



January 12, 2021

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To: Clients and Friends

From: David F. Dulock

Subject: Texas Finance Commission Adopts Amendments to Texas Administrative Code Chapter 80 (Texas Residential Mortgage Loan Companies) and Chapter 81 (Mortgage Bankers and Residential Mortgage Loan Originators)

In the January 1, 2021, *Texas Register*, the Finance Commission of Texas (Commission) published amendments to the Texas Administrative Code rules affecting Texas Residential Mortgage Loan Companies (7 TAC Chap. 80, [click here](#)) and Texas Mortgage Bankers and Residential Mortgage Loan Originators (7 TAC Chap. 81, [click here](#)). These amendments (herein “adopted rules”) are effective as of January 3, 2021.

The adopted rules are comprehensive and amend the following sections of Chapters 80 and 81:

1. **Chapter 80:** §80.1(*Scope*); §80.2 (*Definitions*); §80.200 (*Required Disclosures*); §80.202 (*Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings*); §80.203 (*Advertising*); §80.204 (*Books and Records*); §80.205 (*Mortgage Call Reports*); §80.206 (*Physical Office*); §80.300 (*Examinations*); and §80.301 (*Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions*).
2. **Chapter 81:** §81.1(*Scope*); §81.2 (*Definitions*); §81.3 (*Interpretations*); §81.200 (*Required Disclosures*); §81.202 (*Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings*); §81.203 (*Advertising*); §81.204 (*Books and Records*); §81.205 (*Mortgage Call Reports*); §81.206 (*Physical Office*); §81.300 (*Examinations*); and §81.301 (*Investigations*).

The below summary is taken from the Commission’s preamble to the adopted rules and summarizes the more substantive amendments:

**CHAPTER 80
(Texas Residential Mortgage Loan Companies)**

§80.1(*Scope*). The adopted rules add a new closing sentence to clarify that Chapter 80 applies to a company registered with the Department of Savings and Mortgage Lending as a financial services company as if such company were licensed by the Department as a mortgage company, as provided by Tex. Fin. Code §156.2012(b)(7).

§80.2 (*Definitions*). The adopted rules add a definition for the term “application” to further define and clarify when an individual has received information constituting a residential mortgage loan application for the purpose of determining when an individual is acting as a residential mortgage loan originator as used in Tex. Fin. Code §156.002(14)/§180.002(19) and adopted paragraph (20) of §80.2. The adopted rules add a definition for “compensation” for purposes of determining when an individual is acting

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as a residential mortgage loan originator as used in Tex. Fin. Code §156.002(14)/§180.002(19) and adopted paragraph (12) of §80.2. The adopted rules eliminate the existing definition for “one-to-four family residential real property,” the subject matter of which is generally replaced by the addition of definitions for the terms “dwelling” in adopted paragraph (8) and “residential real estate” in adopted paragraph (18). The adopted rules also add the following definitions: “mortgage applicant” in adopted paragraph (9), “mortgage company” in adopted paragraph (10), “person” in adopted paragraph (14) and “social media site” in adopted paragraph (19). The adopted rules add a definition for the phrase “offers or negotiates the terms of a residential mortgage loan” in paragraph (12) for purposes of determining when an individual is acting as a residential mortgage loan originator as used in Tex. Fin. Code §156.002(14)/§180.002(19). The adopted rules add a definition for “originator” in adopted paragraph (13), to adopt by reference the statutory definition for residential mortgage loan originator in Tex. Fin. Code §156.002(14)/§180.002(19). Lastly, the adopted rules add a definition for the phrase “takes a residential loan application” in adopted paragraph (20) for purposes of determining when an individual is acting as a residential mortgage loan originator as used in Tex. Fin. Code §156.002(14).

§80.200 (Required Disclosures). The adopted rules amend subsection (a) to require a mortgage company to maintain in its records evidence of the timely delivery of the required notice in Figure: 7 TAC §80.200(a) to a residential mortgage loan applicant. The adopted rules amend subsection (b) to eliminate the requirement for a mortgage company or its sponsored originator to conspicuously post the notice required by subsection (b) at each physical office and clarify requirements for conspicuously posting the notice on “its website” to expressly include the residential mortgage loan origination business and solicitation website(s) and social media site(s) of the mortgage company or sponsored originator that “is accessible by a mortgage applicant or prospective mortgage applicant.” The adopted rules remove the existing text in subsection (c) and replace it with new requirements to disclose on all correspondence sent to a mortgage applicant the name(s) and NMLS identification number(s) of the mortgage company and of its sponsored originator, if the correspondence is from the originator. The adopted rules also add new subsections (d) and (e). Notwithstanding the definition of “application” in §80.2, for the purposes of triggering the notice required by subsection (a), new subsection (d) limits the determination of what constitutes an application to the definition in §1026.2 of Regulation Z. For the purposes of the notice required by subsection (b), new subsection (e) sets out the requirements of what constitutes “conspicuously posted” on a website and on a social media site.

§80.202 (Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings). The adopted rules make changes to the duties and responsibilities imposed on licensed mortgage companies and sponsored originators contained in §80.202. Existing subsection (a) is amended with language causing each discrete act contained in the paragraphed list under subsection (a), which list also is amended, to be a violation of the prohibition against a mortgage company engaging in fraudulent and dishonest dealings pursuant to Tex. Fin. Code §156.303(a)(3). Existing subsection (a), paragraph (3), establishing a violation for knowingly disparaging the source or potential source of mortgage loan funds that disregards the truth or makes a knowing and material misstatement or omission, is amended to include language establishing such a violation for knowingly overstating, inflating, altering or amending the source or potential source

of mortgage loan funds. Existing subsection (b) is amended with language causing each discrete act by a mortgage company or its sponsored originator contained in the paragraphed list under subsection (b), which list also is amended, to be a violation of the prohibition against a mortgage company engaging in improper dealings pursuant to Tex. Fin. Code §156.303(a)(3). Existing subsection (b), paragraph (3), which prohibits a mortgage company or its sponsored originator from representing to a mortgage applicant that a fee payable to the mortgage company or its sponsored originator operates as a discount point for the transaction, is amended to also prohibit any similar representation that such fee confers a financial benefit on the mortgage applicant, except in the limited circumstances set forth in amended subparagraphs (A) or (B) under existing subsection (b), paragraph (3). Existing subsection (b), paragraph (3), subparagraph (C), regarding a false, misleading or deceptive practice or improper dealings in a related transaction, is removed and the subject matter amended for clarity in a new subsection (c). Existing subsection (b), paragraph (3), subparagraph (D), requiring an originator (and not the mortgage company) to respond accurately to an inquiry about the scope and nature of the originator's services and any costs, is removed and the subject matter replaced with a new paragraph (4) of subsection (b) that provides that a mortgage company's failure to accurately respond within a reasonable time to reasonable questions from a mortgage applicant about the scope and nature of the mortgage company's services and any costs constitutes an improper dealings violation under Tex. Fin. Code §156.303(a)(3). A new subsection (d) is added prohibiting a mortgage company and its sponsored originator from offering or agreeing "to share or split any residential mortgage loan origination fees with a mortgage applicant, rebate all or part of an origination fee to a mortgage applicant, reduce their established compensation to benefit a mortgage applicant, or otherwise provide money, a cash equivalent, or anything of value to a mortgage applicant in connection with providing mortgage loan origination services unless otherwise allowable as provided by Regulation X." New subsection (d) further provides that those sponsored originators "acting in the dual capacity of an originator and a 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 herein occurs as a part of closing and is properly reflected in the closing disclosure for the transaction." However, new subsection (d) also provides that if said payment or transfer occurs after closing, "a rebuttable presumption exists that the payment or transfer is derived from the sponsored originator's fees for mortgage origination services" (a violation of subsection (d)). This rebuttable presumption "may only be overcome by clear and convincing evidence established by the mortgage company or sponsored originator that the payment or transfer is instead derived from fees for real estate brokerage or sales agent services. A violation of this subsection (d) is deemed to constitute improper dealings for purposes of Tex. Fin. Code §156.303(a)(3)."

§80.203 (Advertising). The adopted rules amend subsection (b), paragraph (2) to require that an advertisement by a mortgage company or sponsored originator include the name and NMLS number of the mortgage company, and the name and NMLS number of its sponsored originator, if applicable. Subsection (b), paragraph (2) is further amended to eliminate the requirement that the advertisement list the mortgage company's physical office or branch office street address in Texas. Subsection (c) is amended to provide a more precise definition of advertisement and to expressly make certain items subject to the requirements of the advertising rule in subsection (b), including flyers, business cards or other handouts, and commercial messages delivered through a

social media site. Subsection (c) is further amended to allow certain items already exempt from subsection (b) to include the website address for the mortgage company or sponsored originator. Subsection (c) also is amended to exempt signs located on or adjacent to a mortgage company's physical office from the requirements of subsection (b). The adopted rules insert a new subsection (d) that allows a mortgage company to directly advertise its services and need not advertise by and through a sponsored originator. New subsection (d) also provides that advertisements by a sponsored originator are not considered advertisements made directly by the mortgage company.

§80.204 (Books and Records). In addition to making minor amendments to §80.204, the adopted rules amend subsection (b), paragraph (2) to require the mortgage transaction log to include the following additional information: a description of the purpose for the loan (e.g., purchase, refinance, construction, etc.) and a description of the owner's intended occupancy of the subject real estate (e.g., primary residence, secondary residence, investment property (no occupancy), etc.). The adopted rules insert a new subsection (b), paragraph (4) to require a mortgage company to create and maintain records establishing its physical office, including records reflecting the names of and contact information for the staff members present at such physical office, and records reflecting its right to occupy the physical office and conduct business there (e.g., a lease agreement or deed).

§80.206 (Physical Office). The adopted rules amend subsection (a), paragraph 2, by removing the requirements for posting at the physical office the hours of opening and closing of the office.

§80.301 (Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions). The provisions of existing subsections (c) and (e) – (i) are eliminated as being duplicative of the requirements of the Texas Finance Code and without offering additional guidance.

CHAPTER 81 **(Mortgage Bankers/Residential Mortgage Loan Originators)**

§81.2 (Definitions). The adopted rules add definitions for “application,” “compensation,” “dwelling” “mortgage applicant,” “mortgage company,” “offers or negotiates the terms of a residential mortgage loan,” “originator,” “residential real estate,” “social media site” and “takes a residential loan application” that are the same or substantially the same as the adopted definitions in §80.2, except for the definition for “offers or negotiates the terms of a residential mortgage loan” in §81.2(12) in which subparagraph (D) is omitted.

§81.200 (Required Disclosures). The adopted rules amend subsection (a) to require a mortgage banker and its sponsored originator to maintain in their records evidence of the timely delivery of the required notice in Figure: 7 TAC §81.200(a) to a residential mortgage loan applicant. The language of existing subsection (b) that a mortgage banker or its originator is required to maintain records evidencing timely delivery of the required notice is eliminated and replaced with new language that impose on an originator sponsored by a mortgage company the requirement to provide the notice required §80.200(a) to the residential mortgage loan applicant. Existing subsection (c) is amended to eliminate the requirement for a mortgage banker or its originator to conspicuously post the notice required by subsection (c) at each physical office and clarify requirements for conspicuously posting the notice on “its website” to expressly include the

residential mortgage loan origination business and solicitation website(s) and social media site(s) of the mortgage banker or sponsored originator that “is accessible by a mortgage applicant or prospective mortgage applicant.” The provisions in existing subsection (d), which dictate how a mortgage banker or originator displays the notice required by subsection (c) at a physical office, are eliminated and replaced with new language imposing on an originator sponsored by a mortgage company the requirement for the mortgage company to make disclosures on its website and social media sites, as provided by 7 TAC §80.200(b). New subsection (e) requires an originator to disclose the names and NMLS identification numbers of the originator and the mortgage banker or the mortgage company sponsoring the originator on all correspondence sent to a mortgage applicant. Notwithstanding the definition of “application” in §81.2, for the purposes of triggering the notices required by subsections (a) and (b), new subsection (f) limits the determination of what constitutes an application to the definition in §1026.2 of Regulation Z. For the purposes of the notice required by subsection (c), new subsection (g) sets out the requirements of what constitutes “conspicuously posted” on a website and on a social media site.

§81.202 (Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings). The adopted rules make amendments to the duties and responsibilities imposed on a mortgage banker and its originator contained in §81.202. The amendments to §81.202 are substantially the same amendments the adopted rules make to §80.202, modified for context for §81.202.

§81.203 (Advertising). The amendments to §81.203 are substantially the same amendments the adopted rules make to §80.203, modified for context for §81.203 and to clarify that the requirements of 81.203 apply to mortgage bankers.

§81.204 (Books and Records). The amendments to §81.204 are substantially the same amendments the adopted rules make to §80.204, modified for context for §81.204, except for adopted §80.204(b)(4)’s requirement for a mortgage company to create and maintain records establishing a physical office, which does not apply to mortgage bankers.

§81.206 (Physical Office). The adopted rules amend subsection (a), paragraph 2, by removing the requirements for posting at the physical office the hours of opening and closing of the office. Subsection (b) relating to storing books and records at the physical office is eliminated as unnecessary.

§81.301 (Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions). The provisions of existing subsection (c) are eliminated as being duplicative of the requirements of the Texas Finance Code and without offering additional guidance.

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