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**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** Mortgage Broker/Loan Officer- Revised Rules

In order to implement the recent legislative changes to the Mortgage Broker License Act (Chapter 156, Finance Code, herein the "Act") made by House Bills 1716 and 2783 (*see our Legislative Update dated August 6, 2007*), the Finance Commission of Texas ("Finance Commission") published in the November 2, 2007 issue of the *Texas Register* amendments to the following mortgage broker rules: 7 TAC §§80.1 – 80.7 (Licensing), §§80.12 - 80.14 (Administration and Records), §§80.20 and 80.21 (Inspections and Investigations), and §80.23 (Annual Reports). **These amended rules become effective November 11, 2007.**

The following summaries of the amended rules are taken from the Finance Commission's preamble to the amendments published in the above issue of the *Texas Register* and the more important rules are reprinted after their respective summaries.

#### §80.1. Scope.

House Bill 2783 amended §156.204(b) of the Act to require business entities to be licensed in order to act as mortgage brokers. Prior to HB 2783, only individuals could be licensed as mortgage brokers. The term "person" expressly includes business entities as well as natural persons (*see*, Code Construction Act, Chapter 311, Government Code). For this reason, the amendments to §80.1 substitute the term "person" for the term "individual" in several provisions. The use of the term "individual" is retained or added in those places where the provision is intended to apply only to a natural person.

HB 1716 and HB 2783 amended the exemption language in §156.202 of the Act, which exempts certain persons from the Act. HB 1716 creates a new exemption for individuals who are exclusive agents of registered financial services companies. This new exemption is contained in §80.1(6)(A)(vi). Prior to HB 2783, persons who financed property which they own and sell were exempt from the Act. HB 2783 amended §156.202 of the Act so that this exemption now applies only to owners who make no more than five such loans in any 12-month period. This revised exemption is contained in §80.1(6)(B)(ii).

#### §80.1(6) Exemptions.

(A)(vi) an individual who is an exclusive agent of a registered financial services company under a written agreement prohibiting the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the registered financial services company or an affiliate of that company.

(B)(ii) an owner of real property who in any 12-consecutive-month period makes no more than five Mortgage Loans to purchasers of the real property for all or a part of the purchase price of that same real property;

## §80.2. Definitions.

The amendments to §80.2(1) and (4) reflect the name change of the Department from the “Savings and Loan Department” to the “Department of Savings and Mortgage Lending.”

The amendment to the definition of “Mortgage Loan” in §80.2(5) conforms this definition to the definition in §156.002(10) of the Act, amended by HB 2783, by eliminating the word “first.” By eliminating the lien priority restriction, amended §80.2(5) expands the definition of Mortgage Loan to all residential Mortgage Loans regardless of their priority. HB 2783 also provides that a licensed mortgage broker will no longer be required to have a separate Chapter 342 license to originate a second lien Mortgage Loan subject to Chapter 342 (*new §342.051(f) of the Finance Code*) and designates the Commissioner of the Department of Savings and Mortgage Lending as the officer responsible for overseeing Chapter 342 loans originated by licensed mortgage brokers (new §341.103(a)(3) of the Finance Code).

The definition of “Mortgage Banker” in §80.2(7) is amended by adding the word “unconditional” before the words *direct endorsement underwriting authority*, and is intended to clarify the definition of direct endorsement authority for HUD-authorized originators.

The definition of “Physical Office” in §80.2(9) is amended by the addition of the following requirements: “The posted hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers.” This amendment to the definition of a “Physical Office” is intended to more clearly describe the manner of posting business hours for offices which may be located in shared facilities, such as an executive office suite arrangement, or when a mortgage broker operates out of his or her residence. The amendment further requires that a licensee provide on-site staff during all posted hours of business. The amendment is intended to insure that consumers know when the mortgage originator is open for walk-in traffic and that assistance will be available during those hours. Lest anyone be concerned that the amendment applies to loan officers working out of their homes, the Finance Commission stated in its preamble discussion of this amended rule that *“The rule does not require that all locations from which a broker or loan officer work meet these requirements. The rule simply sets the parameters for an office which serves as the ‘official office’ for the broker.”*

The definition of criminal offense in §80.2(13) is amended by adding drug dealing (§80.2(13)(E)), crimes involving weapons (§80.2(13)(F)), and misdemeanor convictions (§80.2(13)(G)). This reflects the current definition that the Department of Savings and Mortgage Lending considers criminal offenses related to the business of a mortgage broker. The Commissioner believes that non-financial related offenses, such as drug dealing and crimes involving weapons, pose danger to the public at large and to consumers in particular and that a pattern of misdemeanor convictions may evidence such disregard for authority as to cause concern that the person would be more likely to disregard laws regulating mortgage lending, thereby placing consumers at risk. These amendments formalize the approach the Commissioner and Department have taken in dealing with these types of offenses.

§80.2(13) "Criminal Offense" means any violation of any state or federal criminal statute which:

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered in connection with several other violations committed by the same person over a period of time forms part of a pattern showing a lack of respect for, disregard for, or, apparent inability to follow, the criminal law;

### **§80.3. Licensing - general.**

The amendments to §80.3(a) eliminate the language that only individuals may be licensed, consistent with the requirements for entity licensing in §156.204(b) of the Act as amended by HB 2783. Additionally, the amendments to §80.3(a) clarify the application procedure and more accurately reflect current processes.

The amendments to §80.3(b) for provisional loan officer licenses reflect changes mandated by new §156.2011 of the Act, as added by HB 2783, relating to provisional licensing for those persons with recent experience as loan officers with exempt entities. The intent is to provide an expedited loan officer license process for these persons as they move from exempt entities to a licensed activity.

§80.3(b)(2) If an applicant for a loan officer license has been employed as a loan officer for at least 18 months of the 20 months immediately preceding the date of the application by a person exempt from the Act under §156.202, the applicant may be granted a 90 day provisional license as provided in this subdivision:

(A) The applicant must meet the qualifications for a loan officer license, other than the educational and examination requirements.

(B) The applicant must pay a non-refundable \$100 expedited processing fee in addition to the fee for regular license.

(C) No extension of the provisional license will be granted. Unless the applicant has met all of the requirements for a regular license, including the educational and testing requirements, and the license has been issued, the provisional license will expire at the end of the 90 day period.

(D) The Commissioner shall use best efforts to issue the provisional loan officer license on or before the later of: (i) the 10th business day after the date of receipt of a completed application; or (ii) the second business day after the date of receipt of the criminal background information required under §156.206 of the Act, demonstrating that the applicant has no pending criminal charges and has not been convicted of a criminal offense. A person is considered convicted as provided by §156.204(d) of the Act.

(E) The Commissioner may revoke a provisional loan officer license if the Commissioner discovers that the applicant has made a misrepresentation relating to the applicant's qualifications for a loan officer license, has violated this chapter, or does not meet the qualifications for a provisional loan officer license. The revocation of a provisional loan officer license is not subject to appeal.

The amendments to §80.3 also add a new subsection (c) which brings together in one subsection the mortgage broker and loan officer license application fee provisions relating to how these fees are established and modified and the fact that they are nonrefundable and nontransferable.

#### **§80.4. Qualifications for obtaining licenses.**

The amendments to §80.4 conform this rule to the language in §156.204 of the Act as amended by HB 2783 (*i.e.*, increased educational and testing requirements; entity licensing, *etc.*). Amended §80.4(a) now applies only to individual applicants for a mortgage broker license and provides for additional educational requirements in new subsection (a)(10). Amended §80.4(b) amends the existing requirements for a loan officer license and increases the educational requirements. New §80.4(c) provides for entity licensing, as required by HB 2783, and minimum net worth requirements for licensed entities. HB 2783 did not specifically address whether the entity must independently meet the financial requirements of a mortgage broker. New §80.4(c) provides that an entity will satisfy this net worth requirement by providing evidence to the Commissioner that the mortgage broker serving as the designated representative meets the requirement. New §80.4(d) provides that the entity's designated representative must have an active mortgage broker license.

§80.4(a) Individual Mortgage Broker Licenses. In order to be issued a license as a Mortgage Broker, an individual applicant must establish to the satisfaction of the Commissioner that:

*[Subsections (1) through (9) are substantially unchanged]*

(10) provide the Commissioner with satisfactory evidence that:

(A) if the person has not been previously licensed as a mortgage broker or a loan officer under this subchapter, the person has completed 90 classroom hours of education courses approved by the Commissioner under this section; or

(B) if the person has not been previously licensed as a mortgage broker under this subchapter but has been licensed as a loan officer under this subchapter, the person has successfully completed an additional 30 classroom hours of education courses approved by the Commissioner under this section.

§80.4(b) Loan Officer Licenses. In order to be issued a license as a Loan Officer, an applicant must establish to the satisfaction of the Commissioner that:

*[Subsections (1) through (3) and (5) through (8) are substantially unchanged]*

(4) the applicant has either:

(A) successfully completed at least 60 hours of education courses approved by the Commissioner; or

(B) successfully completed 30 hours of education courses approved by the Commissioner if the applicant: (i) has 18 months or more of experience as a mortgage loan officer as evidenced by documentary proof of full-time employment as a mortgage loan officer with a person exempt under §156.202 of the Act; or (ii) is a person who meets the qualifications of §80.4(a)(4)(B) [*an active real estate broker; an active attorney; or a local recording or insurance agent for a legal reserve life insurance company under Chapter 21, Insurance Code*].

§80.4(c) Entity Mortgage Broker Licenses. A corporation, limited liability company, or limited partnership may not act as a mortgage broker unless the entity obtains a mortgage broker license. To be eligible to obtain a mortgage broker license the entity must:

(1) designate an individual licensed as a mortgage broker as its designated representative. The designated representative must be:

(A) an officer of the corporation if the entity is a corporation;

(B) a manager of the limited liability company if the entity is a limited liability company; or

(C) if the entity is a limited partnership: (i) an individual who is a general partner; (ii) an officer of a general partner that is a corporation; or (iii) a manager of a general partner that is a limited liability company.

(2) demonstrate to the satisfaction of the Commissioner that the applicant meets the minimum net worth requirements for a mortgage broker or prove [sic] to the Commissioner a surety bond in an amount not less than \$50,000 as provided in subsection (a)(5) of this section. In the alternative, the Commissioner will accept evidence that the mortgage broker who is the designated representative meets the minimum net worth requirements for a mortgage broker.

§80.4(d) Designated representative. A mortgage broker may not act as a designated representative at any time while the broker's license is inactive, expired, suspended or revoked.

Notwithstanding the November 11, 2007 effective date of the amendments to the mortgage broker rules discussed in this memorandum, HB 2783 provides that a corporation, limited liability company, or limited partnership is not required to obtain a mortgage broker license to act as a mortgage broker before January 1, 2008.

### **§80.5. Renewals.**

The amendments to §80.5(a) update and correct internal statutory citations.

The amendments to §80.5(b) update and clarify the procedures for license renewals and also update the grounds for denying a renewal to conform to the statutory provisions found in §156.208 of the Act as amended by HB 2783. Amended §80.5(b)(3) provides that a person may be denied a renewal of a license for engaging “*in conduct evidencing the licensee’s lack of good moral character, including the licensee’s honesty, trustworthiness, or integrity.*” The Department considers this to be consistent with the statutory language in §156.208 of the Act, which provides for denial of a license if “during the current term of the license, the commissioner becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was granted.” Therefore, if the act is committed by a current licensee, the Department considers the act as grounds for denial of the renewal of a license.

The amendments to §80.5(c) remove outdated language and provide for the option of establishing staggered license renewal dates for entity licenses.

§80.5(b) A renewal of a license may be denied if: (1) the license holder has been convicted of a criminal offense the Commissioner determines is directly related to the occupation of a mortgage broker or

loan officer as provided by Chapter 53 of the Occupations Code [*Consequences of Criminal Conviction*];

(2) the license holder is in violation of the Act, this Chapter, or an order of the Commissioner;

(3) the license holder has engaged in conduct evidencing the licensee's lack of good moral character, including the licensee's honesty, trustworthiness, or integrity; or

(4) any other ground provided by statute or this Chapter.

### **§80.6. Sponsorship and termination thereof.**

The amendments to §80.6 update the names of currently used forms. The amendments also provide that a loan officer may be sponsored by either the licensed entity or by an individual mortgage broker. This option provides flexibility to the newly licensed entities as to how loan officers may be sponsored, and is considered especially favorable to providing flexibility to small business operations.

§80.6(d) Loan officers affiliated with an entity which is licensed as a mortgage broker may be sponsored by the entity or an individual mortgage broker which is affiliated with and does business solely on behalf of the entity.

### **§80.7. Background checks.**

In order to implement the provisions of HB 1716, the amendments to §80.7 provide that the process for criminal background checks for exclusive agents of registered financial services companies will be that used for licensees under the Act. Amended §80.7 also updates existing language to incorporate the use of fingerprint scans in addition to cards and reflects the Department's use of this new technology.

§80.7(d) The provisions of this section shall apply to the background check to be conducted by the Commissioner for exclusive agents of registered financial services companies.

### **§80.12. Display of License Verification; License Record Changes.**

The amendments to §80.12 eliminate the need for the issuance of a paper license. A "Verification of Licensure" certificate will be provided on the Department's website and may be downloaded and printed for display. In addition, the amendment to §80.12(c) and new §§80.12(d) and (e) conform to amendments made to §156.211 of the Act by HB 2783, which provide for notice to the Department and payment of fees for name changes, address changes, and notice of use of assumed names.

§80.12(b) [*provides in pertinent part*] ... A Verification of Licensure document will be made available for download and printing on the Department's website. ... .

§80.12(c) Before the tenth day preceding the effective date of any change in address, a Mortgage Broker shall notify the Commissioner in writing of the proposed new address of that Mortgage Broker or, as applicable, a Loan Officer sponsored by that Mortgage Broker. The request shall be on the form promulgated

by the Commissioner and include a \$25 processing fee. Prior to conducting business at the new address, the licensee must confirm that the address change has been processed, and must download from the Department's website, print and post the amended Verification of Licensure for each licensee doing business from the new address.

§80.12(d) Before the tenth day following the effective date of any personal name change, a licensee shall notify the Commissioner in writing of the new personal name. The request shall be on the form promulgated by the Commissioner and include supporting documentation as well as a \$25 processing fee. Prior to conducting business using the new name, the licensee must confirm that the name change has been processed, and must download from the Department's website, print and post the amended Verification of Licensure for each licensee using the new name.

§80.12(e) Before the tenth day preceding the effective date of a new or changed assumed name or DBA, a licensee shall notify the Commissioner in writing of the new name. The request shall be on the form promulgated by the Commissioner and include supporting documentation as well as a \$25 processing fee. Prior to conducting business using the new or amended assumed name, the licensee must confirm that the assumed name has been processed, and must download from the Department's website, print and post the amended Verification of Licensure for each licensee using the new or amended assumed name.

### **§80.13. Books and records.**

New §343.105 of the Finance Code, added by HB 716, requires a notice to be given and signed by all mortgage applicants advising them of the possible criminal consequences of making a written misrepresentation in connection with a loan application (*see our June 4th Fraud Notice memo*). It is part of the Texas Legislature's mortgage fraud prevention initiative. Amended §80.13(1)(A) adds a new subsection (v) to require that licensees retain a copy of this fraud notice.

§80.13(1) Mortgage Application Records. Each Mortgage Broker and each Loan Officer is required to maintain, at the location specified in his or her application, the following books and records:

(A) A Mortgage Loan file for each Mortgage Loan application received; each such file shall contain at least the following:

*[Subsections (i) through (iv) are substantially unchanged]*

(v) a copy of the notice to applicants required by *Finance Code* §343.105.

### **§80.14. Education Program.**

The Finance Commission amended §80.14 in order to implement the provisions of HB 2783. In addition, the amendments incorporate the Department of Savings and Mortgage Lending's existing standards for approving educational courses which may be used to satisfy the initial educational requirements for the licensing of mortgage brokers and loan officers and for satisfying the continuing education requirements of the Act.

The amendments to §80.14(a) expand the narrative as to the purpose and goals of the educational program, which are to promote and further the purposes of the Act; ensure that applicants and licensees receive the minimal knowledge needed to acquire their licenses and

operate in compliance with federal and state laws in conducting mortgage lending activities; and to provide review and oversight of courses available to mortgage broker and loan officer applicants and licensees.

Existing §80.14(b) is deleted and new §80.14(j) incorporates and expands upon the deleted language. Existing §§80.14(c), (d), and (e) are moved to a later place in the rule and are relettered, respectively, (l), (m), and (n).

New §80.14(b) incorporates standards for course delivery methods and course content. Appropriate distinctions are made for classroom, classroom equivalent, correspondence, and online instruction. Particular attention has been devoted to the development and delivery of online courses. Online courses present particular challenges such as how to verify that course content is sufficient for the credit hours sought and how to verify that the applicant or licensee actually completes the course material. The adopted standards address these issues by requiring an interactive component that requires the student to successfully answer questions at specified intervals throughout the course and by requiring that online courses have the ability to verify the identity of the student. In order to promote quality content, courses offered by correspondence are required to have a proctored final exam. New §80.14(b) also includes standards for approval of course instructors and standards for seminar courses.

§80.14(b) Types of course delivery methods and standards:

(1) Classroom and classroom-equivalent.

(A) Classroom.

(i) A class must consist of at least five students, unless otherwise approved by the Department prior to the start of the class.

(ii) The training site must be easily accessible and secure for the safety of the student, and must comply with all applicable state and federal laws, including, but not limited to, the Americans with Disabilities Act of 1990.

(iii) **The instructor** must be approved by the Department and be a disinterested third party, i.e., an individual who **is not related to a student** by blood, adoption, or marriage as a parent, child, grandparent, sibling, niece, nephew, aunt, uncle, or first cousin; **and is not an employee or employer of the student.**

(iv) No more than a 10 minute break is allowed for every 50 minutes of instruction.

(v) One hour of classroom instruction (including break) equals one credit hour.

(B) Classroom-equivalent.

(i) A class must consist of at least five students, unless otherwise approved by the Department prior to the start of the class.

(ii) In circumstances involving remote presentations, the students and the instructor do not need to be in the same location. In the case of presenting recorded or text materials, the instructor making the live course



presentation does not have to be the same instructor included on the recorded presentation or who prepared the text materials.

(iii) A disinterested third party attendant, an instructor, or a disinterested third party using visual observation technology must visually monitor attendance either inside or at all exits to the course presentation area at all times during the course presentation.

(iv) Question and answer and discussion periods must be provided by an instructor making a live presentation of the course to students in the same room or via real-time live audio or audio-visual connection which shall allow for immediate student inquiries and responses with the presenting instructor, or an instructor who is present for the entire remote, recorded, or computer-based course presentation to students in the same room which shall allow for immediate inquiries and responses of students to the instructor.

(v) The course pace is set by the instructor and does not allow for independent completion of the course by students.

(vi) **The instructor** must be approved by the Department and be a disinterested third party, i.e., an individual who **is not related to a student** by blood, adoption, or marriage as a parent, child, grandparent, sibling, niece, nephew, aunt, uncle, or first cousin; **and is not an employee or employer of the student.**

(vii) No more than a 10 minute break is allowed for every 50 minutes of instruction.

(viii) One hour of classroom instruction (including break) equals one credit hour.

(2) Correspondence.

(A) Courses may include textbook, audio, video, computer-based instruction, or any combination of these in an independent study setting designed in such a manner as to insure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified to the Department.

(B) Provides for a written final examination of at least six questions for each one hour of credit approved (up to a maximum of 100 questions per course) that reasonably evaluates the student's understanding of the course content. At least 70% of the questions must be answered correctly for the student to be awarded a course completion certificate. At least two versions of the final examination must be available with the second examination provided to a student who fails at the first attempt. Anyone not passing the examination after the second attempt must retake the course before being offered a re-examination opportunity.

(C) Multiple choice questions must have at least four appropriate potential responses and for which "all of the above" or "none of the above" is not an appropriate option. No "true/false" questions are acceptable.

(D) Common industry best-practices guidelines will be used in reviewing and approving questions.

(E) A proctored final examination must be administered under controlled conditions to positively identify students at a location and by an official approved by the Department prior to the course material being presented to the students. **Proctors** must be approved by the Department and be a disinterested third party, that is an individual who **is not related to a student** by blood, adoption, or marriage as a parent, child,

grandparent, sibling, niece, nephew, aunt, uncle, or first cousin; **and is not an employee or employer of the student.**

(F) A minimum standard of 12,000 words (200 words-per-minute times 60 minutes) equals one credit hour.

(3) Online.

(A) Courses may be internet, CD-ROM, DVD, or other computer-based presentations.

(B) Sessions may not have more than one student at any one presentation of the course.

(C) The course must be designed in such a manner as to insure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified to the Department.

(D) Each course must have an interactive electronic component that:

(i) Provides for at least four interactive multiple choice (question with four possible answers) inquiry periods during each hour of the course, one of which shall be at the end of the course. Inquiry periods shall occur at regular and relatively evenly-spaced intervals between each period. Inquiry periods shall cover material presented in that section of the course.

(ii) Requires answering 70% of the test questions for each period correctly to demonstrate mastery of the current section, including the final section, before the student is allowed by the program to proceed to the next section or complete the course.

(iii) Identifies all incorrect responses and informs the student of the correct response with an explanation of the correct answer.

(iv) Generates a different set of test questions for the section, which may be repeated as necessary on a random or rotating basis if the student does not achieve the 70% correct response rate necessary to advance to the next section.

(v) Is capable of generating at least two separate sets of test questions for each inquiry period.

(vi) Includes a minimum of six questions for every one hour of instructor credit approved.

(vii) Provides for a method to directly transmit the final course completion results or a printed course completion receipt to the provider for issuance of a completion certificate.

(viii) Has a means to reasonably authenticate the student's identity on an hourly basis, including upon entering, during, and exiting the course.

(4) Seminar. A seminar is a one-time event which must meet the requirements of a classroom course, and is presented at particular events such as conventions and organizational meetings.

New §§80.14(c) and (d) establish a classification system for courses as core, ethics, and continuing education. Criteria for determining course content for each class are also established.

The requirements for core courses and ethics courses are consistent with the requirements of §156.204 of the Act, amended by HB 2783, which sets forth minimum educational requirements for mortgage brokers and loan officers.

§80.14(c) The Department classifies all of its approved courses into the following three types:

(1) Core.

(A) Assists in the preparation of an applicant for taking and passing the Texas pre-licensing examination as required by the Act for new mortgage broker and loan officer applicants;

(B) If taken in a classroom or classroom-equivalent setting, meets the educational requirements for new mortgage broker and loan officer applicants; and

(C) Meets the educational requirements for renewing mortgage broker and loan officer licensees.

(2) Ethics.

(A) If taken in a classroom or classroom-equivalent setting, meets the educational requirements for new mortgage broker and loan officer applicants. The total number of hours necessary is determined by the Commissioner with a minimum of two hours required.

(B) Meets the educational requirements for renewing mortgage broker and loan officer licensees.

(3) Continuing education. These courses meet the general educational requirements for renewing mortgage broker and loan officer licensees.

§80.14(d) Approved subject matter. Course types are determined based on the material presented in the course.

(1) Core courses must focus on topics covered by the Texas pre-licensing examination, specifically: (A) Equal Credit Opportunity Act (ECOA) and Regulation B; (B) Real Estate Settlement Procedures Act (RESPA) and Regulation X; (C) Truth in Lending Act (TILA) and Regulation Z; (D) Mortgage Broker License Act (MBLA) and Regulation; (E) General loan terms, knowledge or market practices; (F) Application and pre-qualification process; (G) Role of the mortgage broker and loan officer; (H) Secondary market or federal loan program terminology; (I) Texas home equity; (J) Predatory lending; (K) Deceptive trade practices; or (L) General mortgage-related math.

(2) Ethics courses must deal with the usage and customs among members of the mortgage lending industry, involving their moral and professional duties toward clients, lenders, borrowers, and one another. All ethics courses must include a minimum of five discussion questions designed to engage attendees in conversation regarding ethical issues facing them as mortgage lending professionals.

(3) Continuing education courses may include overviews of one or more of the subjects listed under core subject matter, general industry-related information, and other topics relevant to mortgage brokers and loan officers. Courses that may be approved include, but are not limited to: (A) Loan origination; (B) Loan processing; (C) Appraisal process; (D) Underwriting; (E) Credit analysis; (F) Finance and financial consulting; (G) Real estate contracts; (H) Discrimination laws; and (I) Real property conveyances.

New §§80.14(e) - (q) formalize the existing procedures the Department uses for course and instructor approvals. One important element is found in subsection (h) which requires periodic review and evaluation of approved course offerings. The Department believes that meaningful student feedback is an important component of monitoring the effectiveness of the educational component. New §156.214 of the Act, added by HB 2783, permits the Department to assess a fee up to \$200 for course review and approval, and this change is addressed in §80.14(j).

§80.14 (e) To receive approval to issue certificates for continuing education credit for special events and luncheons prior to the event, the sponsor of the activity must provide the Department an outline of the topics to be discussed and the date(s) of the activity. The Department may also grant continuing education credit on a case-by-case basis to individuals receiving college credit for courses taken in pursuit of degrees. Individuals requesting consideration must provide the Department proof of successfully completing the course and a description and syllabus of the course.

§80.14(f) The Department has the discretion of granting credit to those hours that specifically relate to the subject matter. For example, a provider may conduct a 15-hour course, but the Department will grant only four hours of credit for the portion of the class that directly relates to the pertinent subject matter.

§80.14(g) To be approved as an instructor, the instructor must document that he or she has adequate instructional training and subject matter expertise to properly convey the approved course material as approved by the Department. Any change to the status of a course instructor must be provided immediately to the Department. **No course may be offered without the prior approval of the instructor.**

§80.14(h) Once a course is approved and offered to the public, the Department may monitor the course to insure it is being instructed as it was originally presented for approval, and that both the course and the instructor are meeting the needs of the attendees. In order to accomplish this, the Department will conduct random audits and review student evaluations.

(1) The provider shall keep the Department informed regarding scheduling information of a classroom course, i.e., where and when a course will be offered, and permanent access to courses that are presented online via the internet. Any resulting audit will be documented and any negative feedback, regardless of the source, will be discussed with the provider.

(2) The provider shall distribute a Department-developed student evaluation to each attendee or user of the course. The evaluation will ask the student to complete the evaluation and mail or fax it directly to the Department; the provider should not collect forms and submit them to the Department on the students' behalf. The evaluations will be reviewed, and the Department will provide feedback as necessary to the provider. The Department's course evaluation form cannot be submitted by the provider, and providers cannot substitute their own form in place of the Department's form.

(3) The provider must provide to the Department a completed course attendance roster within five business days following the end of a course. The roster must include the name of the course, the course number, the dates the course was offered, and the name, contact information, and pass/fail indication for each attendee.

*[Subsection (i) is intentionally omitted from this memorandum]*

§80.14(j) All requests for review and approval of a course, including instructor(s), must be submitted using the Department's prescribed approval form, with the required processing fee not to exceed \$200 per one-

time review of the course. An applicable fee schedule shall be available and provided upon request. **No fee will be required for courses provided and approved by a duly organized trade association the purpose of which is primarily to represent residential mortgage originators.** The provider will be notified in writing of the decision of the Department to approve or deny the course. Resubmission of a reformatted course following a denial constitutes a new submission and must include the applicable fee.

*[Subsections (k), (l), and (m) are intentionally omitted from this memorandum]*

§80.14(n) *[provides in pertinent part]* Unless the approval of the Commissioner indicates otherwise, approval of a course is valid for two years. ... The provider can submit a request for an extension of the course prior to its expiration using company letterhead if there are no changes to the course as last approved, along with the applicable fee. If there are substantial changes, the provider should resubmit a new request for course review, along with the applicable fee.

§80.14(o) The Mortgage Broker License Act requires that each licensee complete at least 15 hours of continuing education courses during the term of his or her current license. The Mortgage Broker License Act further requires that at least eight of the fifteen hours relate to residential mortgage lending, defined as core courses by the Department. The remaining seven hours may be satisfied by taking courses which cover any of the subjects included in subsection (d)(3) of this section.

*[Subsection (p) is intentionally omitted from this memorandum]*

§80.14(q) *[provides in pertinent part]* ... Providers may advertise submitted courses by indicating the course is pending approval. No credit hours will be accepted for any class attended by an applicant or licensee that was not approved at the time of attendance. ...

## **§80.20. Inspections.**

The amendments to §80.20(b) provide that advance notice of an inspection of a licensee need not be given when the Department believes the advance notice would compromise the inspection by providing an opportunity for a licensee to purge files or otherwise obstruct the examination of records. This is of particular concern when the Department has reason to suspect that the licensee is engaged in mortgage fraud. The amendments also provide that advance notice of an inspection may be given by e-mail.

§80.20(b) Except when the Department determines that giving advance notice would impair the inspection, the Department will give licensees advance notice of each inspection. Such notice will be sent to the licensee's address of record or e-mail address on file with the Department and will specify the date on which the Department's inspectors are scheduled to arrive at the licensee's office. Failure of the licensee to actually receive the notice will not be grounds for delay or postponement of the inspection. The notice will include a list of the documents and records the licensee should have available for the inspector to review.

## **§80.21. Investigations.**

The amendments to §80.21 add a new subsection (d) and are intended as implementation provisions for entity licensing. The language in new subsection (d) provides that the designated representative of a licensed entity is individually responsible for the acts of the licensed entity and of the loan officers acting on behalf of the entity.

§80.21(d) The person who is the designated representative of an entity licensed as a mortgage broker is responsible for all acts and conduct as a mortgage broker performed by or through the business entity. A complaint which names the entity as a mortgage broker as the subject of the complaint but which does not specifically name the designated officer, manager or partner of the business entity, is a complaint against the mortgage broker acting as the designated representative at the time of any alleged violation for the purposes of determining the designated person's involvement in any alleged violation and whether the designated person fulfilled his or her professional responsibilities to the Commissioner and members of the public. A complaint which names a loan officer sponsored by an entity licensed as a mortgage broker but which does not specifically name the designated representative of the entity is a complaint against the mortgage broker who was acting as a designated representative at the time of any alleged violation by the loan officer for the purposes of determining the designated representative's involvement in any alleged violation and whether the designated representative fulfilled his or her professional responsibilities to the Commissioner and members of the public.

### **§80.23. Annual Reports.**

The amendment to §80.23(a) requires the mortgage broker to file an annual report before March 1 for the calendar year immediately preceding the year in which the report is due. Traditionally, the Commissioner has announced the date on an annual basis as the last business day of February. This amendment eliminates the need for the Commissioner to establish the date each year, and it provides greater direction to the regulated community.

§80.23(a) A mortgage broker shall file an annual report containing such information regarding the mortgage broker activity of the licensee and each sponsored loan officer as the Commissioner may require. The annual report shall be submitted on a form promulgated by the Commissioner. The annual report must be filed before March 1 of each year and shall cover the mortgage broker activities for the calendar year immediately preceding the year in which the report is due.

We have reprinted in this memorandum only those portions of the mortgage broker rules revised by the Finance Commission that we believe are most important. If you wish a complete copy of the revised rules approved by the Finance Commission in the November 2nd issue of the *Texas Register*, please contact us.

**This Memorandum is provided for the general information of the clients and friends of our firm only and is not intended as specific legal advice. You should not place reliance on this general information alone but should consult legal counsel regarding the application of the material discussed in this Memorandum to your specific case or circumstances.**