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To: Clients and Friends

From: David F. Dulock

Subject: Proposed Residential Mortgage Loan Originator Regulations -
Texas Register (35 TexReg 1846-1866) issued March 5, 2010

The Finance Commission of Texas ("Finance Commission") proposes amendments to Sections 80.1, 80.2, 80.8, 80.9, 80.10, 80.11, 80.12, 80.13, 80.14, 80.15, 80.20, 80.21, 80.22, and 80.23 of the Mortgage Broker and Loan Officer Licensing regulations contained in the Texas Administrative Code at 7 TAC Chapter 80. In addition, the Finance Commission proposes new Subchapter L, Licensing, Sections 80.301, 80.302, 80.303, 80.304, 80.305, 80.306, and 80.307. The text of these proposed amended and new regulations ("Proposed Rules") may be found in the above cited issue of the *Texas Register*, and you are advised to read these Proposed Rules and not rely on the summary contained in this memorandum.

Comments on the Proposed Rules may be submitted in writing to Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or e-mailed to smlinfo@sml.state.tx.us, no later than April 5, 2010.

Some of the more important Proposed Rules are briefly summarized below:

1. The proposed amendment to Section 80.1, *Scope*, provides that existing Subchapter A, Licensing, is to be rescinded on January 1, 2011, and is to be replaced by new Subchapter L, Licensing, Sections 80.301 – 80.307.

2. The proposed amendment to Section 80.2, *Definitions*, replaces the definition for "Mortgage Loan" with the definition of "Residential Mortgage Loan." Definitions for the terms "Dwelling" and "Residential Real Estate" have also been added. Although still defined in Section 80.2, in some of the proposed amended regulations the terms "Mortgage Broker" and "Loan Officer" are replaced with the term "Residential Mortgage Loan Originator." In addition, the term "Mortgage Loan" is replaced with the term "Residential Mortgage Loan."

3. The proposed amendment to Section 80.10, *Prohibition on False, Misleading, or Deceptive Practices and Improper Dealings*, eliminates the language that a sponsoring broker engages in false, misleading or deceptive practices or improper dealings when affiliating with a second mortgage broker who engages in false, misleading, or deceptive practices.

4. The proposed amendment to Section 80.12, *License Record Changes*, provides that changes in address, personal name, or company or organization name shall be filed through the Nationwide Mortgage Licensing System and Registry together with the payment of any applicable fees.

5. The proposed amendment to Section 80.14, *Education Program*, provides that subsections (a) through (q) are to be rescinded effective January 1, 2011, and adds new

subsection (r), to be effective April 2, 2010, that provides that pre-licensing and continuing education courses must be reviewed and approved by the Nationwide Mortgage Licensing System and Registry.

6. The proposed amendment to Section 80.15, *Complaints, Administrative Penalties, and Disciplinary and/or Enforcement Actions*, amends the maximum administrative penalty from \$2,500 per violation per day to \$25,000 per violation. Additionally, it provides that the Commissioner shall consider economic harm to property caused by a violation when determining the amount of any administrative penalty.

7. The proposed amendment to Section 80.21, *Investigations*, clarifies that the person who is the designated representative of an entity is responsible for all acts and conduct performed by or through the entity including acts and conduct by residential mortgage loan originators sponsored by the entity.

8. The proposed amendment to Section 80.22, *Loan Status Forms*, provides that a residential mortgage loan originator shall use the promulgated form (Form B) when providing a loan applicant with confirmation that an application for a mortgage loan has been approved. Existing Section 80.22 provides that use of this form is optional.

9. The proposed amendment to Section 80.23, *Annual Reports and Call Reports*, adds a new subsection (b) that requires a company or organization who held a license anytime during the reporting year to submit to the Nationwide Mortgage Licensing System and Registry a report of condition in the form and that contains the information required by the Nationwide Mortgage Licensing System and Registry.

10. The proposed addition of Subchapter L addresses the new licensing program to be effective January 1, 2011, in place of existing Subchapter A, Licensing, which is to be rescinded on January 1, 2011.

11. The proposed addition of Section 80.301, *Scope*, defines the terms residential mortgage loan originator, mortgage company, financial services company, credit union subsidiary organization, auxiliary mortgage loan activity company, and independent contractor loan processor/underwriter company. Additionally, it describes when a person must be licensed and describes persons who are exempt from licensure.

12. The proposed addition of Section 80.302, *Definitions*, adds definitions for numerous terms found in the mortgage broker and loan officer licensing rules (7 TAC Chapter 80).

13. The proposed addition of Section 80.303, *Licensing-General*, provides that applications for individual, company, or organization licensure must be submitted through the Nationwide Mortgage Licensing System and Registry; applications deemed incomplete may be withdrawn after 30 days from the TDSML request for additional information; and all licenses issued shall be valid for a term of not more than one year from the date of issuance and shall expire on December 31st of the year issued.

14. The proposed addition of Section 80.304, *Qualifications for Obtaining Licenses*, describes the minimum qualifications for licensure under the following license types offered under proposed Subchapter L: (1) Mortgage Company License, (2) Mortgage Company Residential Mortgage Loan Originator License, (3) Credit Union Subsidiary Organization License, (4) Credit Union Subsidiary Organization Residential Mortgage Loan Originator License, (5) Auxiliary Mortgage Loan Activity Company License, (6) Auxiliary Mortgage Loan Activity Residential Mortgage Loan Originator License, (7) Independent Contractor Loan Processor/Underwriter Company License, (8) Independent Contractor Loan Processor/Underwriter License, (9) Financial Services Company registration, and (10) Financial Services Company Exclusive Agent License.

15. The proposed addition of Section 80.305, *Renewals*, describes the conditions in which an application for license renewal may be approved or denied. Additionally, proposed Section 80.305 states that a licensed individual on active military duty serving outside of Texas is exempt from any late filing penalty fee for renewing after the expiration date of the license and is entitled to additional time to complete any education requirements or other requirements related to the renewal of the license.

16. The proposed addition of Section 80.306, *Sponsorship and Termination Thereof*, provides that companies or organizations affiliating with residential mortgage loan originators are required to sponsor their license; an applicant for a residential mortgage loan originator license without sponsorship may be issued an inactive license; and either the sponsoring company or the residential mortgage loan originator may remove sponsorship.

17. The proposed addition of Section 80.307, *Background Checks*, provides that each applicant for a residential mortgage loan originator license shall provide authorization and fingerprints necessary to conduct a criminal background history check through the Federal Bureau of Investigation; the Commissioner may conduct background history checks through the Department of Public Safety; each applicant shall provide authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain a credit report from a consumer credit reporting agency; and each applicant shall provide information related to any administrative, civil, or criminal findings by a governmental jurisdiction. Proposed Section 80.307 also provides that, except under certain circumstances, information obtained under it shall be kept confidential. Additionally, an individual considering applying for a license may request a criminal history evaluation letter regarding the person's eligibility for a license as defined in Chapter 53, Subchapter D, of the Occupations Code.

Please do not rely on the above summary of the Proposed Rules. You are advised to read the complete text of the Proposed Rules published in the above issue of the *Texas Register*.

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