fraudulent, False, Misleading, or Deceptive Practices.</u> The following conduct by a mortgage banker or an originator constitutes fraudulent and dishonest dealings for purposes of Finance Tex. Fin. Code §157.009(d) and §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 Tex. Fin. Code §180.153(1), and a false or deceptive statement or representation for purposes of Finance Tex. Fin. Code §180.153(11):</p> <p class="list-item-l1">(1) knowingly misrepresenting the mortgage banker's or originator's relationship to a residential mortgage loan applicant or any other party to <u>a residential mortgage loan transaction</u> <u>an actual</u> or <u>prospective proposed</u> residential mortgage loan transaction;</p> <p class="list-item-l1">(2) knowingly misrepresenting or understating any cost, fee, interest rate, or other expense <u>to a mortgage applicant</u> <u>or prospective mortgage applicant</u> in connection with a residential mortgage loan applicant's applying for or obtaining a residential mortgage loan;</p> <p class="list-item-l1">(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;</p>

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		<p>(4) knowingly misrepresenting the lien position of a residential mortgage loan or prospective residential mortgage loan;</p> <p>(5) (4) 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 or not to make or acquire a residential mortgage loan;</p> <p>(6) (5) as provided for by the Real Estate Settlement Procedures Act and Regulation X (<u>12 C.F.R. §1024.14</u>), brokering, arranging, or making a residential mortgage loan for in which the originator retains fees or receives other compensation for services which are not actually performed or where the fees or other compensation received bears bear no reasonable relationship to the value of the services actually performed;</p> <p>(7) (6) recommending or encouraging default or delinquency or the continuation of an existing default or delinquency by a residential mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;</p> <p>(8) (7) altering any document produced or issued by SML the Department, unless otherwise permitted by statute or a rule of SML the Department.</p> <p>(9) <u>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);</u></p> <p>(10) <u>using a trigger lead in misleading or deceptive manner by, among other things:</u></p> <p class="list-item-l1">(A) <u>failing to state in the initial communication with the consumer:</u></p> <p class="list-item-l2">(i) <u>the originator's name and mortgage company or mortgage banker on behalf of which the originator is acting;</u></p> <p class="list-item-l2">(ii) <u>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);</u></p> <p class="list-item-l2">(iii) <u>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</u></p> <p class="list-item-l2">(iv) <u>that the purpose of the communication is to solicit new business for the mortgage company or mortgage banker sponsoring the originator;</u></p>

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		<p style="text-align: center;"><u>(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</u></p> <p style="text-align: center;"><u>(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));</u></p> <p style="text-align: center;"><u>(11) (8) engaging in any other practice which the Commissioner, by published interpretation, has determined <u>is fraudulent, to be false,</u> misleading, or deceptive.</u></p> <p>(b) Improper and Unfair Dealings. The following conduct by a mortgage banker or an originator constitutes improper dealings for purposes of Finance Tex. Fin. Code §157.009(d) and §157.024(a)(3) and unfair practices for purposes of Finance Tex. Fin. Code §180.153(2):</p> <p class="list-item-l1">(1) Acting negligently in performing an act requiring for which a license person is required under Finance Code, <u>Chapters 157 or 180 to hold a license;</u></p> <p class="list-item-l1">(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 <u>or a closely related</u> activity, transaction, or subject matter that is governed by the provisions of Finance Code <u>Chapters Chapter</u> 157 or <u>Chapter</u> 180, or this chapter, including, but not limited to:</p> <p class="list-item-l2">(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.);</p> <p class="list-item-l2">(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.);</p> <p class="list-item-l2">(C) Regulation N (12 C.F.R. §1014.1 et seq.);</p> <p class="list-item-l2">(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.);</p> <p class="list-item-l2">(E) Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);</p> <p class="list-item-l2">(F) (A) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) <u>and</u> (B) Regulation X (12 C.F.R. 1024.1 et seq.);</p> <p class="list-item-l2">(G) (C) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.) <u>and</u> (D) Regulation Z</p>

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		<p>(12 C.F.R. §1026.<u>1</u> et seq.);</p> <p><u>(E) Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.);</u></p> <p><u>(F) Regulation B (12 C.F.R. §1002 et seq.);</u></p> <p><u>(H) the FTC's Standards for Safeguarding Customer Information rule (16 C.F.R. §314.1 et seq.);</u></p> <p><u>(I) Finance Code Chapter 158 and Chapter 58 of this title;</u></p> <p><u>(J) Finance Code Chapter 159 and Chapter 59 of this title; and</u></p> <p><u>(K) (G) Texas Constitution, Article XVI, §50 and Chapter 153 of this title;</u></p> <p><u>(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));</u></p> <p><u>(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;</u></p> <p><u>(5) (3) 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 or originator is a "discount point" or otherwise benefits confers a financial benefit on the mortgage applicant unless the loan closes and:</u></p> <p><u>(A) the mortgage company or mortgage banker or mortgage company sponsoring the originator is making the residential mortgage loan (lender) is the lender in the transaction. For purposes of this paragraph, the mortgage banker or mortgage company sponsoring the originator is deemed to be the lender if such entity is the payee as evidenced on the face of the note or other written evidence of indebtedness; or</u></p> <p><u>(B) the mortgage company or mortgage banker or mortgage company sponsoring the originator is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount points point(s) or other fees which the mortgage company or mortgage banker or mortgage company 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;</u></p>

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		<p>(6) (4) Failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant <u>or prospective mortgage applicant</u> concerning the scope and nature of the mortgage banker's or originator's services and any costs.</p> <p>(c) Related Transactions. <u>An A mortgage banker or</u> originator engages in a fraudulent and deceptive dealings for purposes of <u>Finance Tex. Fin.</u> Code §157.009(d) and §157.024(a)(3), deceptive practices for purposes of <u>Finance Tex. Fin.</u> Code §180.153(2), and a scheme to defraud a person for purposes of <u>Finance Tex. Fin.</u> Code §180.153(1) if, when, in connection with the origination of a <u>residential</u> mortgage loan:</p> <p>(1) <u>the The mortgage banker or</u> originator:</p> <p class="list-item-l1">(A) offers other goods or services to a <u>mortgage applicant consumer</u> in a separate but related transaction; and</p> <p class="list-item-l1">(B) the mortgage banker or originator engages in <u>fraudulent, a false</u> misleading, or deceptive <u>acts practice</u> in the related transaction; or</p> <p>(2) <u>the The mortgage banker or</u> originator:</p> <p class="list-item-l1">(A) affiliates with another person that provides goods or services to a <u>mortgage applicant consumer</u> in a separate but related transaction;</p> <p class="list-item-l1">(B) and the affiliated person <u>engages in fraudulent, performs false,</u> misleading, or deceptive acts <u>in that transaction;</u></p> <p class="list-item-l1">(C) and, the mortgage banker or originator <u>to the mortgage transaction</u> knew or should have known of the <u>fraudulent, false,</u> misleading, or deceptive acts <u>of the affiliated person;</u> and</p> <p class="list-item-l1">(D) <u>the originator failed to take appropriate steps to prevent or limit the fraudulent, misleading, or deceptive acts.</u></p> <p>(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. <u>An A mortgage banker or</u> 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 <u>performing residential providing</u> mortgage loan origination services unless otherwise allowable under Regulation X, <u>(12 C.F.R. §1024.14)</u> and <u>Regulation Z (12 C.F.R. §1026.36(d))</u>. 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 <u>their his or her</u> fees legitimately earned and derived from <u>their his or her</u> real estate brokerage or sales agent services to the extent allowable under applicable</p>

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		<p>law governing real estate brokers or sales agents; provided, the payment or other transfer described <u>by this subsection herein</u> occurs as a part of closing and is properly reflected in the closing disclosure <u>for the transaction</u>. If a payment or other transfer described <u>by this subsection herein by an originator acting in the dual capacity of an originator and real estate broker or sales agent</u> occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the originator's fees for <u>residential</u> mortgage <u>loan</u> origination services, and constitutes an improper sharing or splitting of fees with the mortgage applicant. The rebuttable <u>created by this subsection</u> presumption may only be overcome by clear and convincing evidence established by the <u>mortgage banker or</u> originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection <u>(d)</u> is <u>be</u> deemed to constitute improper dealings for purposes of <u>Finance Tex. Fin.</u> Code §157.009(d) and §157.024(a)(3); and unfair practices for purposes of <u>Finance Tex. Fin.</u> Code §180.153(2).</p> <p><u>(e) Education Fraud. The following conduct in connection with the 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):</u></p> <p class="list-item-l1"><u>(1) claiming credit for a pre-licensing education course, pre-licensing examination, or continuing education course the individual did not take; or</u></p> <p class="list-item-l1"><u>(2) taking a pre-licensing education course, pre-licensing examination, or continuing education course on behalf of another individual.</u></p>
55.203	81.203	<p>Advertising</p> <p><u>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).</u></p> <p class="list-item-l1"><u>(a) A mortgage banker or originator that advertises rates, terms, or conditions must comply with the disclosure requirements of Regulation Z.</u></p> <p class="list-item-l1"><u>(b) Any advertisement of residential mortgage loans or for residential mortgage loan origination services which is offered by or through a mortgage banker or originator must conform to the following requirements:</u></p> <p class="list-item-l2"><u>(1) A mortgage banker or originator may only advertise for such products and terms as are actually available and, if availability is subject to any material requirements or limitations, the advertisement must specify those requirements or</u></p>

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		<p>limitations.</p> <p>(2) Except as provided in subsections (c) and (d) of this section, the advertisement must contain:</p> <p>(A) the name of the mortgage banker or mortgage company followed by its NMLS identification number; and</p> <p>(B) the name of the sponsored originator followed by the sponsored originator's NMLS identification number.</p> <p>(3) An advertisement must not make any statement or omit relevant information the result of which is to present a misleading or deceptive representation to consumers.</p> <p>(4) An advertisement must comply with applicable state and federal disclosure requirements.</p> <p>(e) For purposes of this section, an advertisement means a commercial message in any medium that promotes directly or indirectly, a residential mortgage loan transaction or is otherwise designed to solicit residential mortgage loan business for the mortgage banker or originator. This includes "flyers," business cards, or other handouts, and commercial messages delivered by and through a social media site. However, the requirements of subsection (b)(2) of this section do not apply to:</p> <p>(1) any advertisement which indirectly promotes a residential mortgage loan transaction and which contains only the name of the mortgage banker or 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;</p> <p>(2) 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</p> <p>(3) signs located on or adjacent to the mortgage banker's registered office as provided by §81.206 of this title (relating to Office Locations; Remote Work).</p> <p>(d) Advertising Directly by a Mortgage Banker. The provisions of subsection (b) of this section notwithstanding, a mortgage banker may advertise directly to the public and not by and through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section do not apply to such advertisements. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage banker will not be considered an advertisement made directly by a mortgage banker for the purposes of this subsection.</p>

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55.204	81.204	<p>§55.204 Books and Records</p> <p>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.</p> <p>(a) Maintenance of Records, Generally. In order to ensure a mortgage banker or an originator will have all records necessary to facilitate an inspection (including an examination) of an originator, enable the Commissioner or the Commissioner's designee to investigate complaints against a mortgage banker or an originator, and otherwise ensure compliance with the requirements of Finance Code Chapters 157 and 180, and this chapter, a mortgage banker and an originator must maintain records as prescribed by this section.</p> <p>(1) Format. The records required by this section may be maintained by 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.</p> <p>(2) Location. A mortgage banker 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. An originator must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from the main office of the mortgage banker or the mortgage company sponsoring the originator, or the location the mortgage banker or 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 §81.206 of this title (relating to Office Locations; Remote Work), with respect to a mortgage banker, and §80.206 of this title (relating to Office Locations; Remote Work), with respect to a mortgage company.)</p> <p>(3) Production of Records; Disciplinary Action or Violation. All records required by this section must be maintained in good order and produced for the Commissioner or the Commissioner's designee upon request. Failure by an 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 the Department may be treated as a failure by the mortgage banker to provide evidence in violation of</p>

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		<p>the requirements of Finance Code §157.0022(b).</p> <p>(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.</p> <p>(5) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage banker or originator 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.</p> <p>(6) Compliance by the Mortgage Banker or Mortgage Company on Behalf of the Originator. An originator fulfills the requirements of subsection (b) of this section if his or her sponsoring mortgage banker or mortgage company maintains the required books and records on behalf of the originator.</p> <p>(b) Required Records of an Originator. An originator is required to maintain the following items:</p> <p>(1) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means all entries must be made within no more than 7 days from the date on which the matters they relate to occurred), setting forth, at a minimum:</p> <p>(A) the name and contact information of each mortgage applicant;</p> <p>(B) the date of the initial loan application;</p> <p>(C) the full name of the originator who took the initial loan application, and his or her NMLS identification number;</p> <p>(D) a description of the purpose for the loan (e.g., purchase, refinance, construction, home equity, home improvement, land lot loan, wrap mortgage loan, etc.);</p> <p>(E) a 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));</p> <p>(F) the lien type (e.g., first lien, second lien, or wrap mortgage);</p> <p>(G) a description of the current status or disposition of the loan application (e.g., in process, withdrawn, closed, or</p>

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		<p>denied); and</p> <p>(H) if the loan is closed, the identity of the person who initially funded and/or acquired the loan;</p> <p>(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:</p> <p>(A) All Transactions. For all transactions, the following records:</p> <p>(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);</p> <p>(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;</p> <p>(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);</p> <p>(iv) for an originator sponsored by a mortgage banker, the disclosure statement required by Finance Code §157.0021 and §81.200(a) of this title (relating to Required Disclosures); or, for an originator sponsored by a mortgage company, the disclosure statement required by Finance Code §156.004 and §80.200(a) of this title (relating to Required Disclosures), signed and dated by each mortgage applicant and the sponsored originator;</p> <p>(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 §81.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage banker, or Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage company;</p> <p>(vi) if provided to a mortgage applicant or prospective mortgage applicant, the Conditional Approval Letter, or similar, as specified by Finance Code §157.02012 and §81.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage banker, or Finance Code §156.105 and §80.201 of this title (relating to Loan Status Forms), with respect to an originator sponsored by a mortgage company;</p> <p>(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</p>

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		<p>application or its ultimate disposition (e.g., fee agreements, rate lock agreements, or similar documents);</p> <p>(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;</p> <p>(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;</p> <p>(x) consumer reports or credit reports obtained in connection with the loan or prospective loan, and if a fee is paid by or imposed on the mortgage applicant, invoices/receipts for the purchase of the consumer report or credit report;</p> <p>(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;</p> <p>(xii) invoices and proof of payment for third party fees paid by or imposed on the mortgage applicant;</p> <p>(xiii) refund checks issued to the mortgage applicant;</p> <p>(xiv) if applicable, the risk based pricing notice required by Regulation V, 12 C.F.R. §1022.72;</p> <p>(xv) if applicable, invoices for independent loan processors or underwriters;</p> <p>(xvi) if the originator or the mortgage banker or mortgage company sponsoring the 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) and §156.303(a)(13);</p> <p>(xvii) the initial privacy notice required by Regulation P, 12 C.F.R. §1016.4 or 16 C.F.R. §313.4;</p> <p>(xviii) the mortgage applicant's written authorization to receive electronic documents;</p> <p>(xix) records reflecting compensation paid to employees or independent contractors in connection with the transaction;</p> <p>(xx) any other agreements, notices, disclosures, or affidavits required by federal or state law in connection with the transaction; and</p>

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		<p>(xxi) any written agreements or other records governing the origination of the loan or prospective loan;</p> <p>(B) Lender Transactions. For transactions where the mortgage banker or mortgage company sponsoring the originator acted as the lender, the following records:</p> <ul style="list-style-type: none"> (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 receipts/invoices 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; <p>(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:</p> <ul style="list-style-type: none"> (i) the initial Truth in Lending statement for home equity lines 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);

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		<p>(vii) the notice of right to rescission required by Regulation Z, 12 C.F.R. §1026.15 or §1026.23;</p> <p>(viii) for high-cost mortgage loans, the disclosures required by Regulation Z, 12 C.F.R. §1026.32(c);</p> <p>(ix) for high-cost mortgage loans, the certification of counseling required by Regulation Z, 12 C.F.R. §1026.34(a)(5)(i); and</p> <p>(x) any other notice or disclosure required by TILA or Regulation Z;</p> <p>(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:</p> <ul style="list-style-type: none"> (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; <p>(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:</p> <ul style="list-style-type: none"> (i) the notice of incompleteness required by Regulation B, 12 C.F.R. §1002.9(e)(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); <p>(F) Home Equity Transactions. For home equity loan or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 refers to Article XVI, Section 50, Texas Constitution):</p> <ul style="list-style-type: none"> (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

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		<p>required by Regulation Z fulfills this requirement);</p> <p>(ii) the consumer disclosure required by Section 50(g) and §153.51 of this title (relating to Consumer Disclosure: Section 50(g));</p> <p>(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));</p> <p>(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));</p> <p>(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);</p> <p>(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)); and</p> <p>(vii) 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));</p> <p>(G) Wrap Mortgage Loans. For wrap mortgage loan transactions subject to the requirements of Finance Code Chapter 159, the following records:</p> <p>(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;</p> <p>(ii) the disclosure statement required by Tex. Prop. 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</p>

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		<p>(iii) documents evidencing that the wrap mortgage loan was closed by an attorney or a title company, as required by Finance Code §159.105;</p> <p>(H) Home Improvement Loans. For home improvement transactions (including repair, renovation, and new construction), the following records:</p> <ul style="list-style-type: none"> (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 Article XVI, Section 50(a)(5)(C), Texas Constitution (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; <p>(I) Reverse Mortgages. For reverse mortgage transactions, the following records:</p> <ul style="list-style-type: none"> (i) the disclosure required by Article XVI, Section 50(k)(9), Texas Constitution; (ii) the certificate of counseling required by Article XVI, Section 50(k)(8), Texas Constitution; (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; <p>(3) Other Records Required by Federal Law. An originator 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:</p> <ul style="list-style-type: none"> (A) the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.); (B) 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 regulations of the Federal Trade Commission (16 C.F.R. §313.1 et seq.);

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		<p>(C) 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.); and</p> <p>(D) Regulation N (Mortgage Acts and Practices Advertising (MAP Rule); 12 C.F.R. §1014.1 et seq.); and</p> <p>(4) Other Records of an Originator Designated by the Commissioner. An originator must maintain such other books and records as the Commissioner or the Commissioner's designee may, from time to time, specify in writing.</p> <p>(e) Required Records of a Mortgage Banker. A mortgage banker must maintain the following records:</p> <p>(1) General Business Records. General business records include:</p> <p>(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to residential mortgage loan origination business;</p> <p>(B) 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;</p> <p>(C) all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees of the mortgage banker, independent contractors, and all others compensated by the mortgage banker in connection with residential mortgage loan origination business;</p> <p>(D) 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;</p> <p>(E) 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;</p> <p>(F) all reports of audits, examinations, inspections, reviews, investigations, or similar, performed by any third party, including any regulatory or supervisory authorities;</p> <p>(G) 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</p> <p>(H) policies and procedures related to the origination of residential mortgage loans by the mortgage banker and its</p>

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		<p>sponsored originators, including, but not limited to:</p> <p class="list-item-l1">(i) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));</p> <p class="list-item-l1">(ii) anti-money laundering program (31 C.F.R. §1029.210);</p> <p class="list-item-l1">(iii) information security program (16 C.F.R. §314.3(a));</p> <p class="list-item-l1">(iv) ability to repay underwriting policies, if any (Regulation Z, 12 C.F.R. §1026.43(c));</p> <p class="list-item-l1">(v) quality control policy, if any;</p> <p class="list-item-l1">(vi) compliance manual, if any; and</p> <p class="list-item-l1">(vii) personnel administration/employee policies, if any;</p> <p class="list-item-l1">(2) 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 §80.206 of this title (relating to Office Locations; Remote Work); and</p> <p class="list-item-l1">(3) Records Concerning Remote Work. A mortgage banker must maintain records reflecting its compliance with the requirements for remote work, as provided by §80.206 of this title (relating to Office Locations; Remote Work).</p> <p class="list-item-l1">(d) Records Retention After Terminating Operations. Within 10 days of terminating operations, a mortgage banker or originator must provide the Department with written notice of where the required records will be maintained for the prescribed period. If such records are transferred to another mortgage banker registered with the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.</p>
55.205	81.205	<p>Mortgage Call Reports</p> <p class="list-item-l1">(a) <u>Purpose.</u> This section clarifies and establishes requirements related to the mortgage call reports an originator is required to file under Finance Code §180.101.</p> <p class="list-item-l1">(b) <u>Fulfillment by Mortgage Company or Mortgage Banker.</u> 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</p>

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		<p><u>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.</u></p> <p><u>(a) Call Report.</u></p> <p><u>(1) A mortgage banker must file a mortgage call report on a quarterly basis. The filing deadlines are set by NMLS.</u></p> <p><u>(2) A call report is required to be filed for each quarter a license is held, including partial quarters.</u></p> <p><u>(3) The call report must be submitted through and in the manner and form prescribed by NMLS.</u></p> <p><u>(b) Statement of Condition Report.</u></p> <p><u>(1) A mortgage banker must file a statement of condition on an annual basis.</u></p> <p><u>(2) A statement of condition report is required to be filed for each year a license is held, including partial years.</u></p> <p><u>(3) The statement of condition report must be submitted through and in the manner and form prescribed by NMLS.</u></p> <p><u>(c) Submission of a call report or statement of condition report, by a mortgage banker, satisfies the requirements of an originator sponsored by the mortgage banker to submit a mortgage call report, as required by Tex. Fin. Code §180.101 for the period of sponsorship, provided that the sponsored originator's information is included in the report.</u></p> <p><u>(d) Failure to file a mortgage call report or statement of condition report may result in disciplinary action including, but not limited to, imposition of an administrative penalty.</u></p>
55.300	81.300(a)-(e), (g), and (h)	<p>Examinations</p> <p>(a) <u>Purpose. This section clarifies and establishes requirements related to examinations of an originator conducted by SML under Finance Code §157.021. The Commissioner, or the Commissioner's designee(s), will conduct periodic examinations of an originator as the Commissioner deems necessary.</u></p> <p>(b) <u>State Examination System (SES). Examinations are conducted in SES (stateexaminationsystem.org). The</u></p>

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		<p><u>mortgage company or mortgage banker sponsoring the originator must use SES to facilitate the examination.</u></p> <p><u>(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.</u></p> <p><u>(d) (b) Notice of Examination. Except when <u>SML the Department</u> determines that giving advance notice would impair the examination, <u>SML the Department</u> 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 <u>SML's the Department's</u> examiners are scheduled to begin the examination. Failure to <u>actually</u> 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.</u></p> <p><u>(e) (e) Examination Scope. Examinations will be conducted to determine compliance with Finance Code, Chapters <u>156</u>, 157 and 180, and this chapter, and will specifically address whether:</u></p> <ul style="list-style-type: none"> <u>(1) all persons conducting residential mortgage loan origination activities are properly licensed and sponsored;</u> <u>(2) all office locations are properly licensed or registered, as provided by <u>§56.206 §80.206</u> of this title (relating to <u>Physical Office Locations; Remote Work</u>) and <u>§57.206 §81.206</u> of this title (relating to Physical Office Locations; Remote Work);</u> <u>(3) all required books and records are being maintained in accordance with <u>§56.204 §80.204</u> of this title (<u>relating to Books and Records</u>) and <u>§57.204</u> of this title (<u>relating to Books and Records</u>);</u> <u>(4) legal and regulatory requirements applicable to the originator and the mortgage banker or mortgage company sponsoring the originator are being properly followed (<u>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</u>); and</u> <u>(5) other matters as <u>SML and its examiners the Commissioner may</u> deem necessary or advisable to carry out the purposes of Finance Code, Chapters <u>156</u>, 157, and 180.</u> <p><u>(f) (d) Loan Sample. The examiners will review a sample of residential mortgage loan files identified by the examiners and randomly selected from the mortgage transaction log <u>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</u></u></p>

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		<p><u>with SML.</u> The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.</p> <p>(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.</p> <p>(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 required or expressly permitted by law.</p> <p>(g) 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.</p> <p>(h) Reimbursement for Costs. <u>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.</u> When the examiners the Department must travel outside of Texas to conduct an examination of an originator because the required records are maintained at a location outside of Texas, <u>SML the Department</u> 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. <u>Any such costs will be assessed against the originator in NMLS and must be paid in NMLS.</u></p>
55.301	81.301	<p>Investigations</p> <p>(a) Purpose. <u>This section clarifies and establishes requirements related to investigations of an originator conducted by SML under Finance Code §157.021.</u></p> <p>(b) Reasonable Cause. <u>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 creditable 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. The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 157 and this chapter.</u> (c) <u>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 157.</u></p> <p>(c) (a) <u>Investigation Methods.</u> Investigations will be conducted as <u>SML deems appropriate based on in light of</u></p>

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		<p>all the relevant facts and circumstances then known. <u>An Such</u> investigation may include <u>any or all of the following:</u></p> <ul style="list-style-type: none"> (1) review of documentary evidence; (2) interviews with complainants, <u>respondents, licensees,</u> and third parties, <u>and the taking of sworn written statements;</u> (3) obtaining <u>information from reports, advice, and other comments and assistance of</u> other state <u>or</u> and/or federal <u>agencies, regulatory authorities, or self-regulatory organizations enforcement, or oversight bodies;</u> <u>(4) requiring complainants or respondents to provide explanatory, clarifying, or supplemental information; and</u> <u>(5) (4) other lawful investigative methods SML techniques as the Commissioner reasonably deems necessary or and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.</u>
55.302	81.300(f)	<p><u>Confidentiality of Examination, Investigation, and Inspection Information</u></p> <p><u>(a) Purpose.</u> 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.</p> <p><u>(b) Confidential Information.</u> 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):</p> <ul style="list-style-type: none"> <u>(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;</u> <u>(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</u>

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		<p><u>entity under §55.303 of this title (relating to Corrective Action);</u></p> <p><u>(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.</u></p> <p><u>(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).</u></p>
55.303	New	<p><u>Corrective Action</u></p> <p><u>(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.</u></p> <p><u>(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</u></p> <p><u>(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:</u></p> <p style="padding-left: 2em;"><u>(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 originator 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 originator 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</u></p>

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		<p><u>(2) Wire Transfer or ACH.</u> The refund may be made by wire transfer or automated clearing house (ACH) payment to the mortgage applicant's verified bank account. The originator must capture and maintain records evidencing the payment, including any transaction receipt, confirmation page, or similar, reflecting:</p> <ul style="list-style-type: none"> <u>(A) name of the sender and any relevant contact information;</u> <u>(B) sender's bank information (institution, routing number, and account number);</u> <u>(C) name of the recipient and any relevant contact information;</u> <u>(D) recipient's bank information (routing number and account number); and</u> <u>(E) the transaction reference number or confirmation code.</u>
55.310	81.302(c)	<p>Hearings and Appeals</p> <p><u>(a) Purpose.</u> 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.</p> <p><u>(b) The following appeal deadlines apply:</u></p> <ul style="list-style-type: none"> <u>(1) License Denials.</u> 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. <u>(2) Order of Suspension for Violation of Final Order.</u> 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. <u>(3) Notice of Suspension for Criminal Offense Involving Fraud, Theft, or Dishonesty.</u> A notice of suspension issued under Finance Code §156.303(k) must be appealed within 15 days after the date the notice is issued. <u>(4) Notice of Disciplinary Action.</u> 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. <u>(5) Order for Disciplinary Action (Order to Take Affirmative Action or Order to Cease and Desist).</u> 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

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		<p><u>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.</u></p> <p><u>(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.</u></p> <p><u>(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).</u></p> <p><u>(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.</u></p> <p><u>(e) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final without further action and cannot be appealed.</u></p>
55.311	81.302(a) and (b)	<p>Hearings and Appeals</p> <p>(a) <u>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 As determined by the Commissioner, hearings may be conducted in accordance with Chapter 9 of this title including, but not limited to, motions for rehearing, notices of appeal, and applications for review. All hearings shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in Chapter 9 of this title are incorporated herein by reference for all purposes.</u></p> <p>(b) <u>Hearing Costs for License Denials. Hearing costs assessed against an individual under Finance Code §157.017(f)</u></p>

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		<p><u>include:</u></p> <p class="list-item-l1">(1) <u>filing fees;</u></p> <p class="list-item-l1">(2) <u>the costs of a court reporter;</u></p> <p class="list-item-l1">(3) <u>the costs of the administrative law judge (ALJ) or hearings officer presiding over the hearing;</u></p> <p class="list-item-l1">(4) <u>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;</u></p> <p class="list-item-l1">(5) <u>the cost of any outside counsel retained to represent SML; and</u></p> <p class="list-item-l1">(6) <u>the cost of any expert witness retained by SML.</u></p> <p class="list-item-l1">(c) <u>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.</u></p> <p class="list-item-l1">(b) <u>If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.</u></p>