



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 56 RESIDENTIAL MORTGAGE LOAN COMPANIES

NEW SECTION	OLD SECTION	REDLINE
56.1	80.1	<p><u>Purpose and Applicability Scope</u></p> <p>This chapter governs <u>SML's administration and enforcement of Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act (other than Subchapters F and G), concerning the</u> licensing, registration, and <u>operations</u> conduct of mortgage companies, financial services companies, credit union subsidiary organizations, auxiliary mortgage loan activity companies, and independent contractor <u>loan processor or underwriter companies (each a residential mortgage loan company)</u> processors and underwriters under Finance Code, Chapter 156. This chapter applies to persons licensed by SML as a residential mortgage loan company or those required to be licensed. Pursuant to <u>Finance Tex. Fin. Code §156.2012(d) §156.2012(b)(7)</u> a <u>person</u> company registered with <u>SML</u> the Department as a financial services company is subject to the requirements of this chapter as if the company were licensed by <u>SML</u> the Department as a <u>residential</u> mortgage <u>loan</u> company and the rules contained in this chapter must be construed accordingly.</p>
56.2	80.2	<p><u>Definitions</u></p> <p><u>For purposes of As used in</u> this chapter, and in <u>SML's</u> the Commissioner's administration and enforcement of Finance Code, Chapter 156 <u>(other than Subchapters F and G)</u>, the following definitions apply, unless the contest clearly indicates otherwise terms have the meanings indicated:</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(1) "Application," as used in <u>Finance Tex. Fin.</u> Code §156.002(14) and paragraphs (9) and (22) paragraph (18) of this section means a request, in any form, for an offer (or a response to a solicitation of for an offer) of residential mortgage loan terms, and the information about the mortgage applicant that is customary or necessary in a decision on whether to make such an offer, including, but not limited to, a mortgage applicant's name, income, social security number to obtain a credit report, property address, an estimate of the value of the real estate, or and/or 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) "Commissioner's designee" means an employee of the Department performing his or her duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.</p> <p>(3) (4) "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.</p> <p>(4) (5) "Control person" means an individual that directly or indirectly exercises control over a mortgage company. Control is defined by the power, directly or indirectly, to direct the management or policies of a mortgage company, whether through ownership of securities, by contract, or otherwise. Control person includes any person that:</p> <p>(A) is a director, general partner, or executive officer;</p> <p>(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;</p> <p>(C) in the case of <u>a limited liability company an LLC</u>, is a <u>manager or</u> managing member; or</p> <p>(D) in the case of a partnership, has the right to receive upon dissolution, or has had contributed, 10% or more of the partnership's capital assets.</p> <p>(6) "Department" means the Department of Savings and Mortgage Lending.</p> <p>(5) (7) "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>(6) "E-Sign Act" refers to the federal <u>Electronic Signature in Global and National Commerce Act (15 U.S.C. §7001</u></p>

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		<p><u>et seq.</u></p> <p><u>(7) "Engage in or conduct the business of a mortgage company" or "engage in or conduct the business of residential mortgage loan origination," or any similar derivative or variation of those terms, means to contract for (as provider), provide, or offer to contract for or provide, residential mortgage loan origination services for compensation or gain or with the expectation of compensation or gain.</u></p> <p><u>(8) "Making a residential mortgage loan," or any similar derivative or variation of that term, means when a person determines the credit decision to provide the residential mortgage loan, or the act of funding the residential mortgage loan or transferring money to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the residential mortgage loan.</u></p> <p><u>(9) (8) "Mortgage applicant" has the meaning assigned by Finance Tex. Fin. Code §156.002 and includes a person who contacts a mortgage company or its sponsored originator in response to a solicitation to obtain a residential mortgage loan, and a person who has not completed or started completing a formal loan application on the appropriate form (e.g., Fannie Mae's Form 1003 Uniform Residential Loan Application), but has submitted financial information constituting an application, as provided by paragraph (1) of this section.</u></p> <p><u>(10) "Mortgage banker" has the meaning assigned by Finance Code §156.002.</u></p> <p><u>(11) (9) "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Finance Code §156.002.</u></p> <p><u>(12) (10) "Nationwide Multistate Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Finance Tex. Fin. Code §156.002 in defining "Nationwide Mortgage Licensing System and Registry."</u></p> <p><u>(13) (11) "Offers or negotiates the terms of a residential mortgage loan," as used in Finance Tex. Fin. Code §156.002(14), means, among other things, when an individual:</u></p> <p>(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;</p> <p>(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees, and other costs); or</p> <p>(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the</p>

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		<p>purpose of reaching a mutual understanding about particular residential mortgage loan terms.</p> <p>(14) (42) "Originator" has the meaning assigned by <u>Finance Tex. Fin. Code §156.002</u> in defining "residential mortgage loan originator." Paragraphs (13) (41) and (22) (48) 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. Code §180.002(19)(B)</u>, are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by <u>Finance Tex. Fin. Code §180.003</u> are exempt for purposes of this chapter, except as otherwise provided by <u>Finance Tex. Fin. Code §180.051</u>.</p> <p>(15) (43) "Person" <u>has the meaning assigned by Finance Code §180.002</u> means an individual, corporation, company, limited liability company, partnership, or association.</p> <p>(15) (43) "Qualifying Individual" or "Qualified Individual" has the meaning assigned by <u>Finance Tex. Fin. Code §156.002</u> in defining "qualifying individual." Additionally, the license held by the Qualifying Individual must be held in a status which authorizes him or her to conduct regulated activities, and the individual sponsored of record in NMLS by the mortgage company for which he or she is acting as the Qualifying Individual.</p> <p>(16) (44) "Residential mortgage loan <u>Mortgage Loan</u>" has the meaning assigned by <u>Finance Tex. Fin. Code §180.002</u> 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>(17) (45) "Residential real estate" has the meaning assigned by <u>Finance Tex. Fin. Code §156.002</u> 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> <p>(18) (46) "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage company or sponsored originator does not typically own the hosting platform but otherwise exerts editorial control or influence over the content within their account, profile, or other space on the digital platform, from which the mortgage company or sponsored originator posts commercial messages or other content designed to solicit business.</p> <p>(20) <u>"SML" means the Department of Savings and Mortgage Lending.</u></p> <p>(21) <u>"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</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>to facilitate the examination process.</u></p> <p><u>(22) (48) "Takes a residential mortgage loan application," as used in Finance Tex. Fin. Code §156.002(14) in defining "residential mortgage loan originator"; means when an individual receives a residential mortgage loan application for the purpose of facilitating a decision on whether to extend an offer of residential mortgage loan terms to a mortgage applicant or prospective mortgage applicant, whether the application is received directly or indirectly from the mortgage applicant or prospective mortgage applicant, and regardless of whether or not a particular lender has been identified or selected.</u></p> <p><u>(23) "Trigger lead" means information concerning a consumer's credit worthiness (consumer report) compiled by a credit reporting agency (consumer reporting agency), obtained in accordance with the federal Fair Credit Reporting Act (15 U.S.C. §1681b(c)(1)(B)) that is not initiated by the consumer but, instead, is triggered by an inquiry to a consumer reporting agency in response to an application for credit initiated by the consumer in a separate transaction. The term does not include a consumer report obtained by a mortgage company licensed by SML or a mortgage banker registered with SML in response to an application for credit made by a consumer with that mortgage company or mortgage banker or that is otherwise authorized by the consumer.</u></p> <p><u>(24) "UETA" refers to the Texas Uniform Electronic Transactions Act, Business & Commerce Code Chapter 322.</u></p> <p><u>(25) "Wrap lender" has the meaning assigned by Finance Code §159.001.</u></p> <p><u>(26) "Wrap mortgage loan" has the meaning assigned by Finance Code §159.001.</u></p>
56.3	New	<p><u>Formatting Requirements for Notices</u></p> <p><u>Any notice or disclosure (notice) required by Finance Code Chapter 156, or this chapter, must be made in at least 12-point font using an easily readable typeface. A font point generally equates to 1/72 of an inch. If Finance Code Chapter 156, or this chapter, prescribes a form for the notice, the notice must closely follow the font types used in the form. For example, where the form uses bolded, underlined, or "all caps" font type, the notice or disclosure must be made using those font types. The following typefaces are deemed to be easily readable for purposes of this section (list is not exhaustive and other typefaces may be used; provided, the typeface is easily readable):</u></p> <p><u>(1) Arial;</u></p> <p><u>(2) Aptos;</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(3) Calibri;</u></p> <p><u>(4) Century Schoolbook;</u></p> <p><u>(5) Garamond;</u></p> <p><u>(6) Georgia;</u></p> <p><u>(7) Lucinda Sans;</u></p> <p><u>(8) Times New Roman;</u></p> <p><u>(9) Trebuchet; and</u></p> <p><u>(10) Verdana.</u></p>
56.4	New	<p><u>Electronic Delivery and Signature of Notices</u></p> <p><u>Any notice or disclosure required by Finance Code Chapter 156, or this chapter, may be provided and signed in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and E-Sign Act include requirements for electronic signatures and delivery.</u></p>
56.5	New	<p><u>Computation of Time</u></p> <p><u>The calculation of any time period measured in days by Finance Code Chapter 156, or this chapter, is made using calendar days, unless clearly stated otherwise. In computing a period of calendar days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, unless clearly stated otherwise.</u></p>
56.6	80.4	<p>Enforceability of Liens</p> <p>A violation of <u>Finance Code Chapter 156</u>, or this chapter, does shall not render an otherwise lawfully taken lien <u>invalid or</u> unenforceable.</p>
56.100	80.100(a) and 80.107(c)	<p>Licensing <u>Requirements</u> –General</p> <p>(a) <u>License Required.</u> A person, <u>unless exempt as provided by Finance Code §156.202</u>, is required to be licensed</p>

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		<p><u>as a mortgage company</u> under Finance Code, Chapter 156 if the person <u>engages</u> (1) Engages in <u>or conducts the business of a mortgage company or advertises or holds that person out to the public as engaging in or conducting the business of residential mortgage loan origination concerning a loan or prospective loan secured or designed to be secured by residential real estate on real property</u> located in the state of Texas, including, but not limited to:</p> <p><u>(1) (2) representing represents or holding that person holds himself out to the public through advertising or other means of communication as a mortgage company “loan officer,” “mortgage consultant,” “mortgage broker,” “loan modification/refinance consultant,” or otherwise represents that the individual can or will perform the activities of a residential mortgage loan originator; and</u></p> <p><u>(2) receiving compensation for engaging in or conducting the business of residential mortgage loan origination (a person must be licensed at the time it receives compensation even if the compensation relates to services provided when the person was licensed).</u></p> <p>(3) Provides disclosures to a prospective borrower or discusses or explains such disclosures. 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 a prospective borrower shall not be deemed to have produced a disclosure for purposes of this paragraph;</p> <p>(4) Determines the lender(s) or investor(s) to whom the loan will be submitted;</p> <p>(5) Issues or signs a prequalification letter or preapproval letter; or</p> <p>(6) Is a loan processor or underwriter who is an independent contractor.</p> <p><u>(b) Branch Office License Required. A mortgage company must apply for and obtain a branch office license for each office constituting a branch office of the mortgage company for purposes of §56.206 of this title (relating to Office Locations; Remote Work).</u></p> <p><u>(c) Securing the Services of an Originator. A person making a residential mortgage loan (lender), other than a wrap lender making a wrap mortgage loan, or the maker of a secondary mortgage loan subject to the requirements of Finance Code Chapter 342, is not required to be licensed as a mortgage company if the lender secures the services of a licensed mortgage company or registered mortgage banker authorized to originate the loan and that mortgage company or mortgage banker, and not the lender, fulfills the functions of origination by actually providing residential mortgage loan origination services in connection with the loan. However, if the lender owns the residential real estate</u></p>

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		<p><u>securing the loan and has exceeded the limit for exempt transactions as provided by Finance Code §156.202(a-1)(3), the lender must be licensed under Finance Code Chapter 156, regardless of whether the lender has secured the services of an originator as provided by this subsection.</u></p>
56.101	80.100(b), (c), and (g)	<p><u>Applications for Licensure</u></p> <p><u>(a) (b) NMLS. Applications for licensure a company or an originator license must be submitted through NMLS the Nationwide Mortgage Licensing System and Registry and must be made using the current form prescribed by NMLS on the prescribed application forms. SML has published application checklists on the NMLS Resource Center website (nationwidelicensingsystem.org; viewable on the "State Licensing Requirements" webpage) which outline the requirements to submit an application. Applicants must comply with requirements in the checklist in making the application.</u></p> <p><u>(b) (g) Supplemental Information. SML The Commissioner may require such additional, clarifying, or supplemental information or documentation from any applicant for the issuance of any license pursuant to Finance Code, Chapter 156 as is deemed necessary or appropriate advisable to determine that the licensing requirements of Finance Code, Chapter 156 are have been met.</u></p> <p><u>(c) 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 is complete only if all required information and supporting documentation is included and all required fees are have been received by the department. If an application is incomplete, SML will send written notice to the applicant specifying the additional information, documentation, or fee required to render the application complete. The application may be deemed withdrawn and any fee paid will be forfeited if the an applicant fails to provide the additional information, documentation, or fee within 30 days after the date written notice is sent to the applicant as provided by this subsection to the department, within 30 days from the date of the request, any information or supplemental documentation.</u></p>
56.102	80.105(a)-(c)	<p><u>Fees</u></p> <p><u>(a) License Fees. The license fee is determined License fees will be established by the Commissioner in an amount not to exceed the maximum amount specified by Finance Code §156.203(b), exclusive of fees charged by NMLS, as described in subsection (b) of this section in accordance with Finance Code Chapter 156. 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.</u></p>

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		<p><u>(b) NMLS Fees. NMLS charges a fee to process the application. Such fee is determined by NMLS and must be paid by the applicant at the time it files the application. The current fee is set in NMLS and posted on the NMLS Resource Center website (nationwidelicensingsystem.org).</u></p> <p><u>(c) (b) All fees are nonrefundable and nontransferable.</u></p> <p><u>(d) (e) Insufficient Funds Fee. The Commissioner may, in addition to taking 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 clearinghouse (ACH) payment. A fee assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.</u></p>
56.103	80.106(a), (b), and (d)	<p><u>Renewal of the License Renewals</u></p> <p>(a) A license may be renewed <u>on upon</u>:</p> <p>(1) <u>timely</u> submission of a completed <u>renewal</u> application (<u>renewal request</u>) <u>in through</u> NMLS together with payment of <u>all required fees the applicable renewal application fee</u>; and</p> <p>(2) a determination <u>by SML</u> that the <u>mortgage company applicant</u> continues to meet the minimum requirements for licensure, <u>including the requirements of Finance Code §§156.2041(a), 156.2042(a), 156.2042(a), 156.2043(a), or 156.2044(a), as applicable, and 156.208(a-1).</u></p> <p><u>(b) Application of §56.101. A renewal request is a license application subject to the requirements of §56.101 of this title (relating to Applications for Licensure). A renewal request withdrawn under §56.101(c) of this title will be rejected in NMLS.</u></p> <p><u>(c) (b) Commissioner's Discretion to Approve with a Deficiency; Conditional License. The Commissioner may, in his or her sole discretion, approve a renewal request application with one or more deficiencies a deficiency the Commissioner deems to be relatively minor and in nature so as to allow the mortgage company licensee to continue conducting regulated activities under the license while the mortgage company works diligently to resolve the deficiencies deficiency is resolved. An application approved by the Commissioner under this subsection with a pending deficiency will be assigned the in NMLS the license status code "Approved - Deficient." Approval under this subsection of the application by this method does not relieve the mortgage company licensee of the obligation to resolve the deficiencies deficiency noted. A license approved under this subsection is deemed to be a conditional license for which the mortgage company, in order to maintain the license, must resolve the deficiencies within 30 days after the date the license is approved unless an extension of time is granted by the Commissioner. Failure to timely resolve the deficiencies such deficiency constitutes grounds for the Commissioner to suspend or revoke take</u></p>

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		<p>disciplinary action against the licensee, including suspension or revocation of the license.</p> <p>(d) Reinstatement. This section applies <u>The provisions of this section also apply</u> to a person seeking reinstatement of an expired a recently-expired license, (assigned the license status "Terminated - Failed to Renew") during the reinstatement period described by Finance Code §156.2081 as provided by Tex. Fin. Code §156.2081, and must should be construed accordingly. A mortgage company license cannot be renewed beyond the reinstatement period; instead, the person must apply for a new license and comply with all current requirements and procedures governing issuance of a new license.</p>
56.104	80.107	<p>NMLS License Records; <u>Notices Sent to the Mortgage Company Notice to Licensee</u></p> <p>(a) NMLS License Status. <u>SML is required to assign a status to the license in NMLS. The license status is displayed in NMLS and on the NMLS Consumer Access website (nmlsconsumeraccess.org). SML is limited to the license status options available in NMLS. The NMLS Resource Center (nationwidelicensingsystem.org) describes the available license status options and their meaning.</u></p> <p>(b) (a) Amendments to <u>NMLS License</u> Records Required. Unless <u>Finance Tex. Fin. Code §156.211</u> applies and requires additional notice, a mortgage company must amend its NMLS license records (MU1 filing) within 10 days after <u>the date of</u> any material change occurs affecting any aspect of the MU1 filing, including, but not limited to:</p> <p>(1) name (which must be accompanied by supporting documentation submitted to <u>SML</u> the Department establishing the name change);</p> <p>(2) the addition or elimination of an assumed name (a/k/a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);</p> <p>(3) the contact information for the mortgage company listed in the MU1 filing under "Identifying Information":</p> <p>(A) principal address (main address);</p> <p>(B) mailing address;</p> <p>(C) phone number;</p> <p>(D) fax number; and</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(E) email address;</p> <p>(4) the contact information listed under "Resident/Registered Agent";</p> <p>(5) the contact information listed under "Contact Employee Information"; and</p> <p>(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).</p> <p>(c) (b) Amendments to MU2 Associations Required. A mortgage company must cause the individuals who are required to register an association with the mortgage company (<u>control persons and Qualified Individuals MU2 filing</u>) to make do so the <u>proper filings in NMLS system using the current form prescribed by NMLS (MU2 filing)</u> and must ensure such associations are amended within 10 days after <u>the date of</u> any material change occurs affecting such associations.</p> <p>(c) Branch Office License Required. A mortgage company must apply for and obtain a branch office license for each office constituting a branch office of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work), which must be licensed prior to conducting operations at such office. The application must be submitted through NMLS and must be made using the appropriate form prescribed by NMLS (MU4 filing). A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after closing a branch office.</p> <p>(d) <u>Notices Sent to the Mortgage Company Notice to Licensee. Any Service of any</u> 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>mortgage company licensee</u> in accordance with this subsection <u>using utilizing</u> the <u>mortgage company'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 mortgage company 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 is will be made <u>using utilizing</u> the email address the mortgage company has designated in its MU1 filing under "<u>Contact Employee Identifying Information</u>" <u>for the contact designated as the "Primary Company Contact."</u> Service by email is complete on transmission of the email to the mortgage company's email service provider; provided, SML the Department does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The mortgage company must has an ongoing duty and a continuing obligation to monitor such email account <u>and including to</u> ensure that emails sent by SML the Department are not lost in a "spam <u>folder</u>" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage company is deemed to have constructive notice of any <u>emails sent by SML to the email address described by this paragraph email correspondence or.</u> <u>A mortgage company is further deemed to have</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p>constructive notice of any NMLS system notifications sent to it by email, the email address it has designated in its MU1 filing listed under "Identifying Information."</p> <p>(2) Service by Mail. Service by mail is made using the address the mortgage company has designated in its MU1 filing under "Contact Employee Information" for the contact designated as the "Primary Company Contact." Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the mortgage company by mail and the document communicates a deadline by or a time during which the mortgage company must perform some act, such deadline or time period for action is extended by 3 three days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.</p>
56.105	80.100(h)	<p><u>Conditional License Licensing--General</u></p> <p>(a) (h) Conditional License; Terms and Conditions. The Commissioner or the Commissioner's designee may, in his or her sole discretion, at their discretion, after reviewing the circumstances of each situation, issue a license on a conditional basis. A conditional license will be assigned the license status "Approved - Conditional" in NMLS. Reasonable terms and conditions for a conditional license include:</p> <p>(1) requiring the mortgage company to undergo additional credit checks or provide evidence of satisfaction concerning a debt, judgment, lien, child support obligation, or other financial delinquency affecting its financial condition;</p> <p>(2) requiring the mortgage company to undergo additional criminal background checks or provide information on a periodic basis or upon request concerning the status of a pending criminal proceeding that might affect its eligibility for licensure;</p> <p>(3) requiring the mortgage company to take other specific action or provide other specified information to address a known deficiency; and</p> <p>(4) requiring the mortgage company to surrender the license upon the occurrence of an event that would render the mortgage company ineligible for the license.</p> <p>(b) Probated Suspensions and Revocations. A license subject to a probated suspension or revocation is deemed to be a conditional license.</p> <p>(c) Conditional License in Lieu of Denial. The Commissioner may issue a license on a conditional basis in lieu of seeking denial of the license where the person applying for the license has the capacity to resolve the deficiency</p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>servicing 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>
56.106	New	<p><u>Surrender of the License</u></p> <p><u>(a) Surrender Request. A mortgage company may seek surrender of the license by filing a license surrender request (request) in NMLS. The request must be made using the current form prescribed by NMLS. SML will review the request and determine whether to grant it. SML may not grant the request if, among other reasons:</u></p> <ul style="list-style-type: none"> <u>(1) the mortgage company is the subject of a pending or contemplated examination, inspection, investigation, or disciplinary action;</u> <u>(2) the mortgage company is in violation of an order of the Commissioner;</u> <u>(3) the mortgage company has failed to pay any administrative penalty, fee, charge, or other indebtedness owed to SML; or</u> <u>(4) the mortgage company has failed to file mortgage call reports as required by §56.205 of this title (relating to Mortgage Call Reports).</u> <p><u>(b) Inactive Status Pending Surrender. If SML does not grant the request or requires additional time to consider the request, the request will be left pending while the issue preventing SML from granting the request is resolved or lapses. During this time, the mortgage company's license will be assigned the license status "Approved - Inactive" in NMLS.</u></p>
56.107	80.101	<p><u>Sponsorship of Originator; Responsibility for Originator's Actions</u></p> <p>(a) Sponsorship Required. A mortgage company acts by and through one or more originators who must be sponsored by the mortgage company in NMLS. To In order to sponsor an originator, the mortgage company must first register a relationship with the originator in NMLS. When a Once such relationship has been registered, the mortgage company may then file a request in NMLS to establish sponsorship of the originator. An originator must make corresponding filings license record amendments in NMLS in order to establish such sponsorship, as provided by this section. Sponsorship is not effective until the sponsorship request has been reviewed and approved by SML the Department. A mortgage company must not allow an individual to act on its behalf in the capacity of an originator</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>until such sponsorship 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>(b) Responsibility for Originator's Actions. By sponsoring an originator, or otherwise allowing an individual to act on its behalf in the capacity of an originator, the that mortgage company and the Qualified Individual for the mortgage company each assumes responsibility for the actions of such originator or individual acting in the capacity of an originator. As provided by Finance Tex. Fin. Code §156.201, all violations of law by an originator or individual acting in the capacity of an originator are deemed to be attributable and imputed to the mortgage company sponsoring the originator or for which the individual acting as an originator was allowed to act, and the Commissioner may seek disciplinary action against the mortgage company, the Qualified Individual for the mortgage company, and the originator simultaneously for the same conduct giving rise to the alleged violation. As a result, a mortgage company and its Qualified Individual are both charged with knowledge of and must ensure compliance by their sponsored originators with the requirements of Finance Code Chapters 157 and 180, and the requirements of SML's the Department's rules concerning pertaining to originators in Chapter 55 84 of this title (relating to Mortgage Bankers and Residential Mortgage Loan Originators).</p> <p>(c) Termination of Sponsorship. Sponsorship may be terminated by either the sponsoring mortgage company or the sponsored originator. If sponsorship is terminated, the party terminating the sponsorship must immediately notify SML of the termination by making a filing make a license record amendment in NMLS to show the sponsorship as has been terminated in the system, as provided by Finance Tex. Fin. Code §156.211 and §157.019.</p> <p><u>(d) Failure to Maintain Sponsored Originator; Inactive Status. If a mortgage company does not have sponsored originators that are licensed, the license will revert to an inactive status ("Approved - Inactive") until a new sponsorship becomes effective, during which time the mortgage company must not conduct regulated activities.</u></p>
56.108	80.102	<p>Qualified Individual</p> <p>(a) Qualified Individual Required. A mortgage company must appoint at least one licensed originator to be the mortgage company's Qualified Individual qualifying individual for purposes of Tex. Fin. Code §156.002 (Qualified Individual). As provided by Finance Tex. Fin. Code §156.002, the Qualified Individual is a personal representative of the mortgage company and is deemed to have authority to bind the mortgage company concerning its operations in Texas. To In order to serve as the Qualified Individual, the originator licensee must hold his or her individual license in a status which enables him or her to engage in regulated activities with the license, and must be sponsored by the mortgage company for which he or she serves seeks to serve as the Qualified Individual. <u>The contact information for the Qualified Individual listed by the mortgage company in its license records (MU1 filing), in the "Qualifying Individuals" section, must match the principal address (main address) of the mortgage company listed in the "Identifying Information" section of the MU1 filing.</u> A mortgage company may appoint more than one originator as Qualified Qualifying Individual. If a mortgage company appoints more than one originator to serve as Qualified</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>Individual, each <u>Qualified Individual</u> such originator is deemed to serve concurrently and is responsible for all of the originators sponsored by the mortgage company or <u>other</u> individuals acting otherwise allowed to act as originator on its behalf <u>in the capacity of an originator</u>.</p> <p>(b) Consent Required. The appointment of the Qualified Individual must be consented to by the originator. The originator must acknowledge and confirm his or her consent by making a corresponding filing license record amendment in NMLS to reflect such appointment, using the <u>current appropriate</u> form prescribed by NMLS.</p>
56.200	80.200	<p>Required Disclosures</p> <p>(a) Purpose. This section clarifies and establishes requirements related to the disclosure a mortgage company is required to make under Finance Code §156.004.</p> <p>(b) (a) Specific Notice to Applicant. A mortgage company <u>must send written notice to a mortgage applicant concerning SML's regulatory oversight. The notice must be sent at the time the mortgage company and</u> or its sponsored originator <u>receives the</u> must provide the following notice to a residential mortgage loan applicant with an initial application for a residential mortgage loan and the mortgage company must maintain in its records evidence of the timely delivery of such disclosure. The notice must be signed by the mortgage company's sponsored originator that took the application and the mortgage applicant. The notice must be in the following form:</p> <p><u>Figure: 7 TAC §56.200(b)</u></p> <p>(c) (b) Posted Notice on <u>Mortgage Company Websites and Social Media Sites</u>. A mortgage company or its sponsored originator must post <u>a in conspicuous fashion the following</u> notice <u>concerning SML's regulatory oversight</u> on each website <u>of the mortgage company, other than a</u> and social media site, <u>of the mortgage company or sponsored originator</u> that is accessible by a mortgage applicant or prospective mortgage applicant and either used to conduct residential mortgage loan origination business <u>or by the mortgage company or sponsored originator</u> from which the mortgage company advertises to solicit such business, as provided by §56.203 §80.203 of this title (relating to Advertising). <u>The notice must be in the current form prescribed by SML and posted on its website (sml.texas.gov). The notice must be displayed on the initial or home page of the website (typically the base-level domain name) or contained in a linked webpage with the link to such webpage displayed on the initial or home page.</u></p> <p><u>Figure: 7 TAC §80.200(b)</u></p> <p>(d) (e) Disclosures in Correspondence. <u>All</u> A mortgage company must provide the following information on all correspondence sent to a mortgage applicant <u>must include</u>:</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(1) the name of the mortgage company, followed by the mortgage company's name and NMLS ID identification number; and</p> <p>(2) the mortgage company's website address, if it has a website.</p> <p>(2) if the correspondence is from a sponsored originator, the name of the sponsored originator, followed by the sponsored originator's NMLS identification number.</p> <p>(d) the determination of what constitutes a mortgage application for purposes of triggering the notice required by subsection (a) of this section will be made in accordance with applicable federal law determining what constitutes an application for purposes of the Truth in Lending Act, as implemented and defined by the Consumer Financial Protection Bureau in Regulation Z (12 C.F.R. §1026.2).</p> <p>(e) The notice required by subsection (b) 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 required by subsection (b) of this section deemed to be conspicuously posted on a social media site when it is readily apparent or 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 company 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>
56.201	80.201	<p><u>Conditional Pre-Qualification and Conditional Approval Letters</u> Loan Status Forms</p> <p>(a) <u>Conditional Pre-Qualification Letter</u>. Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant or prospective mortgage applicant, written confirmation of conditional pre-qualification (<u>conditional pre-qualification letter</u>) must shall include the information in Form A, Figure: 7 TAC <u>§56.201(a)</u> §80.201(a). The information must can be provided <u>using by utilizing</u> Form A or an alternate form <u>approved by the mortgage company</u> that includes all of the information found on Form A. There is no requirement to issue a written confirmation of conditional pre-qualification <u>letter</u>. Form A or an alternate form may be modified by adding any of the following as needed:</p> <p><u>Figure: 7 TAC §56.201(a)</u></p> <p>(1) Any additional aspects of the loan as long as not misleading;</p>

NEW SECTION	OLD SECTION	REDLINE
		<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) <u>Conditional Approval Letter</u>. 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 (<u>conditional approval letter</u>), must shall include the information in Form B, Figure: 7 TAC §56.201(b) §80.201(b). The This information must can be provided using by-utilizing Form B or an alternate form <u>approved by the mortgage company</u> that includes all of the information found on Form B. There is no requirement to issue a written notification of conditional loan approval letter. Form B or an alternate form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or <u>a</u> 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 letter must should not be issued unless the <u>mortgage</u> company or <u>its sponsored</u> 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><u>Figure: 7 TAC §56.201(b)</u></p> <p>(c) <u>Firm Offers of Credit</u>. Subsection (a) of this section does not apply to "firm offers of credit," as that term is defined by in 15 U.S.C. §1681a(l).</p> <p><u>(d) Issuance by the Originator. A conditional pre-qualification letter or conditional approval letter must be issued and signed by the mortgage company's sponsored originator acting on behalf of the mortgage company to originate the prospective residential mortgage loan.</u></p>
56.202	80.202	<p><u>Prohibition on False, Fraudulent, Misleading, or Deceptive Practices and Improper Dealings</u></p> <p>(a) <u>Fraudulent, False,</u> Misleading, or Deceptive Practices. The following conduct by a mortgage company or its sponsored <u>originators</u> originator constitutes fraudulent and dishonest dealings for purposes of <u>Finance Tex. Fin.</u> Code §156.303(a)(3):</p> <p>(1) knowingly misrepresenting the mortgage company's or its sponsored originator's relationship to a mortgage applicant or any other party to <u>a residential mortgage loan transaction</u> an actual or <u>prospective proposed</u> residential mortgage loan transaction;</p> <p>(2) knowingly misrepresenting or understating any cost, fee, interest rate, or other expense <u>to a mortgage</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>applicant or prospective mortgage applicant</u> in connection with a mortgage applicant's applying for or obtaining a residential mortgage loan;</p> <p>(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> <p><u>(4) knowingly misrepresenting the lien position of a residential mortgage loan or prospective residential mortgage loan;</u></p> <p><u>(5) (4)</u> 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><u>(6) (5)</u> 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 mortgage company retains fees or <u>sponsored originator</u> receives other compensation for services which are not actually performed or where the fees or other compensation received <u>bears bear</u> no reasonable relationship to the value of <u>the</u> services actually performed;</p> <p><u>(7) (6)</u> recommending or encouraging default or delinquency or <u>the</u> continuation of an existing default or delinquency by a mortgage applicant on any existing indebtedness prior to closing a residential mortgage loan which refinances all or a portion of such existing indebtedness;</p> <p><u>(8) (7)</u> altering any document produced or issued by <u>SML</u> the Department, unless otherwise permitted by statute or a rule of <u>SML</u> the Department;</p> <p><u>(9) Allowing a licensed originator to act on behalf of the mortgage company when the originator is not sponsored by the mortgage company or otherwise holds his or her license in an inactive status (which is deemed to constitute unlicensed activity);</u></p> <p><u>(10) using the services of a mortgage company or mortgage banker to provide loan processing services when the mortgage company or mortgage banker providing the services holds its license in an inactive status (which is deemed to constitute unlicensed activity);</u></p> <p><u>(11) using a trigger lead in a misleading or deceptive manner by, among other things:</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(A) failing to state in the initial communication with the consumer:</u></p> <p><u>(i) the mortgage company's name;</u></p> <p><u>(ii) a brief explanation of how the mortgage company obtained the consumer's contact information to make the communication (i.e., an explanation of trigger leads);</u></p> <p><u>(iii) that the mortgage company is not affiliated with the creditor to which the consumer made the credit application that resulted in the trigger lead; and</u></p> <p><u>(iv) that the purpose of the communication is to solicit new business for the mortgage company;</u></p> <p><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><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><u>(12) (8) engaging in any other practice which the Commissioner, by published interpretation, has determined <u>is to be</u> fraudulent, misleading, or deceptive.</u></p> <p>(b) Improper <u>or Unfair</u> Dealings. The following conduct by a mortgage company or its sponsored <u>originators</u> originator constitutes improper dealings for purposes of <u>Finance Tex. Fin. Code §156.303(a)(3):</u></p> <p>(1) acting negligently in performing an act <u>requiring for which a license person is required</u> under <u>Finance Tex. Fin. Code, Chapters Chapter 156, 157, or 180 to hold a license;</u></p> <p>(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 156, 157, or 180,</u> including, but not limited to, <u>the following:</u></p> <p><u>(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.);</u></p> <p><u>(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.);</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(C) Regulation N (12 C.F.R. §1014.1 et seq.);</u></p> <p><u>(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.);</u></p> <p><u>(E) Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);</u></p> <p><u>(F) (A) Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.); and (B) Regulation X (12 C.F.R. 1024.1 et seq.);</u></p> <p><u>(G) (C) Consumer Credit Protection Act, Truth in Lending Act (15 U.S.C. §1601 et seq.); and (D) Regulation Z (12 C.F.R. §1026.1 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>(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.); 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 §56.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters) that does not comply with the required form for the letter or is inaccurate, erroneous, or negligently-issued;</u></p> <p><u>(5) (3) representing to a mortgage applicant that a charge or fee which is payable to the mortgage company or its sponsored originator is a "discount point" or otherwise <u>benefits</u> confers a financial benefit on the mortgage applicant unless the loan closes and:</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(A) the mortgage company is <u>making</u> the <u>residential mortgage loan (lender)</u> lender in the transaction. For purposes of this paragraph, the mortgage company is deemed to be the lender if the mortgage company or sponsored originator, is the payee as evidenced on the face of the note or other written evidence of indebtedness; or</p> <p>(B) the mortgage company is not the lender, but demonstrates by clear and convincing evidence that the lender has charged or collected discount points <u>point(s)</u> or other fees which the mortgage company actually paid to the lender on behalf of the mortgage applicant, to buy down the interest rate on the a residential mortgage loan; and</p> <p>(6) <u>(4)</u> failing to accurately respond within a reasonable time period to reasonable questions from a mortgage applicant concerning the scope and nature of the mortgage company's services and any costs.</p> <p>(c) Related Transactions. A mortgage company engages in fraudulent and <u>dishonest deceptive</u> dealings for purposes of Finance Code §156.303(a)(3) when, in connection with the origination of a residential mortgage loan:</p> <p>(1) the mortgage company or sponsored originator:</p> <p><u>(A)</u> offers other goods or services to a <u>mortgage applicant consumer</u> in a separate but related transaction; and</p> <p><u>(B)</u> the mortgage company or sponsored originator engages in <u>fraudulent, false</u> misleading, or deceptive acts in the related transaction; or</p> <p>(2) the mortgage company or sponsored originator:</p> <p><u>(A)</u> affiliates with another person that provides goods or services to a <u>mortgage applicant consumer</u> in a separate but related transaction; and</p> <p><u>(B)</u> the affiliated person engages in fraudulent, misleading, or deceptive acts in <u>the related transaction;</u> and</p> <p><u>(C)</u> the mortgage company or sponsored originator to the mortgage transaction knew or should have known of the <u>fraudulent, false,</u> misleading, or deceptive acts of the affiliated person; and</p> <p><u>(D)</u> <u>the mortgage company or sponsored originator</u> failed to take appropriate steps to prevent or <u>limit the fraudulent, such false,</u> misleading, or deceptive acts.</p> <p>(d) Sharing or Splitting Origination Fees with the Mortgage Applicant. A mortgage company and its sponsored originators <u>originator</u> must not offer or agree to share or split any residential mortgage loan origination fees with a mortgage applicant, rebate all or part of an origination fee to a mortgage applicant, reduce their established</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing <u>residential</u> mortgage loan origination services unless otherwise allowable under as provided by Regulation X <u>(12 C.F.R. §1024.14) and Regulation Z (12 C.F.R. §1026.36(d))</u>. A sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent licensed under Occupations Code Chapter 1101 may rebate their fees legitimately earned and derived from their real estate brokerage or sales agent services to the extent allowable under applicable law governing real estate brokers or sales agents; provided, the payment or other transfer described by this subsection herein occurs as a part of closing and is properly reflected in the closing disclosure for the transaction. If a payment or other transfer described by this subsection herein by a mortgage company or sponsored originator acting in the dual capacity of an originator and real estate broker or sales agent occurs after closing, a rebuttable presumption exists that the payment or transfer is derived from the sponsored 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 presumption created by this subsection may only be overcome by clear and convincing evidence established by the mortgage company or sponsored originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection (d) is deemed to constitute improper dealings for purposes of <u>Finance Tex. Fin.</u> Code §156.303(a)(3).</p>
56.203	80.203	<p>Advertising</p> <p><u>(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:</u></p> <p><u>(1) "Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a residential mortgage loan transaction or is otherwise designed to solicit residential mortgage loan origination business for the mortgage company or its sponsored originators. The term includes "flyers," business cards, or other handouts, and messages or posts made on a social media site. The term does not include:</u></p> <p><u>(A) any advertisement which indirectly promotes a residential mortgage loan transaction and contains only the name of the mortgage company or sponsored originator and not any contact information with the exception of a website address, such as on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotional items of nominal value;</u></p> <p><u>(B) any rate sheet, pricing sheet, or similar proprietary information provided to realtors, builders, and other commercial entities that is not intended for distribution to consumers; or</u></p> <p><u>(C) signs located on or adjacent to the mortgage company's licensed office as provided by §56.206 of this title (relating to Office Locations; Remote Work).</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(2) “Team logo” means a logo, symbol, or other graphic used to identify the group using a team name.</u></p> <p><u>(3) “Team name” means a name other than the mortgage company's legal name or a properly registered assumed name typically used by a geographically or administratively distinct group of employees working for the mortgage company as a division or team within the larger organization (e.g., the employees of a branch office).</u></p> <p><u>(b) (a) Compliance with Federal Law.</u> A mortgage company or sponsored originator that advertises rates, terms, or conditions must comply with the disclosure requirements of <u>Regulation N (12 C.F.R. §1014.1 et seq.), and Regulation Z (12 C.F.R. §1026.24).</u></p> <p>(b) Any advertisement of residential mortgage loans or for residential mortgage origination services which is offered by or through a mortgage company or sponsored originator must conform to the following requirements:</p> <p>(1) a mortgage company or sponsored 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 limitations;</p> <p><u>(c) (2) Required Content. Except except</u> as provided by subsections (d) and (e) of this section, an advertisement must contain:</p> <p>(1) (A) the name of the mortgage company followed by the mortgage company's name and NMLS ID identification number; and</p> <p><u>(2) the mortgage company's website address, if it has a website; and</u></p> <p>(3) (B) the name of the sponsored originator followed by the sponsored originator's name and NMLS ID identification number.</p> <p>(3) an advertisement must not contain any statement or omit relevant information, the result of which is to present a misleading or deceptive representation to consumers; and</p> <p>(4) an advertisement must comply with applicable state and federal disclosure requirements.</p> <p>(c) For purposes of this section, 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 company or sponsored originator. This includes “flyers,” business cards, or other handouts, and commercial messages delivered by and through a social media site. However, the requirements of subsection</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(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 company or sponsored originator and not any contact information with the exception of a website address, such as on cups, pens or pencils, shirts or other clothing (including company uniforms and sponsored youth league jerseys), or other promotion 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 company's licensed office as provided by §80.206 of this title (relating to Office Locations; Remote Work).</p> <p>(d) Advertising Directly by a Mortgage Company. <u>A</u> The provisions of subsection (b) of this section notwithstanding, a mortgage company may advertise directly to the public and is not required to advertise not by and through a sponsored originator, and the requirements of subsection (b)(2)(B) of this section to not apply to such advertisements. The requirements of subsection (c)(3) of this section do not apply to an advertisement made directly by a mortgage company. An advertisement posted, promoted, disseminated, distributed, delivered, or otherwise made by an originator sponsored by the mortgage company will not be considered an advertisement made directly by a mortgage company for purposes of this subsection.</p> <p><u>(e) Advertising on Social Media Sites. If the mortgage company or sponsored originator advertises on a social media site, the requirements of subsection (c) of this section may be met by prominently displaying the required information on the home page, profile page, or similar, on such social media site so that the viewer can quickly discern the information without reviewing various historical content posted by the mortgage company or sponsored originator on the social media site.</u></p> <p><u>(f) Use of Team Names and Team Logos. A mortgage company and its sponsored originators may use team names and team logos in advertisements if the following requirements are met:</u></p> <p><u>(1) Team names and team logos are permitted for advertising purposes only. A team name or team logo may not be used to conduct residential mortgage loan origination business. For clarity, a team name or team logo may not appear on any documentation sent to the mortgage applicant in connection with a residential mortgage loan or on any documentation in the residential mortgage loan file a mortgage company is required to maintain under §56.204(c)(2) of this title (relating to Books and Records).</u></p> <p><u>(2) The mortgage company's legal name or an assumed name of the mortgage company and its NMLS ID must be used with the team name or team logo, in substantially equivalent prominence, and must be connected with an</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>explanatory word or phrase that clearly links the two (e.g., “(team name) of (mortgage company name and NMLS ID)” or “(team name) powered by (mortgage company name and NMLS ID)”</u>). The information must be presented in a manner that makes it readily apparent to the viewer what mortgage company is making the advertisement. The mortgage company may not obscure the information by, among other things, using graphics, shading, or coloration to deemphasize or mask the appearance of the mortgage company’s name and NMLS ID. If the advertisement is made on a social media site, the requirements of this paragraph may be met by prominently displaying the information on the home page, profile page, or similar, on such social media site so that the viewer can quickly discern the information without reviewing various historical content posted by the mortgage company or sponsored originator on the social media site.</p> <p><u>(3) If a team logo is used, it must be used with the team name, unless the team name is contained in the team logo, and if so, the team logo may be used without the team name.</u></p>
56.204	80.204	<p>Books and Records</p> <p><u>(a) Purpose and Applicability. This section clarifies and establishes requirements related to the books and records a mortgage company and its sponsored originators are required to keep under Finance Code §156.301. Subsection (c) of this section applies to a mortgage company and its sponsored originators in connection with the origination of residential mortgage loans. Subsection (d) of this section applies to a mortgage company and its sponsored originators in connection with the provision of third-party loan processing or underwriting services (including independent loan processor or underwriter companies).</u></p> <p><u>(b) (a) Maintenance of Records, Generally. In order to ensure a mortgage company and its sponsored originators will have all records necessary to facilitate an inspection (including an examination) by SML of the mortgage company and its sponsored originators by the Commissioner or the Commissioner’s designee, enable SML the Commissioner or the Commissioner’s designee to investigate complaints against a mortgage company or its sponsored originators, and otherwise ensure compliance with the requirements of Finance Code Chapter 156, and this chapter, a mortgage company and its sponsored originators must maintain records as prescribed by this section.</u></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 company and its sponsored originators must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage company or the location the mortgage company has designated in its MU1 filing under "Books and Records Information" in NMLS. (For purposes of this section "main office" has the meaning assigned by <u>§56.206</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p>§80.206 of this title (relating to Office Locations; Remote Work.)</p> <p>(3) Production of Records; Disciplinary Action. All records required by this section must be maintained in good order and produced to SML for the Commissioner or the Commissioner's designee upon request. Failure by a mortgage company or its sponsored originators to produce records upon request after a reasonable time for compliance may result in disciplinary action against the mortgage company or its sponsored originators, including, but not limited to, suspension or revocation of the mortgage company's or sponsored originator's license.</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. If a mortgage company terminates operations, the mortgage company must, within 10 days after the date the mortgage company terminates operations, provide SML with written notice of where the records required by this section will be maintained for the required period. If such records are transferred to another mortgage company licensed by the Department, the transferee must provide the Department with written notice within 10 days after the date it receives such records.</p> <p>(5) Maintenance by the Mortgage Company. A mortgage company is required to maintain records on behalf of the originators it sponsors in connection with work performed by the originator for that mortgage company.</p> <p>(6) (5) Conflicting Law. If the requirements of other applicable law governing recordkeeping by the mortgage company or its sponsored originators differ from the requirements of this section, such other applicable law prevails only to the extent this section conflicts with the requirements of this section.</p> <p>(c) (b) Required Records (Origination). A mortgage company and its sponsored originators must is required to maintain the following items in connection with the origination of residential mortgage loans by the mortgage company:</p> <p>(1) Mortgage Transaction Log. A mortgage transaction log maintained, on a current basis (meaning which means all entries must be made within no more than 7 days after from the date on which the events matters they relate to occurred, and updated as the information changes) setting forth, at a minimum (the log may include additional information, provided, the information is readily sortable as required by subsection (b)(1) of this section):</p> <p>(A) full the full name and contact information of each mortgage applicant (last name, first name);</p> <p>(B) application/loan identification number assigned by the mortgage company;</p> <p>(C) loan identification number assigned by the lender, if different than subparagraph (B) of this paragraph;</p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(D)</u> (B) date of the initial loan application;</p> <p><u>(E)</u> address of the subject property (street address, city, state, zip code);</p> <p><u>(F)</u> interest rate;</p> <p><u>(G)</u> (D) 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><u>(H)</u> loan product (conventional, FHA, VA, reverse, etc.);</p> <p><u>(I)</u> (H) if the loan is closed, the identity <u>full name</u> of the <u>lender that person who</u> initially funded <u>or and/or</u> acquired the loan <u>and their NMLS ID, if applicable</u>;</p> <p><u>(J)</u> (C) the full name of the originator who took the initial loan application, and his or her NMLS <u>ID identification number</u>;</p> <p><u>(K)</u> closing date;</p> <p><u>(L)</u> (F) the lien <u>position type</u> (e.g., first lien, second lien, or wrap mortgage);</p> <p><u>(M)</u> (E) 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)); <u>and</u></p> <p><u>(N)</u> (G) a description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied); <u>and</u></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</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>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) the disclosure statement required by Finance Code §156.004 and §56.200(b) §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 Conditional Pre-Qualification Letter, or similar, as specified by Finance Code §156.105 and §56.201 §80.201 of this title (relating to Conditional Pre-Qualification and Conditional Approval Letters Loan Status Forms);</p> <p>(vi) if provided to a mortgage applicant or prospective mortgage applicant, the conditional approval letter Conditional Approval Letter, or similar, as specified by Finance Code §156.105 and §56.201 §80.201 of this title (relating to Loan Status Forms);</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 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 residential mortgage loan or prospective residential mortgage loan, and if a fee is paid by or imposed on the mortgage applicant for such consumer report or credit report, invoices and proof of payment for the purchase of the consumer report or credit report;</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</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>report;</p> <p>(xii) invoices and proof of payment for any 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 mortgage company or sponsored originator acts in a dual capacity as the loan originator and real estate broker, sales agent, or attorney in the transaction, the disclosure of multiple roles in a consumer real estate transaction, signed and dated by each mortgage applicant, as required by Finance Code §156.303(a)(13) and §157.024(a)(10);</p> <p>(xvii) the initial privacy notice required by Regulation P; (12 C.F.R. §1016.4) or <u>the Federal Trade Commission's Privacy of Consumer Financial Information rules (16 C.F.R. §313.4)</u>;</p> <p>(xviii) the mortgage applicant's written authorization to receive electronic documents, <u>as required by the E-Sign Act and Regulation Z (12 C.F.R. §1026.17(a)(1))</u>;</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> <p>(xxi) any written agreements or other records governing the origination of the <u>residential mortgage</u> loan or prospective <u>residential mortgage</u> loan;</p> <p>(B) Lender Transactions. For transactions where the mortgage company <u>made the loan (lender) acted as the lender</u>, the following records:</p> <p>(i) the promissory note, loan agreement, or repayment agreement, signed by the borrower (mortgage applicant);</p> <p>(ii) the recorded deed of trust, contract, security deed, security instrument, or other lien transfer document,</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>signed by the borrower (mortgage applicant);</p> <p>(iii) any verifications of income, employment, or deposits obtained in connection with the loan;</p> <p>(iv) copies of any title insurance policies with endorsements or title search reports obtained in connection with the loan, and if a fee is paid by or imposed on the mortgage applicant for such title insurance policies or title search reports, invoices and proof of payment for the title insurance policy or title search report; and</p> <p>(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> <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> <p>(i) the initial Truth-in-Lending statement for home equity line lines of credit and reverse mortgage transactions required by Regulation Z 7 (12 C.F.R. §1026.19);</p> <p>(ii) if the transaction is an adjustable rate mortgage transaction, the adjustable rate mortgage program disclosures;</p> <p>(iii) records relating to the mortgage applicant's ability to repay the loan, as required by Regulation Z 7 (12 C.F.R. §1026.43(c));</p> <p>(iv) if the mortgage applicant is permitted to shop for a settlement service, the written list of providers required by Regulation Z 7 (12 C.F.R. §1026.19(e)(1)(vi)(C));</p> <p>(v) the notice of intent to proceed with the transaction required by Regulation Z 7 (12 C.F.R. §1026.19(e)(2)(i)(A));</p> <p>(vi) if applicable, records related to a changed circumstance required by Regulation Z 7 (12 C.F.R. §1026.19(e)(3)(iv));</p> <p>(vii) the notice of right to rescission required by Regulation Z 7 (12 C.F.R. §1026.15 or §1026.23);</p> <p>(viii) for high-cost mortgage loans, the disclosures required by Regulation Z 7 (12 C.F.R. §1026.32(c));</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(ix) for high-cost mortgage loans, the certification of counseling required by Regulation Z (12 C.F.R. §1026.34(a)(5)(i));</p> <p><u>(x) for home equity line of credit transactions:</u></p> <p><u>(I) the account-opening disclosure required by Regulation Z (12 C.F.R. §1026.6(a));</u></p> <p><u>(II) the early disclosure statement required by Regulation Z (12 C.F.R. §1026.40(d));</u></p> <p><u>(III) the Home Equity Line of Credit Brochure required by Regulation Z (12 C.F.R. §1026.40(e));</u> and</p> <p><u>(xi) (x)</u> 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> <p>(i) records reflecting delivery of the special information booklet required by Regulation X, <u>(12 C.F.R. §1024.6);</u></p> <p>(ii) any affiliated business arrangement disclosure statement provided to the mortgage applicant in accordance with Regulation X (12 C.F.R. §1024.15);</p> <p>(iii) records reflecting delivery of the list of homeownership counseling organizations required by Regulation X (12 C.F.R. §1024.20); and</p> <p>(iv) any other notice or disclosure required by RESPA or Regulation X;</p> <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> <p>(i) the notice of incompleteness required by Regulation B, <u>(12 C.F.R. §1002.9(c)(2));</u></p> <p>(ii) the counteroffer letter sent to the mortgage applicant in accordance with Regulation B, <u>(12 C.F.R. §1002.9);</u> and</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(iii) the adverse action notification (a/k/a turndown letter) required by Regulation B (12 C.F.R. §1002.9(a));</p> <p>(F) Home Equity Transactions. For home equity loan <u>transactions</u> or home equity line of credit transactions, the following records (references in this subparagraph to Section 50 <u>refer refers</u> to Article XVI, Section 50, Texas Constitution; <u>see also subparagraph (C)(x) of this paragraph</u>):</p> <p>(i) the preclosing disclosures required by Section 50(a)(6)(M)(ii) and §153.13 of this title (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii); as provided by such section, the closing disclosure or account-opening disclosures required by Regulation Z fulfills this requirement);</p> <p>(ii) the consumer disclosure required by Section 50(g) and §153.51 of this tile (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><u>(vii) any discount point acknowledgement form used by the lender to substantiate that the discount points are bona fide as required by §153.5 of this title (relating to Two Percent Fee Limitation: Section 50(a)(6)(E));</u></p> <p><u>(viii) the Texas Home Equity Affidavit and Agreement (Fannie Mae Form 3185), or similar;</u></p> <p><u>(ix) for home equity line of credit transactions, the Texas Home Equity Line of Credit Agreement or</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>repayment agreement:</u></p> <p>(x) (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 Property 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> <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> <p>(i) the mechanic's lien contract;</p> <p>(ii) documents evidencing the transfer of lien from the contractor to the lender;</p> <p>(iii) the residential construction contract;</p> <p>(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</p> <p>(v) any other notice or disclosure required by Texas Property Code Chapter 53;</p> <p>(I) Reverse Mortgages. For reverse mortgage transactions, the following records:</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(i) the disclosure required by Article XVI, Section 50(k)(9) Texas Constitution;</p> <p>(ii) the certificate of counseling required by Article XVI Section 50(k)(8) Texas Constitution;</p> <p>(iii) the servicing disclosure statement required by Regulation X, (12 C.F.R. §1024.33(a));</p> <p>(iv) the disclosures required by Regulation Z, (12 C.F.R. §1026.33(b)); and</p> <p>(v) any other notice or disclosure required by federal or state law to originate a reverse mortgage.</p> <p>(c) Records Retention After Terminating Operations. Within 10 days of terminating operations, a mortgage company must provide the Department with written notice of where the records required by this section will be maintained for the prescribed period. If such records are transferred to another mortgage company licensed by the Department, the transferee must provide the Department with written notice within 10 days after receiving such records.</p> <p>(d) Required Records (Loan Processing and Underwriting). A mortgage company and its sponsored originators must maintain the following items in connection with the provision of third-party loan processing and underwriting services by the mortgage company to a mortgage company licensed by SML or a mortgage banker registered with SML:</p> <p>(1) Loan Processing and Underwriting Log. A loan processing and underwriting log, maintained on a current basis (meaning all entries must be made within 7 days after the date on which the events they relate to occurred, and updated as the information changes) setting forth, at a minimum (the log may include additional information, provided, the information is readily sortable as required by subsection (b)(1) of this section):</p> <p>(A) full name of each mortgage applicant (last name, first name);</p> <p>(B) application/loan identification number assigned by the mortgage company;</p> <p>(C) application/loan identification number assigned by the mortgage company or mortgage banker to which the mortgage company is providing loan processing or underwriting services, if different than subparagraph (B) of this paragraph;</p> <p>(D) loan identification number assigned by the lender, if different than subparagraphs (B) or (C) of this paragraph;</p> <p>(E) address of the subject property (street address, city, state, zip code);</p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(F) full name and NMLS ID of the mortgage company or mortgage banker to which the mortgage company is providing loan processing or underwriting services;</u></p> <p><u>(G) the name, NMLS ID, and employment status (e.g., W-2 or 1099) of each individual loan processor or underwriter performing loan processing or underwriting services on behalf of the mortgage company;</u></p> <p><u>(H) closing date;</u></p> <p><u>(I) description of the owner's or prospective owner's intended occupancy of the real estate secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan), secondary residence, or investment property (no intent to occupy as their residence));</u></p> <p><u>(J) description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied);</u></p> <p><u>(K) dollar amount invoiced, assessed, charged, collected, and/or paid by the mortgage applicant for the loan processing or underwriting services provided by the mortgage company; and</u></p> <p><u>(L) description of whether the fee for the loan processing or underwriting services was included on the Closing Disclosure as a fee paid directly to the mortgage company at closing (e.g., on CD, or not on CD).</u></p> <p>(e) (4) Other Records Required by Federal Law. A mortgage company <u>and its sponsored originators</u> 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> <p><u>(1) (A)</u> the Fair Credit Reporting Act (15 U.S.C. §1681 et seq.) and Regulation V (12 C.F.R. §1022.1 et seq.);</p> <p><u>(2) (B)</u> the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.) and Regulation P (12 C.F.R. §1016.1 et seq.), and the Federal Trade Commission's (FTC) Privacy of Consumer Financial Information rules (16 C.F.R. §313.1 et seq.);</p> <p><u>(3) (C)</u> 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><u>(4) (D)</u> Regulation N (Mortgage Acts and Practices Advertising (MAP Rule)); (12 C.F.R. §1014.1 et seq.), <u>and</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(5) the FTC's Standards for Safeguarding Customer Information rule (16 C.F.R. §314.1 et Seq.).</u></p> <p><u>(f) (5) General Business Records. A mortgage company and its sponsored originators must capture and maintain the following records generated in the normal course of doing business general-business records include:</u></p> <p><u>(1) (A)</u> 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><u>(2) (B)</u> 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><u>(3) (C)</u> all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage company employees, independent contractors and all others compensated by the mortgage company in connection with residential mortgage loan origination business;</p> <p><u>(4) (D)</u> 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><u>(5) (E)</u> 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><u>(6) (F)</u> all reports of audits, examinations, inspections, reviews, investigations, or similar, performed by any third party, including any regulatory or supervisory authorities;</p> <p><u>(7) (G)</u> 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><u>(8) (H)</u> policies and procedures related to the origination of residential mortgage loans by the mortgage company and its sponsored originators, including, but not limited to:</p> <p><u>(A) (i)</u> identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));</p> <p><u>(B) (ii)</u> anti-money laundering program (31 C.F.R. §1029.210);</p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(C)</u> (iii) information security program (16 C.F.R. §314.3(a));</p> <p><u>(D)</u> (iv) ability-to-repay underwriting policies, if any, under Regulation Z (12 C.F.R. §1026.43(c));</p> <p><u>(E)</u> (v) quality control policy, if any;</p> <p><u>(F)</u> (vi) compliance manual, if any; and</p> <p><u>(G)</u> (vii) personnel administration/employee policies, if any;</p> <p><u>(g)</u> (6) Records Concerning Administrative Offices. A mortgage company must maintain a list reflecting any office constituting an "administrative office" of the mortgage company for purposes of §56.206 of this title (relating to Office Locations; Remote Work); and</p> <p><u>(h)</u> (7) Records Concerning Remote Work. A mortgage company must maintain records reflecting its compliance with the requirements for remote work, as provided by §56.206 of this title;</p> <p><u>(i) Records Concerning Corrective Action. A mortgage company must maintain records showing compliance with §56.304 of this title (relating to Corrective Action);</u></p> <p><u>(j) Records Concerning Unclaimed Funds. A mortgage company must maintain records showing compliance with §56.305 of this title (relating to Unclaimed Funds); and</u></p> <p><u>(k)</u> (5) Other Records Designated by <u>SML</u> the Commissioner. A mortgage company <u>and its sponsored originators</u> must maintain such other books and records as <u>SML</u> the Commissioner or the Commissioner's designee may, from time to time, specify in writing.</p>
56.205	80.205	<p>Mortgage Call Reports</p> <p><u>(a) Purpose. This section clarifies and establishes requirements related to the mortgage call reports a mortgage company is required to file under Finance Code §156.213.</u></p> <p><u>(b) NMLS Filing Requirements. Mortgage call reports must be filed in NMLS by the deadlines established by NMLS. The mortgage call report must be filed using the current form prescribed by NMLS. Information about how to file the mortgage call report and applicable filing deadlines is available on the NMLS Resource Center website (nationwidelicencingsystem.org).</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(c) Components. The mortgage call report consists of three components, all of which must be completed:</u></p> <ul style="list-style-type: none"> <u>(1) Residential Mortgage Loan Activity (RMLA);</u> <u>(2) State-Specific Supplemental Form (SSSF); and</u> <u>(3) Statement of Financial Condition.</u> <p><u>(d) Partial Reporting Periods; Periods of Inactivity. A mortgage call report must be filed for all reporting periods during which the mortgage company is licensed, including partial periods, and periods during which the mortgage company has no reportable activity.</u></p> <p><u>(e) Extensions of Time. The Commissioner, in his or her sole discretion, may grant an extension of time to file the mortgage call report. A request for an extension of time must be made in writing and approved by the Commissioner.</u></p> <p><u>(f) Duty to File Complete and Accurate Reports. The mortgage call report must contain complete and accurate information at the time it is filed. A mortgage call report containing incomplete or inaccurate information is deemed to be a failure to file the report. A mortgage company must act diligently to compile the information necessary to complete the mortgage call report in advance of the deadline to file the mortgage call report. For clarity, the filing of incomplete or inaccurate information, even on a temporary basis with the intent to amend the filing with complete and accurate information, constitutes a violation of Finance Code §156.213, and this section, and may result in disciplinary action as described by subsection (g) of this section.</u></p> <p>(a) Call Report.</p> <ul style="list-style-type: none"> —(1) A mortgage company must file a mortgage call report on a quarterly basis. The filing deadlines are set by NMLS. —(2) A call report is required to be filed for each quarter a license is held, including partial quarters. —(3) The call report must be submitted through and in the manner and form prescribed by NMLS. <p>(b) Statement of Condition Report.</p> <ul style="list-style-type: none"> —(1) A mortgage company must file a statement of condition on an annual basis.

NEW SECTION	OLD SECTION	REDLINE
		<p>—(2) A statement of condition report is required to be filed for each year a license is held, including partial years.</p> <p>—(3) The statement of condition report must be submitted through and in the manner and form prescribed by NMLS.</p> <p>(c) Submission of a call report or statement of condition report, by a mortgage company satisfies the requirements of an originator sponsored by the mortgage company 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.</p> <p>(g) (d) <u>Failure to File; Disciplinary Action.</u> Failure to file a mortgage call report or a statement of condition report may result in disciplinary action, including, but not limited to, <u>denial, suspension, or revocation of the license, or the imposition of an administrative penalty.</u></p>
56.206	80.206 and 80.107(c)	<p>Office Locations; Remote Work</p> <p>(a) Definitions. For purposes of The following terms, when used in this section, will have the following <u>definitions apply meanings</u>, unless the context clearly indicates otherwise:</p> <p>(1) "Administrative office" means any office of a mortgage company that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage company conducts residential mortgage loan business in Texas. The term does not include a "remote location" as defined by this section. The term includes:</p> <p>(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by <u>Finance Tex. Fin.</u> Code §180.002;</p> <p>(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by <u>Finance Tex. Fin.</u> Code §180.002(19)(B)(i); or</p> <p>(C) an office or location which conducts any combination of activities described by subparagraphs (A) or (B) of this paragraph.</p> <p>(2) "Branch office" means any office a mortgage company maintains that is separate and distinct from its main office, whether located in Texas or not, at which it conducts residential mortgage loan origination business with mortgage applicants or prospective mortgage applicants in Texas or concerning residential real estate located in Texas. The term does not include:</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(A) an office or location at which the employees of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by <u>Finance Tex. Fin.</u> Code §180.002;</p> <p>(B) an office or location at which the employees of the mortgage company perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by <u>Finance Tex. Fin.</u> Code §180.002(19)(B)(i);</p> <p>(C) an office or location which conducts any combination of the activities described by subparagraphs (A) and (B) of this paragraph; or</p> <p>(D) a "remote location" as defined by this section.</p> <p>(3) "Licensed office" means a physical office of the mortgage company that is licensed by the Department as its main office or a branch office.</p> <p>(4) "Main office" means the office the mortgage company has listed in its NMLS license records (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore licensed by the Department through the mortgage company's license.</p> <p>(5) "Remote location" means a location other than a licensed office or an administrative office of the mortgage company from which the employees or sponsored originators of the mortgage company conduct residential mortgage loan business as provided by subsection (c) of this section.</p> <p>(b) Office Requirements. A mortgage company must obtain a license for any office constituting the main office or a branch office of the mortgage company. A mortgage company must also obtain a license for any office or location it advertises or promotes to the general public as an office or location at which the mortgage company's sponsored originators meet in-person with mortgage applicants or prospective mortgage applicants. A licensed office of the mortgage company must be a physical office and have a permanent physical or street address (a post office box or other similar arrangement is not sufficient). The main office or a branch office must be established by the mortgage company. A sponsored originator cannot establish his or her own office other than an office or location from which he or she performs remote work as provided by subsection (c) of this section. <u>A branch office must be licensed by the Department prior to conducting operations. A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after the date the branch office closes.</u></p> <p>(c) Authorization for Remote Work. The employees of a mortgage company and its sponsored originators may conduct business and work from a remote location to the same extent as if such employees or originators were physically present at a licensed office of the mortgage company; provided, the mortgage company:</p>

NEW SECTION	OLD SECTION	REDLINE
		<p>(1) maintains appropriate safeguards for the mortgage company and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;</p> <p>(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;</p> <p>(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;</p> <p>(4) ensures that consumer information and records of the mortgage company, including written procedures and training for work from remote locations authorized under this section, are accessible and available to SML the Commissioner or the Commissioner's designee <u>SML the Commissioner</u> on request;</p> <p>(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and</p> <p>(6) adopts, maintains, and follows written procedures to ensure that:</p> <p>(A) the mortgage company and its employees and sponsored originators comply with this section; and</p> <p>(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a licensed office or administrative office of the mortgage company.</p>
56.210	New	<p><u>§56.210 Reportable Incidents</u></p> <p><u>(a) Definitions. For purposes of this section, the following definitions apply, unless the context clearly indicates otherwise:</u></p> <p><u>(1) "Catastrophic event" means an event, other than a security event, that is unforeseen and results in extraordinary levels of damage or disruption to operations (e.g., the destruction of a principal office or data center).</u></p> <p><u>(2) "Reportable incident" means an incident or situation that presents a material risk, financial or otherwise, to a mortgage company's operations or its customers. A reportable incident includes the following items, provided, it presents a material risk:</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>(A) a "catastrophic event" as defined by this subsection</u></p> <p><u>(B) a "security event" as defined by this subsection;</u></p> <p><u>(C) the termination or curtailment of a line of credit or funding source; or</u></p> <p><u>(D) the termination or curtailment of a service provided to the mortgage company by a third-party service provider.</u></p> <p><u>(3) "Root cause analysis report" means a written report concerning the results or findings of an audit or investigation to determine the origin or root cause of a security event, identify strategic measures to effectively contain and limit the impact of a security event, and to prevent a future security event.</u></p> <p><u>(4) "Security event" means an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form. It includes information that is encrypted, if the person with unauthorized access to the information can decrypt the data.</u></p> <p><u>(b) Incident Report. Except as provided by subsection (c) of this section, a mortgage company must submit a written report to SML concerning any reportable incident within 30 days after the date the mortgage company becomes aware of the reportable incident. The report must include:</u></p> <p><u>(1) a detailed description of the nature and circumstances of the reportable incident;</u></p> <p><u>(2) the number of Texas residents affected or potentially affected by the reportable incident;</u></p> <p><u>(3) the measures taken by the mortgage company to resolve or address the reportable incident;</u></p> <p><u>(4) the measures the mortgage company plans to take to resolve or address the reportable incident; and</u></p> <p><u>(5) the point of contact designated by the mortgage company for inquires by SML about the reportable incident.</u></p> <p><u>(c) Incidents Reported to Other Agencies. A mortgage company must provide SML with a copy of the following notifications sent to other agencies at the time it makes the notification. Except as provided by subsection (d) of this section, a notification provided to SML under this subsection satisfies the requirement to file a report under subsection (b) of this section:</u></p> <p><u>(1) the notification to the Federal Trade Commission (FTC) required by Section 314.4(j) of the FTC's Standards</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>for Safeguarding Customer Information rules (16 C.F.R. §314.4(j)); and</u></p> <p><u>(2) the notification to the Office of the Attorney General of Texas required by Business and Commerce Code §521.053(i).</u></p> <p><u>(d) Root Cause Analysis for Data Breaches. For any security event triggering a notification described by subsection (c) of this section (data breach), the mortgage company must provide SML with a root cause analysis report within 120 days after the date the mortgage company becomes aware that the data breach occurred.</u></p> <p><u>(e) Supplemental Information. SML may require additional, clarifying, or supplemental information or documentation related to a reportable incident as SML deems necessary or appropriate.</u></p> <p><u>(f) Confidentiality. Information reported under subsection (b) or (d) of this section is deemed to be confidential information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §156.301 and §56.302 of this title (relating to Confidentiality of Examination, Investigation, and Inspection Information).</u></p>
56.300	80.300(a)-(e), (g) and (h)	<p>Examinations</p> <p><u>(a) Purpose. This section clarifies and establishes requirements related to examinations of a mortgage company and its sponsored originators conducted by SML under Finance Code §156.301. The Commissioner, or the Commissioner's designee(s), will conduct periodic examinations of a mortgage company or sponsored originator as the Commissioner deems necessary.</u></p> <p><u>(b) State Examination System (SES). Examinations are conducted in SES (stateexaminationsystem.org). A mortgage company 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 SML the Department determines that giving advance notice would impair the examination, SML the Department will give the primary contact person of the mortgage company listed in NMLS or a person designated by the primary contact person advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's mailing address or email address of record with NMLS and will specify the date on which SML's the Department's examiners are scheduled to begin the examination. Failure to receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p>the documents and records that must be produced or made available to facilitate the examination.</p> <p>(e) <u>(e) Examination Scope.</u> Examinations will be conducted to determine compliance with Finance Code, <u>Chapters Chapter 156, 157, and 180,</u> and this chapter, and will specifically address whether:</p> <p>(1) all persons conducting residential mortgage loan origination activities are properly licensed and sponsored;</p> <p>(2) all office locations are properly licensed or registered, as provided by <u>§56.206 §80.206</u> of this title (relating to Office Locations; Remote Work);</p> <p>(3) all required books and records are being maintained in accordance with <u>§56.204 §80.204</u> of this title (relating to Books and Records);</p> <p>(4) legal and regulatory requirements applicable to the mortgage company and its <u>sponsored</u> originators are being properly followed (<u>including, but not limited to, the requirements described in §56.202(b)(2) of this title (relating to Fraudulent, Misleading, or Deceptive Practices and Improper Dealings)</u>); and</p> <p>(5) other matters as <u>SML and its examiners</u> the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, <u>Chapters Chapter 156, 157, and 180.</u></p> <p>(f) <u>(d) Loan Sample.</u> The examiners will review a sample of residential mortgage loan files identified by the examiners and randomly selected from the mortgage company's mortgage transaction log <u>required by §56.204(c)(1) of this title or the loan processing or underwriting log required by §56.204(d)(1) of this title.</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 a mortgage company, at its own cost, to make copies of loan files or such other books and records as the examiner 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 <u>of</u> a mortgage company or a sponsored originator to cooperate with the examination or failure to grant the examiners access to books, records, documents, operations, and facilities may result in disciplinary action including, but not limited to, imposition of an administrative penalty.</p> <p>(h) Reimbursement for Costs. <u>The examiners may require a mortgage company, at its own cost, to make copies of</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>loan files or such other books and records as the examiners deem appropriate.</u> When the Department must travel outside of Texas to conduct an examination of a mortgage company or it's a sponsored originators originator because the required records are maintained at a location outside of Texas, the Department will require reimbursement for the actual costs incurred by the Department in connection with such travel including, but not limited to, transportation, lodging, meals, communications, courier service and any other reasonably related costs. <u>Costs assessed under this subsection will be invoiced in NMLS and must be paid in NMLS.</u></p>
56.301	80.301	<p>Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions</p> <p><u>(a) Purpose. This section clarifies and establishes requirements related to investigations of a mortgage company and its sponsored originators conducted by SML under Finance Code §156.301.</u></p> <p><u>(b) Reasonable Cause. SML will conduct an investigation if it has reasonable cause to do so. Reasonable cause is deemed to exist if SML receives or discovers information from a source SML has no reason to believe is other than credible indicating that a violation of law more likely than not occurred that is within SML's authority to take action to address. The absence of reasonable cause to initiate an investigation does not constitute grounds to challenge and does not invalidate action taken by SML to address a violation found during the course of an investigation. 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. (c) 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><u>(c) (a) Investigation Methods. Investigations will be conducted as SML deems deemed appropriate based on in-light of all the relevant facts and circumstances then known. An such investigation may include any or all of the following:</u></p> <ul style="list-style-type: none"> <u>(1) review of documentary evidence;</u> <u>(2) interviews with complainants, respondents, licensees, and third parties, and the taking of sworn written statements;</u> <u>(3) obtaining information from reports, advice, and other comments and assistance of other state or and/or federal 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</u>

NEW SECTION	OLD SECTION	REDLINE
		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.
56.302	80.300(f)	<p><u>Confidentiality of Examination, Investigation, and Inspection Information</u></p> <p><u>(a) Purpose. This section clarifies and establishes requirements related to the confidentiality of information obtained by SML during an examination, investigation, or inspection, as provided by Finance Code §156.301.</u></p> <p><u>(b) Confidential Information. All information obtained by SML during an examination, investigation, or inspection is confidential and cannot be released except as required or expressly permitted by law. The Finance Commission of Texas and the Commissioner have determined that the following information is confidential under Finance Code §156.301 (list is not exhaustive):</u></p> <p style="padding-left: 40px;"><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></p> <p style="padding-left: 40px;"><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 regulated entity under §56.303 of this title (relating to Corrective Action);</u></p> <p style="padding-left: 40px;"><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) of this section notwithstanding, information described by that subsection is not confidential to the extent the information becomes publicly available in a disciplinary or enforcement action that is a contested case (i.e., information made part of the administrative record during an adjudicative hearing that is open to the public).</u></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</p>

NEW SECTION	OLD SECTION	REDLINE
		or expressly permitted by law.
56.303	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 mortgage company or its sponsored originators that is not confidential, SML may direct the mortgage company to take corrective action to address the violations identified during the examination, investigation, or inspection. This section clarifies and establishes requirements related to such corrective action.</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 mortgage company to conduct its own internal review to self-identify any other violations, compile information concerning such violations, and report its findings to SML. SML may direct the mortgage company to take corrective action for any violations identified during the review.</u></p> <p><u>(c) Policies and Procedures and Internal Controls. SML may direct the mortgage company to develop and adopt policies and procedures and institutional controls designed to prevent or mitigate future violations.</u></p> <p><u>(d) Refunds to Consumers. SML may direct the mortgage company to make refunds to consumers affected by the violation. Any refund must comply with this subsection. The Commissioner, in his or her sole discretion, may waive or modify the requirements of this subsection to achieve appropriate, practical, and workable results. A refund must be made by one of the following methods:</u></p> <p style="padding-left: 40px;"><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 mortgage company must use reasonable diligence to determine the last known address of the mortgage applicant. The payment must be sent in a manner that includes tracking information and confirmation of delivery (e.g., certified mail return receipt requested, or commercial delivery service with tracking). The mortgage company must capture and maintain records evidencing the payment, including a copy of the payment instrument, any correspondence accompanying the payment, tracking information, and delivery confirmation;</u></p> <p style="padding-left: 40px;"><u>(2) Corporate Check. The refund may be made by issuing a check to the mortgage applicant. The check must be drawn on a bank account owned by the mortgage company. The check must be sent to the mortgage applicant at his or her last known address. The mortgage company must use reasonable diligence to determine the last known address of the mortgage applicant. The mortgage company must capture and maintain records evidencing the payment, including a copy of the check, any correspondence accompanying the check, and evidence that the check was successfully negotiated (i.e., cancelled check). If the mortgage applicant fails to cash the check, the mortgage</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>company must comply with requirements of §56.304 of this title (relating to Unclaimed Funds):</u></p> <p><u>(3) Wire Transfer or ACH. The refund may be made by wire transfer or automated clearing house (ACH) payment to the mortgage applicant's verified bank account. The mortgage company must capture and maintain records evidencing the payment, including any transaction receipt, confirmation page, or similar, reflecting:</u></p> <p><u>(A) name of the sender and any relevant contact information;</u></p> <p><u>(B) sender's bank information (institution, routing number, and account number);</u></p> <p><u>(C) name of the recipient and any relevant contact information;</u></p> <p><u>(D) recipient's bank information (routing number and account number); and</u></p> <p><u>(E) the transaction reference number or confirmation code; or</u></p> <p><u>(4) Credit Against Indebtedness. If the mortgage company is the lender or holds the mortgage servicing rights to the residential mortgage loan related to the refund, the mortgage company may issue a credit against the indebtedness equal to the refund; however, if the refund is related to an improper charge or proceeds improperly held by the mortgage company on which interest was charged, the credit must be applied to the unpaid principal balance as of the date of such improper charge or the date the mortgage company began improperly holding the proceeds (typically inception of the residential mortgage loan). The mortgage company must capture and maintain records evidencing application of the credit, including the payment history reflecting application of the credit and any subsequent adjustments to principal and interest as a result of the credit being applied.</u></p>
56.304	New	<p><u>Unclaimed Funds</u></p> <p><u>(a) Escheat Suspense Account; Escheat Log. Funds owed to or held for the benefit of a mortgage applicant or other customer of the mortgage company for more than one year (i.e., unclaimed funds) must be transferred to an escheat suspense account. The mortgage company must maintain a log of all transfers made to the escheat suspense account, including, at a minimum:</u></p> <p><u>(1) date of transfer to the escheat suspense account;</u></p> <p><u>(2) date the obligation to pay the funds arose;</u></p> <p><u>(3) full name and last known contact information of the mortgage applicant or other customer to whom funds are</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>owed; and</u></p> <p><u>(4) amount of unclaimed funds.</u></p> <p><u>(b) Required Records. The mortgage company must maintain records reflecting bona fide attempts to pay the funds to the mortgage applicant or customer.</u></p> <p><u>(c) Escheat to State. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts as provided by Property Code §72.101, or as provided by such other state law governing the unclaimed funds.</u></p> <p><u>(d) Records Retention. Records required by this section must be retained for 10 years beginning on the date the obligation to pay the unclaimed funds arose.</u></p>
56.310	80.302(c)	<p>Hearings and Appeals</p> <p><u>(a) Purpose. Finance Code Chapter 156 provides that certain decisions of the Commissioner adverse to a mortgage company or other person may be appealed and offers the opportunity for an adjudicative hearing to challenge the decision. This section establishes various deadlines by which a mortgage company or other person must appeal the decision before it becomes final and non-appealable.</u></p> <p><u>(b) The following appeal deadlines apply:</u></p> <p><u>(1) License Denials. A license denial under Finance Code §156.209 must be appealed within 10 days after the date notice of the Commissioner's decision is received by the person seeking the license.</u></p> <p><u>(2) Notice of Administrative Penalty for Violation of Final Cease and Desist Order. A notice of administrative penalty issued under Finance Code §156.303(e) must be appealed within 10 days after the date the notice is issued.</u></p> <p><u>(3) Order of Suspension for Violation of Final Order. An order of suspension issued by the Commissioner under Finance Code §156.303(g) must be appealed within 15 days after the date the order is issued.</u></p> <p><u>(4) Order of Suspension for Criminal Offense Involving Fraud, Theft, or Dishonesty. An order of suspension issued by the Commissioner under Finance Code §156.303(j) must be appealed within 15 days after the date the order is issued.</u></p> <p><u>(5) Notice of Disciplinary Action. A notice of disciplinary action issued under Finance Code §§ 156.302(a),</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p><u>156.303(a), or 156.303(a-1) must be appealed within 30 days after the date the notice is issued.</u></p> <p><u>(6) Order for Disciplinary Action (Order to Take Affirmative Action or Order to Cease and Desist). An order of the Commissioner issued under Finance Code §156.303(b) or §156.406(c) must be appealed within 30 days after the date the order is issued. This deadline does not apply to an order for disciplinary action issued by the Commissioner under Finance Code §§ 156.302(a), 156.303(a), or 156.303(a-1) that was preceded by notice issued under paragraph (5) of this subsection.</u></p> <p><u>(7) Other Deadlines. Any appeal not otherwise addressed by this section must be made within 30 days after the date notice or order is issued.</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. A mortgage company or other person that does not timely appeal the Commissioner's decision is deemed to have irrevocably waived any right it had to challenge the decision or request an adjudicative hearing on the decision and is deemed not to have exhausted all administrative remedies available to it for purposes of judicial review of the Commissioner's decision under Government Code §2001.171. The failure to appeal an order of the Commissioner results in the order becoming final and non-appealable. The failure to appeal a notice of the Commissioner's decision means the Commissioner can issue a final, non-appealable order at any time without further notice or opportunity for a hearing to the mortgage company or other person.</u></p> <p>(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 by the commissioner and cannot be appealed.</p>
56.311	80.302(a) and (b)	<p>Hearings and Appeals</p> <p><u>(a) Adjudicative hearings conducted under Finance Code Chapter 156 are governed by the rules in Chapter 9 of this title (concerning Rules of Procedure for Contested Hearings, Appeals, and Rulemakings). Contested cases referred to the State Office of Administrative Hearings (SOAH) are also governed by SOAH's rules in 1 TAC Chapter 155 (concerning Rules of Procedure). All hearings are held in Austin, Texas. Any appeal for judicial review under Government Code §2001.171 must be brought in a district court in Travis County, Texas. 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</u></p>

NEW SECTION	OLD SECTION	REDLINE
		<p>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.</p> <p><u>(b) Hearing Costs for License Denials. Hearing costs assessed against a person under Finance Code §156.209(f) include:</u></p> <p><u>(1) filing fees;</u></p> <p><u>(2) the costs of a court reporter;</u></p> <p><u>(3) the costs of the administrative law judge (ALJ) or hearings officer presiding over the hearing and any ancillary proceedings;</u></p> <p><u>(4) the expense of SML's staff to prepare for and attend the hearing or any ancillary proceedings, and any related travel expenses;</u></p> <p><u>(5) the cost of any outside counsel retained to represent SML; and</u></p> <p><u>(6) the cost of any expert witness retained by SML.</u></p> <p><u>(c) Determination of Hearing Costs for License Denials. Unless the ALJ makes more specific findings of fact or conclusions of law concerning the hearing costs described by subsection (b)(3) of this section, such costs are deemed to be \$500. Hearing costs described by subsection (b)(4) of this section are measured based on the diversion of productivity of such staff away from their normal duties and toward the hearings process and are calculated by multiplying the number of hours spent by each staff member in furtherance of the hearings process (measured in increments of 1/10 of an hour) by their current hourly compensation rate. The Commissioner may rely on affidavit testimony of such staff members to make appropriate findings of fact and conclusions of law concerning the hearing costs described by subsection (b)(4) of this section.</u></p> <p>(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of the 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.</p>