



October 5, 2020

To: Clients and Friends

From: David F. Dulock

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

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In the September 25, 2020, *Texas Register*, [click here](#), the Finance Commission of Texas (Commission) published proposed amendments to the Texas Administrative Codes rules affecting Texas Residential Mortgage Loan Companies (7 TAC Chap.80) and Texas Mortgage Bankers and Residential Mortgage Loan Originators (7 TAC Chap. 81).

Written comments regarding the proposed amendments may be submitted by mail to Iain A. Berry, Associate General Counsel, Department of Savings and Mortgage Lending, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of these proposed rules in the *Texas Register*.

These proposed amendments (herein “proposed 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 proposed rules and summarizes some of the more substantive proposed amendments:

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

§80.1(Scope). The proposed rules would 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 proposed rules would add a definition for the term “application” to define and clarify when an individual acting as a residential mortgage loan originator has received information constituting a residential mortgage loan application as used in Tex. Fin. Code §156.002(14)/§180.002(19) and proposed paragraph (20) of §80.2. The

proposed rules would add a definition for “compensation” 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) and proposed paragraph (12) of §80.2. The proposed rules would 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 proposed paragraph (8) and “residential real estate” in proposed paragraph (18). The proposed rules also would add the following definitions: “mortgage applicant” in proposed paragraph (9), “mortgage company” in proposed paragraph (10), “person” in proposed paragraph (14) and “social media site” in proposed paragraph (19). The proposed rules would add a definition for the phrase “offers or negotiates the terms of a residential mortgage loan” in proposed 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 proposed rules would add a definition for “originator” in proposed 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 proposed rules would add a definition for the phrase “takes a residential loan application” in proposed 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)/§180.002(19).

§80.200 (Required Disclosures). The proposed rules would 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 proposed rules would amend subsection (b) to eliminate the requirement for a mortgage company or its originator to conspicuously post the notice required by subsection (b) at each physical office and would 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 proposed rules would 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 proposed rules would also add proposed subsections (d) and (e). Notwithstanding the proposed definition of “application” in §80.2, for the purposes of triggering the notice required by subsection (a), proposed subsection (d) would limit 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), proposed 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 proposed rules would make changes to the duties and responsibilities imposed on licensed mortgage companies contained in §80.202. The provisions of existing subsection (a) would be amended with language causing each discrete act contained in the paragraphed list under subsection (a), which list would also be 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). The provisions of existing subsection (b) would be amended with language causing each discrete act contained in the paragraphed list under subsection (b), which list would also be 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), 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, would be removed and the subject matter replaced with a new paragraph (4) of subsection (b) that would state 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 would constitute an improper dealings violation under Tex. Fin. Code §156.303(a)(3). Existing subsection (b), paragraph (3), subparagraph (C), regarding a false, misleading or deceptive practice or improper dealings in a related transaction, would be removed and the subject matter amended for clarity in a new subsection (c). A new subsection (d) would be added prohibiting a mortgage company and its 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." In addition, for those originators who are acting in the dual capacity of an originator and a real estate broker or sales agent licensed under Occupations Code, Chapter 1101, proposed subsection (d) would create a rebuttable presumption that a rebate or other transfer to the mortgage applicant made after closing is derived from the originator's fees for mortgage origination services (a violation of subsection (d)) and not derived from his or her role as real estate broker or sales agent.

§80.203 (Advertising). The proposed rules would amend subsection (b), paragraph (2) to require that an advertisement by a mortgage company 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) would be further amended to eliminate the requirement that a mortgage company recite the mortgage company's street address in Texas when making an advertisement. Subsection (c) would be 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 physical printed handouts (including business cards) and commercial messages delivered through a social media site. Subsection (c) would be further amended to allow certain items already exempt from subsection (b) to include the website address for the mortgage company. Subsection (c) also would be amended to exempt signs located on or adjacent to a mortgage company's physical office from the requirements of subsection (b). The proposed rules would insert a new subsection (d) that would allow a mortgage company to directly advertise its services and that it need not advertise by and through a sponsored originator.

§80.204 (Books and Records). The proposed rules would 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 and a description of the owner's intended occupancy of the subject real estate. The proposed rules would 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.

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

§81.2 (Definitions). The proposed rules would 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 proposed definitions in §80.2.

§81.200 (Required Disclosures). The proposed rules would 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 delivery of the required notice would be eliminated and replaced with new language that would 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) would be 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 would 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, would be eliminated and replaced with new language imposing the requirement for a mortgage company to make disclosures on its website and social media sites, as provided by 7 TAC §80.200(b), on the originators sponsored by such mortgage company. Proposed new subsection (e) would require 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 proposed definition of “application” in §81.2, for the purposes of triggering the notices required by subsections (a) and (b), proposed new subsection (f) would limit 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), proposed 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 proposed rules would make amendments to the duties and responsibilities imposed on a mortgage banker and its originator contained in §81.202. The proposed amendments to §81.202 are substantially the same amendments the proposed rules make to §80.202, modified for context for §81.202.

§81.203 (Advertising). The proposed amendments to §81.203 are substantially the same amendments the proposed 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 proposed amendments to §81.204 are substantially the same amendments the proposed rules make to §80.204, modified for context for §81.204, except for proposed §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.

Readers of this memorandum should not rely on this brief summary of the proposed rules but should read the proposed rules and make appropriate comments to Iain A. Berry, Associate General Counsel, Texas Department of Savings and Mortgage Lending, in the manner and time period noted on page 1 of this memorandum.

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