

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 1. OFFICE OF THE GOVERNOR

#### CHAPTER 5. GENERAL ADMINISTRATION

##### SUBCHAPTER C. REGULATORY

##### COMPLIANCE DIVISION

###### 1 TAC §§5.206, 5.209 - 5.211, 5.213

The Regulatory Compliance Division of the Office of the Governor ("Division") proposes amendments to 1 TAC §§5.206, 5.209, 5.210, and 5.213, concerning the Division's procedure for reviewing a supplemental amendment to a previously reviewed proposed rule. The Division also proposes a new rule at 1 TAC §5.211, concerning the Division's ability to request information from a state agency when deciding whether to direct the state agency to submit a proposed rule for review.

###### EXPLANATION OF PROPOSED AMENDMENTS AND NEW RULE

The Division is responsible for conducting an independent review of certain state agencies' proposed rules that affect market competition under Texas Occupations Code, Chapter 57, Subchapter C. Pursuant to Texas Occupations Code §57.105(c), during a review of a proposed rule, the Division already requires a state agency to provide to the Division any amendments to the proposed rule that the state agency intends to adopt. The Division reviews those amendments in conjunction with the text of the proposed rule as published in the *Texas Register* and issues a determination letter approving or disapproving the proposed rule, as intended to be amended. It has been brought to the Division's attention that state agencies occasionally need or desire to further amend a proposed rule after the Division has issued a determination letter on the proposed rule. The proposed amendments to 1 TAC Chapter 5, Subchapter C, create a procedure for state agencies to provide to the Division additional amendments to a previously reviewed proposed rule and to be issued an addendum to the determination letter regarding the permissibility of adopting and implementing the additional amendments.

The proposed amendments to §5.206 authorize the provision of an additional amendment to the Division so long as it does not include a change that would require the rule to be re-proposed in the *Texas Register*. At its discretion, the Division may review the additional amendment and issue an addendum to the determination letter addressing the amendment, or it may require the amendment be resubmitted as a new submission. The proposed amendments to §5.209 set out the procedures and timeline for issuing an addendum to a determination letter. The proposed amendments to §5.210 explain how a state agency may adopt and implement a proposed rule if an addendum is issued, and

the proposed amendments to §5.212 require that any addenda issued by the Division be maintained on the Division's website.

Pursuant to Texas Occupation Code §57.106(g), the Division may initiate a review of a proposed rule if the Division has reason to believe that the proposed rule may have an anticompetitive market effect. However, the potential effects of a proposed rule are not always ascertainable from the explanation and text of the proposed rule published in the *Texas Register*. When deciding whether to initiate a review, Texas Occupations Code §57.106(h)(1) allows the Division to consider evidence or communications that are submitted in writing from an identified person. The proposed new §5.111 makes clear that the Division may request information from a state agency to determine whether a proposed rule affects competition. Such information must be made in writing by identified agency personnel and will be made available to the public.

###### FISCAL NOTE

Erin Bennett, Director, Regulatory Compliance Division, has determined that during each year of the first five years in which the proposed amendments and new rule are in effect, there will be no expected fiscal impact on state and local governments as a result of enforcing or administering the proposed amendments and new rule.

Ms. Bennett does not anticipate any measurable effect on local employment or the local economy as a result of the proposed amendments and new rule.

###### PUBLIC BENEFIT AND COSTS

Ms. Bennett has also determined that during each year of the first five years in which the proposed amendments and new rule are in effect, the public benefits anticipated as a result of the proposed amendments and new rule are reduced delays in state agency rulemaking due to minor amendments to previously reviewed proposed rules and increased efficiency in the Division's identification of proposed rules that may have an anticompetitive market effect.

Ms. Bennett has determined there are no measurable anticipated economic costs to persons required to comply with the proposed amendments and new rule.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Since the Division has determined that the proposed amendments and new rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

###### GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Bennett has determined that during each year of the first five years in which the proposed amendments and new rule are in effect, the proposed amendments and new rule:

- 1) will not create or eliminate a government program;
- 2) will not require the creation of new employee positions or the elimination of existing employee positions;
- 3) will not require an increase or decrease in future legislative appropriations to the Office of the Governor;
- 4) will not require an increase or decrease in fees paid to the Office of the Governor;
- 5) do include the creation of a new regulation;
- 6) will expand, limit, or repeal existing regulations;
- 7) will not increase or decrease the number of individuals subject to the applicability of the rules; and
- 8) will not positively or adversely affect the Texas economy.

#### TAKINGS IMPACT ASSESSMENT

The Division has determined that no private real property interests are affected by the proposed amendments and new rule, and the proposed amendments and new rule do not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the proposed amendments and new rule do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### SUBMISSION OF COMMENTS

Written comments regarding the proposed amendments and new rule may be submitted to Erin Bennett, Director, Regulatory Compliance Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711 or by email to [RegulatoryCompliance@gov.texas.gov](mailto:RegulatoryCompliance@gov.texas.gov) with the subject line "Division Rules." The deadline for receipt of comments is 5:00 p.m., Central Time, on October 2, 2021. All requests for a public hearing on the proposed amendments and new rule, submitted under the Administrative Procedure Act, must be received by the Division no more than fifteen (15) days after the notice of the proposed amendments and new rule has been published in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed amendments and new rule are proposed under Texas Occupations Code §57.107, which provides that the Division may adopt rules to carry out its functions under that subchapter.

#### CROSS REFERENCE TO STATUTE

Subchapter C, Chapter 57, Texas Occupations Code.

No other statutes, articles, or codes are affected by the proposed amendments or new rule.

#### §5.206. *Supplementation of Proposed Rule Submission.*

(a) While a proposed rule is being reviewed by the division, the state agency must provide to the division:

- (1) copies of any administrative records regarding the proposed rule created, received, or consulted by the state agency after submission of the proposed rule to the division, including any information or comments received from the public after the submission; and

(2) any amendments to the proposed rule that the state agency intends to adopt and that were not included in the proposed rule submission.

(b) If a state agency supplements a proposed rule submission under subsection (a) of this section with a substantial amount of administrative records or with an amendment that significantly changes the proposed rule in nature or scope, the division may:

(1) require the submission of an updated rule submission memorandum;

(2) reopen [re-open] or extend the public comment period on the proposed rule; and

(3) deem the supplemented submission a new submission, including restarting the 90-day period for the division to issue a determination letter approving or rejecting the proposed rule.

(c) After the division has issued a determination letter approving a proposed rule or disapproving a proposed rule with precise instructions, the state agency may provide to the division an amendment to the proposed rule that the state agency intends to adopt but did not previously provide to the division, if the amendment does not include a change to the proposed rule that would require the rule to be re-proposed in the *Texas Register*.

(d) If a state agency supplements a proposed rule submission under subsection (c) of this section, the division may, at its discretion, issue an addendum to the determination letter addressing the amendment to the proposed rule, as provided in §5.209(e) of this subchapter, or require the state agency to re-submit the proposed rule and amendment as a new submission under §5.204 of this subchapter.

#### §5.209. *Determination by Division on Proposed Rule.*

(a) Not later than the 90th day after the postmark date of a state agency's mailed proposed rule submission or the date on which the division receives a state agency's hand delivered or emailed proposed rule submission, the division shall issue a determination letter approving or rejecting the proposed rule.

(b) The division shall include in the determination letter an explanation of the division's reasons for approving or rejecting the proposed rule, including a discussion of the division's determination regarding the consistency of the proposed rule with applicable state policy. If the division rejects a proposed rule, the division shall include in the determination letter instructions for revising the proposed rule to be consistent with applicable state policy. At its discretion, the division may provide either precise or general instructions for revising the proposed rule and must identify its instructions as such.

(c) The division shall send the determination letter to the state agency head, the presiding officer of the governing body of the state agency, and, if different from the state agency head or presiding officer, the agency staff or governing body member who submitted the proposed rule to the division, and shall make the determination letter available to the public on the division's website.

(d) A determination letter issued by the division is not subject to appeal.

(e) The division may issue an addendum to a determination letter approving or rejecting an amendment to the proposed rule provided to the division under §5.206(c) of this subchapter. In issuing an addendum, the division shall follow the procedures in subsections (b) and (c) of this section and must issue the addendum not later than the 30th day after the division's receipt of the amendment.

#### §5.210. *Final Adoption and Implementation of Proposed Rule.*

(a) A state agency may finally adopt and implement a proposed rule required to be submitted to the division under §5.204 of this subchapter only if:

(1) the division issues a determination letter approving the proposed rule under §5.209 of this subchapter; or

(2) the division issues a determination letter rejecting the proposed rule under §5.209 of this subchapter with precise instructions for the revision of the proposed rule and the state agency revises the proposed rule according to the division's instructions.

(b) If an addendum to a determination letter is issued under §5.209(e) of this subchapter, the state agency may finally adopt and implement the proposed rule, as amended, if:

(1) the division issues an addendum approving the amendment; or

(2) the division issues an addendum rejecting the amendment with precise instructions for revision and the state agency revises the proposed rule, as amended, according to the division's instructions.

(c) ~~[(b)]~~ In adopting a proposed rule pursuant to ~~[subsection (a) of]~~ this section, a state agency may make technical and nonsubstantive changes to the language of the proposed rule and any amendments to the proposed rule reviewed by the division. For purposes of ~~subsections [subsection] (a)(2) and (b)(2)~~ of this section, a state agency may also make technical and nonsubstantive changes to the proposed rule when incorporating the division's precise instructions.

(d) ~~[(e)]~~ A rule finally adopted and implemented in accordance with subsection (a)(2) or (b)(2) of this section is deemed to have been approved by the division for purposes of Section 57.106(e) of the Texas Occupations Code.

§5.211. Division Information Requests.

When deciding whether to direct a state agency to submit a proposed rule to the division under §5.204(a)(2) of this subchapter, the division may request information from the state agency relating to the proposed rule. Any information provided in response to such a request must be submitted in writing from an identified agency staff or governing body member and will be made available to the public by the division.

§5.213. Division Website.

The division shall maintain a website on which the division makes available to the public:

(1) the rule submission memorandum for each proposed rule that is currently under review by the division;

(2) the deadline and instructions for submitting public comments on each proposed rule that is currently under review by the division;

(3) all determination letters issued by the division, including any addenda to determination letters issued by the division;

(4) a means through which any person may sign up to be notified when the division receives a proposed rule submission or issues a determination letter on any proposed rule; and

(5) a means through which any person may request publicly available documents not maintained on the division's website.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2021.  
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Erin Bennett  
Director, Regulatory Compliance Division  
Office of the Governor  
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For further information, please call: (512) 463-8500

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**TITLE 7. BANKING AND SECURITIES**

**PART 1. FINANCE COMMISSION OF TEXAS**

**CHAPTER 7. TEXAS FINANCIAL EDUCATION ENDOWMENT FUND**

**7 TAC §7.102**

The Finance Commission of Texas (commission) proposes amendments to §7.102 (relating to TFEE Responsibilities), in 7 TAC, Chapter 7, concerning Texas Financial Education Endowment Fund.

The rules in 7 TAC Chapter 7 govern the Texas Financial Education Endowment (TFEE). The Texas Legislature established TFEE under Texas Finance Code, §393.628(c), in order to "support statewide financial education and consumer credit building activities and programs."

In general, the purpose of the proposed rule changes to 7 TAC Chapter 7 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC, Chapter 7 was published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

Proposed amendments to §7.102 relate to the consumer credit commissioner's authority to designate other persons to perform functions related to TFEE. New text in subsection (a) would explain that the investment officer's responsibilities include maintaining compliance. The proposal would also amend subsection (a) to move text on executing grant agreements into a new sentence. The updated text would provide some flexibility and clarify the commissioner's authority to designate another person (not necessarily the investment officer) to execute grant agreements.

Mirand Diamond, Director of Licensing and Finance, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will more clearly specify the responsibilities of the TFEE investment officer.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse

economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would not expand, limit, or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to [rule.comments@occc.texas.gov](mailto:rule.comments@occc.texas.gov). To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing credit access businesses). In addition, Texas Finance Code, §393.628 authorizes the commission to adopt rules regarding TFEE.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§7.102. *TFEE Responsibilities.*

(a) Finance commission and Office of Consumer Credit Commissioner (OCCC). The finance commission administers all aspects of TFEE, including the grant program, gifts, donations, funding and policy decisions. The OCCC is responsible for collection of assessment fees, disbursement and tracking of TFEE funds, and maintaining financial records of revenue, expenditures, and reconciliation of funds. The Consumer Credit Commissioner (commissioner) or the commissioner's designee serves as the investment officer appointed by the finance commission to maintain compliance [execute grant agreements], accept gifts and donations, and invest TFEE funds. The commissioner may designate a person to execute grant agreements.

(b) Grant Advisory Committee (GAC) and grant coordinator. The GAC serves in an advisory role and makes program recommendations to the grant coordinator and finance commission audit committee regarding TFEE administration. The grant coordinator serves under the direction of the commissioner, provides information regarding grant activity to the GAC and finance commission, and serves as the liaison between grantees and the GAC.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 936-7660

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**PART 4. DEPARTMENT OF SAVINGS  
AND MORTGAGE LENDING**

**CHAPTER 52. DEPARTMENT ADMINISTRATION**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes new rules in 7 TAC Chapter 52, Department Administration. This proposal and the new rules as proposed by this proposal are referred to collectively as the "proposed rules."

*Explanation of and Justification for the Rules*

The rules under 7 TAC Chapter 52 generally govern the department's internal processes and procedures including existing rules concerning consumer complaints filed with the department, the resolution of contested cases by informal settlement conference, and the use of advisory committees as provided by Finance Code §13.018. The proposed rules, if adopted, would establish new rules governing certain other internal processes and procedures related to: (i) the recovery fund administered by the department's commissioner (commissioner) under Finance Code Chapter 156, Subchapter F (recovery fund); (ii) the mortgage grant fund administered by the commissioner under Finance Code Chapter 156, Subchapter G (mortgage grant fund); and (iii) claims made against the mortgage grant fund as provided by Finance Code §156.555.

*New Rules Concerning the Recovery Fund*

Pursuant to Finance Code §13.016 and Chapter 156, Subchapter F, the commissioner is required to administer and maintain a fund against which persons may make a claim to recover actual out-of-pocket damages incurred because of acts committed by an individual licensed by the department as a residential mortgage loan originator under Finance Code Chapter 157. The proposed rules, if adopted, would: (i) create definitions necessary to administer the recovery fund, derived from similar definitions contained in existing 7 TAC §81.2 (relating to Definitions); (ii) clarify that a person seeking to make a claim against the recovery fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the recovery fund, a claimant must provide the necessary information and documentation necessary to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that a licensed residential mortgage loan originator against whom a claim was made and approved may have an administrative penalty imposed on him or her; and (vi) establish a process and procedure for paying approved claims in the event funds in the recovery fund are unavailable at the time the claim is approved.

*New Rules Concerning the Mortgage Grant Fund*

During the 87th Legislature (Regular Session), House Bill 3617 (HB3617) was enacted into law (eff. September 1, 2021) which, among other things, amended Finance Code Chapter 156 to create a new Subchapter G, creating a new mortgage grant fund for the commissioner to administer, funded primarily by excess contributions made to the recovery fund. The primary purpose of the mortgage grant fund is to promote financial education relating to mortgage loans and to support other statewide financial education, activities, and programs. The proposed rules, if adopted, would: (i) create definitions necessary to administer the mortgage grant fund; (ii) clarify the commissioner's role as manager of the mortgage grant fund, including providing periodic reports to the commission; (iii) provide for the creation of a manual reflecting the commissioner's policies and procedures governing administration of the mortgage grant fund; (iv) provide for the appointment of an employee of the department to serve as a grant coordinator to assist the commissioner in managing the mortgage grant fund; (v) provide for the creation of an advisory committee to make recommendations to the commissioner and the grant coordinator concerning management of the mortgage grant fund; and (vi) establish various processes and procedures for grantees to apply for, receive disbursements, and return misused funds, from the mortgage grant fund.

#### *New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund*

HB3617 further amended Finance Code Chapter 156 by creating a new Section 156.555, allowing for claims to be made against the mortgage grant fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed by an individual who acted in the capacity of a residential mortgage loan originator but did not hold the license required under Finance Code Chapter 157. The proposed rules, if adopted, would: (i) create definitions necessary to administer claims made against the mortgage grant fund; (ii) clarify that a person seeking to make a claim against the mortgage grant fund must file a sworn written application using the current form prescribed by the commissioner and posted on the department's website; (iii) clarify when the commissioner disburses funds on an approved claim (after the opportunity to appeal the commissioner's decision has lapsed); (iv) clarify that, in order to get paid from the mortgage grant fund, a claimant must provide the necessary information and documentation to be a valid payee for the purposes of the Texas Comptroller of Public Accounts; (v) clarify that an unlicensed individual against whom a claim was made and approved may have an administrative penalty imposed on him or her, and that failure to pay such penalty constitutes grounds for denial of licensure under Finance Code Chapter 157; (vi) establish a process and procedure for paying approved claims in the event funds in the mortgage grant fund are unavailable at the time the claim is approved; (vii) clarify certain eligibility requirements for making a claim against the mortgage grant fund required by application of the requirements for making a claim against the mortgage grant fund as provided by Finance Code §156.555(b); and (viii) clarify how the statute of limitations period for making claims on the recovery fund applies to claims made on the mortgage grant fund, thereby expressly allowing for claims prior to the effective date of Finance Code §156.555 and inception of the mortgage grant fund.

#### *Fiscal Impact on State and Local Government*

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in

costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there will be no foreseeable losses or increases in revenue to the state or local governments as a result of enforcing or administering the proposed rules.

#### *Public Benefits*

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the proposed rules will be for the public to have a clearer understanding of the processes and procedures governing the department's administration of the recovery fund, the mortgage grant fund, and recovery claims made against the mortgage grant fund.

#### *Probable Economic Costs to Persons Required to Comply with the Proposed Rules*

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. The proposed rules related to New Rules Concerning the Recovery Fund clarify existing authority for the commissioner, in his or her sole discretion, to pursue an administrative penalty against a licensed residential mortgage loan originator whose acts or omissions caused funds to be disbursed from the recovery fund, in order to recover such funds and replenish the recovery fund. However, authority for the commissioner to seek recovery of funds disbursed is authorized by Finance Code §156.506(a-1), is discretionary by the commissioner, and not required by the proposed rules. Furthermore, pursuant to Finance Code §156.501(b), an approved claim made against the recovery fund is inherently the result of a violation of law by such residential mortgage loan originator, thereby necessarily constituting grounds for the commissioner to pursue disciplinary action, including an administrative penalty. Moreover, a licensed residential mortgage loan originator can avoid any such potential costs arising from an administrative penalty by conforming to the laws and rules governing use of his or her residential mortgage loan originator license. The proposed rules related to New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund similarly clarify existing authority for the commissioner, in his or her sole discretion, to pursue an administrative penalty against an unlicensed individual whose fraudulent acts caused funds to be disbursed from the mortgage grant fund, in order to recover such funds and replenish the mortgage grant fund. Specifically, pursuant to Finance Code §157.023 and §157.031, the commissioner is authorized to seek an administrative penalty against an individual engaging in unlicensed activity under Finance Code Chapter 157. Finance Code §156.551(b), meanwhile, allows such administrative penalty to be deposited in the mortgage grant fund. An unlicensed individual may similarly avoid any such administrative penalty contemplated by the proposed rules by forbearing from engaging in unlicensed activity or behavior that constitutes fraud. Taking the foregoing into consideration, the proposed rules do not impose economic costs on persons required to comply with the proposed rules.

#### *One-for-One Rule Analysis*

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

## Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions. The proposed rules related to New Rules Concerning the Mortgage Grant Fund contemplate an employee of the department serving as grant coordinator for the mortgage grant fund, however, the department anticipates an existing employee of the department will absorb and perform such duties and thus the proposed rules will not require the creation of a new employee position. The proposed rules do not require the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to New Rules Concerning the Recovery Fund and New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund establish a new requirement clarifying an existing statutory requirement, pursuant to Finance Code §156.504(a) (including by application of Finance Code §156.555(b), with respect to claims made against the mortgage grant fund), for a claimant making a claim against the recovery fund or the mortgage grant fund to file a sworn written application by requiring such application be made using the current form prescribed by the commissioner and posted on the department's website. The proposed rules related to New Rules Concerning the Recovery Fund and New Rules Concerning Recovery Claims Made Against the Mortgage Grant Fund further establish a new requirement generally requiring a claimant whose claim has been approved by the commissioner to cooperate with department staff's instructions for effectuating disbursement of funds from the recovery fund or mortgage grant fund, including a requirement to provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts; (6) the proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

## Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

## Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

## Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

## Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All comments must be received within 30 days of publication of this proposal.

## SUBCHAPTER D. RECOVERY FUND

### 7 TAC §§52.100 - 52.104

#### Statutory Authority

This proposal is made under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. This proposal is also made under the authority of Finance Code §156.102(b-1) which authorizes the commission to adopt rules to promote the fair and orderly administration of the recovery fund consistent with the purposes of Finance Code Chapter 156, Subchapter F.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

#### §52.100. Purpose and Applicability.

The rules contained in 7 TAC Chapter 52, Subchapter D govern the Commissioner's administration of the recovery fund the Commissioner is required to establish, administer and maintain in accordance Tex. Fin. Code §13.016 and Finance Code Chapter 156, Subchapter F.

#### §52.101. Definitions.

The following terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation 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, and/or the mortgage loan amount.

(2) "Claimant" means a mortgage applicant making or seeking to make a claim on the recovery fund in accordance with Tex. Fin. Code §156.504.

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator in response to a solicitation) to obtain a residential mortgage loan, and includes 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.

(6) "Originator" has the meaning assigned by Tex. Fin. Code §180.002 in defining the term "residential mortgage loan originator."

(7) "Recovery fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Tex. Fin. Code §13.016 and Finance Code Chapter 156, Subchapter F.

(8) "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §180.002 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 residence.

§52.102. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.504, a claimant seeking to recover from the recovery fund must file a sworn written application with the Department which must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim made on the recovery fund, the Commissioner will issue an order disbursing funds from the recovery fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the recovery fund. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

§52.103. Administrative Penalty Against Originator.

In accordance with Tex. Fin. Code §156.506(c) and §157.0241(b), in order to effect reimbursement of amounts disbursed from the recovery fund, if the Commissioner approves a claim made under Tex. Fin. Code §156.504, the Commissioner may impose an administrative penalty on the originator whose acts or omissions caused the claim in an amount not less than the approved recovery fund claim amount. Upon payment of the administrative penalty, the Commissioner will cause the funds to be deposited in the recovery fund.

§52.104. Liability for Unpaid Claims.

(a) No Liability. The recovery fund, the Commissioner, and the Department are not liable to a claimant for a claim approved by the Commissioner under Tex. Fin. Code §156.504 if the assets of the recovery fund are insufficient to pay such claim.

(b) Payment of Unpaid Claims. If the recovery fund contains insufficient assets to pay a claim approved by the Commissioner under Tex. Fin. Code §156.504, the Commissioner will:

(1) record the time and date the claim was approved; and

(2) pay approved but unpaid claims for which a recordation was made under paragraph (1) as funds in the recovery fund become available, in the order of the recorded time and date of such claims.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER E. MORTGAGE GRANT FUND

### 7 TAC §§52.200 - 52.205

#### Statutory Authority

This proposal is made under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. This proposal is also made under the authority of Finance Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G including rules to: (i) ensure that a grant awarded from the mortgage grant fund is used for a public purpose; and (ii) provide a means of recovering money awarded from the mortgage grant fund that is not used for a public purpose.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§52.200. Purpose and Applicability.

The rules contained in 7 TAC Chapter 52, Subchapter E govern the Commissioner's administration of the Mortgage Grant Fund as provided by Finance Code Chapter 156, Subchapter G other than claims made against the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555 which are governed by the rules contained in 7 TAC Chapter 52, Subchapter F (relating to Mortgage Grant Fund: Recovery Claims for Unlicensed Activity).

§52.201. Definitions.

The following terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Auxiliary mortgage loan activity company" has the meaning assigned by Tex. Fin. Code §156.002.

(2) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(3) "Department" means the Department of Savings and Mortgage Lending.

(4) "Finance Commission" means the Finance Commission of Texas.

(5) "Grant Coordinator" means the individual appointed as the Grant Coordinator for purposes of §52.203 of this title (relating to Grant Coordinator).

(6) "Mortgage Grant Advisory Committee" or "MGAC" means the Mortgage Grant Advisory Committee formed to advise the Commissioner concerning administration of the fund, as provided by §52.204 of this title (relating to Mortgage Grant Advisory Committee).

(7) "Mortgage Grant Administration Manual" means the manual created by the Commissioner to reflect the various policies and procedures governing administration of the Mortgage Grant Fund grant program as provided by §52.202 of this title (relating to Commissioner as Manager).

(8) "Mortgage Grant Fund" or "fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.

§52.202. Commissioner as Manager.

(a) Manager. As provided by Tex. Fin. Code §156.553, the Commissioner serves as manager of the fund and administers all aspects of the fund.

(b) Periodic Reports to the Finance Commission. Unless the Finance Commission directs otherwise, the Commissioner or his or her designee (including but not limited to the Grant Coordinator) will report to the Finance Commission audit committee concerning the status and activities of the fund at each regularly called meeting of the Finance Commission audit committee, or otherwise at the request of the Finance Commission or its audit committee.

(c) Mortgage Grant Administration Manual. The Commissioner will develop and create a manual reflecting the Commissioner's policies and procedures governing administration of the fund and the Mortgage Grant Fund grant program to be known and referred to as the Mortgage Grant Administration Manual (MGAM). The MGAM, and any amendments to the MGAM, must be approved by the Finance Commission audit committee.

(d) Website. The Commissioner is expressly authorized to establish and maintain a website in connection with administering the fund, through which the Commissioner may disseminate information to the public and prospective grantees concerning the fund.

(e) Promotional Materials. The Commissioner is expressly authorized to develop and distribute various informational materials to promote the fund to the public or otherwise raise awareness of the purpose and activities of the fund.

§52.203. Grant Coordinator.

The Commissioner may appoint an employee of the Department to serve as grant coordinator to assist the Commissioner in discharging his or her duties related to the fund. The Grant Coordinator serves under the direction of the Commissioner and acts as liaison between grantees and the Mortgage Grant Advisory Committee (MGAC). The Commissioner may delegate any authority of the Commissioner to act as manager of the fund to the Grant Coordinator, including any specific duties listed under Tex. Fin. Code §156.553 except the authority to appear at hearings or judicial proceedings related to the fund.

§52.204. Mortgage Grant Advisory Committee.

(a) Formation. The Mortgage Grant Advisory Committee (MGAC) is created to serve in an advisory role and makes program recommendations to the Commissioner and Grant Coordinator regarding administration of the fund and the grant awards to be made from the fund. MGAC will continue in existence until the abolishment date set by §52.30 of this title (relating to Advisory Committees and Informal Conferences).

(b) Governance. MGAC will be governed by the provisions of the Mortgage Grant Administration Manual, including composition, eligibility, appointment, and membership terms.

(c) Reporting. MGAC will make and report written recommendations to the Commissioner and Grant Coordinator for review and consideration concerning all aspects of administering the fund including:

(1) evaluating grant applications to determine whether the application should be approved, and if so, a specific grant amount to award;

(2) monitoring ongoing grant awards to determine compliance;

(3) considering potential amendments to the Mortgage Grant Administration Policy Manual; and

(4) evaluating potential candidates for appointment to MGAC.

§52.205. Grant Program.

(a) Scope. This section governs the administration of and disbursements from the fund (each of which is considered a grant disbursement) for purposes of:

(1) Tex. Fin. Code §156.554(b)(1), concerning grants to an auxiliary mortgage loan activity company or another nonprofit organization to promote financial education relating to mortgage loans; and

(2) Tex. Fin. Code §156.554(b)(3), concerning disbursements to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers, or for the purposes provided by Tex. Fin. Code §393.628(c).

(b) Grant Cycle. The fund may have one competitive grant cycle each year.

(1) Funding determination. The grant funding determination is made by the Commissioner by December 31 of each year. The Commissioner will determine the separate funding available and allocated to each of the purposes of Tex. Fin. Code §156.554(b)(1) and (3).

(2) Programming cycle. A new fund grant programming cycle may open on January 1 of each year, and if opened, closes on December 31 of such year.

(c) Eligibility. A grant made under Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section may only be given to a company licensed by the Department as an auxiliary mortgage loan activity company, or a nonprofit organization. A grant made under Tex. Fin. Code §156.554(b)(3) and subsection (a)(2) of this section may be given to a nonprofit organization, school, or for-profit entity. Grant funding is not available to entities licensed or registered by the Department other than auxiliary mortgage loan activity companies in accordance with Tex. Fin. Code §156.554(b)(1) and subsection (a)(1) of this section.

(d) Grant Application. To be considered for the grant program, an applicant must complete and submit the grant application by the deadline and in accordance with the instructions for the applicable grant cycle. Late or incomplete grant applications will not be accepted. Meeting eligibility criteria and timely submission of a grant application does not guarantee award of a grant in any amount.

(e) Review and Approval. The Commissioner, upon receipt of advice from MGAC and the Grant Coordinator, will review timely and complete applications and determine the grants to be awarded.

(f) Grant Agreement. To participate in the grant program, a grantee approved by the Commissioner to receive a grant must execute the grant agreement approved by the Commissioner for the applicable grant cycle (grant agreement).

(g) Grantee Compliance. A grantee must comply with applicable financial, administrative, and programmatic terms and conditions, and exercise proper stewardship over grant program funds. A grantee must use awarded funds in compliance with the following in effect for the applicable grant cycle:

(1) all applicable state laws and regulations;

(2) all applicable federal laws and regulations;

(3) the Mortgage Grant Administration Manual;

(4) the grant application, including all application guidelines and instructions at the time of application;

(5) the grant agreement signed by the Commissioner or the Commissioner's designee and the grantee;



(6) all reporting and monitoring requirements, as outlined in the grant agreement; and

(7) any other guidance documents posted on the Mortgage Grant Fund website for the applicable grant cycle.

(h) Reporting and Monitoring.

(1) General reporting requirements. To receive reimbursement of grant expenses a grantee must:

(A) submit periodic grant reports as provided by the grant agreement;

(B) maintain satisfactory compliance with the grant agreement and the grant activities as proposed by the grantee in its grant application;

(C) identify, track and report performance measures;  
and

(D) track and report participant demographic information.

(2) Progress reports. A grantee must submit progress reports that demonstrate performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

(3) Six-month longitudinal report. A grantee must submit a six-month longitudinal report after program completion to demonstrate program objectives.

(4) Monitoring. The Grant Coordinator or MGAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk review. The Grant Coordinator or MGAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process; or

(B) Site visits and inspection reviews. The Grant Coordinator or MGAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(i) Reimbursement.

(1) Eligibility. To be eligible for reimbursement, a grantee must comply with all terms of the grant agreement, as well as all other items provided in subsection (g) of this section. To ensure that grant funds are used for a public purpose as provided by Tex. Fin. Code §156.556(1), grant funds will only be awarded on a cost reimbursement basis for all actual, allowable, and allocable costs incurred by a grantee pursuant to the grant agreement. Expenses that were incurred before the beginning or after termination of the grant agreement are not eligible for reimbursement.

(2) Procedure. To request reimbursement for work performed on grant activities, a grantee must submit a grant reimbursement report in accordance with and by the deadlines set forth in the grant agreement. A grantee must submit a detailed expense report with supporting documentation to justify the reimbursement request. The Department will review and approve requests for reimbursement that satisfy the requirements and promptly disburse funds in response to approved requests.

(j) Misuse of Grant Funds. The Commissioner may require a refund of grant funds already disbursed to the grantee and may cancel the grant agreement or disqualify the grantee from receiving future grants from the fund if:

(1) grant funds are not used for a public purpose allowable under Tex. Fin. Code §156.554;

(2) grant funds are used in an illegal manner;

(3) the grantee violates the terms or conditions of the grant agreement or otherwise violates the requirements of subsection (g) of this section; or

(4) the Commissioner discovers the grantee made any material misrepresentations in obtaining the grant or in seeking reimbursement of grant funds.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER F. MORTGAGE GRANT FUND: RECOVERY CLAIMS FOR UNLICENSED ACTIVITY

### 7 TAC §§52.300 - 52.306

#### Statutory Authority

This proposal is made under the authority of Finance Code §156.102(a) which authorizes the commission to adopt and enforce rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156. This proposal is also made under the authority of Finance Code §156.556 which authorizes the commission to adopt rules to administer Finance Code Chapter 156, Subchapter G.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

#### §52.300. *Purpose and Applicability.*

The rules contained in 7 TAC Chapter 52, subchapter F govern the Commissioner's administration of Tex. Fin. Code §156.555, allowing for claims to be made against the Mortgage Grant Fund to compensate persons for actual out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but who did not hold the required license issued under Finance Code Chapter 157.

#### §52.301. *Definitions.*

The following terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Application" means a request, in any form, for an offer (or a response to a solicitation 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, and/or the mortgage loan amount.

(2) "Claimant" means a mortgage applicant making or seeking to make a claim on the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555.

(3) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code Chapter 13.

(4) "Department" means the Department of Savings and Mortgage Lending.

(5) "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts an originator or an individual acting or attempting to act in the capacity of an originator in response to a solicitation) to obtain a residential mortgage loan, and includes 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.

(6) "Mortgage Grant Fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Finance Code Chapter 156, Subchapter G.

(7) "Originator" has the meaning assigned by Tex. Fin. Code §180.002 in defining the term "residential mortgage loan originator."

(8) "Recovery fund" means the fund the Commissioner is required to establish, administer, and maintain in accordance with Tex. Fin. Code §13.016 and Finance Code Chapter 56, Subchapter F.

(9) "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §180.002 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 residence.

#### §52.302. Claims.

(a) Application Required. As provided by Tex. Fin. Code §156.555, adopting by reference the procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F, a claimant must file a sworn written application with the Department and must be made on the current form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov).

(b) Payment of Approved Claims. Upon approval of a claim on the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555, the Commissioner will issue an order disbursing funds from the Mortgage Grant Fund. The Commissioner will direct Department staff to cause disbursement of the funds after the date upon which such order becomes final and unappealable for purposes of Government Code Chapter 2001.

(c) Cooperation by Claimant Required. The claimant must cooperate with Department staff's instructions for effectuating disbursement of an approved claim from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555. Among other things, the claimant must provide such information and complete such documentation required in order to cause the claimant to be a valid payee for purposes of the Texas Comptroller of Public Accounts.

#### §52.303. Consequences for Unlicensed Individual.

(a) Administrative Penalty. In accordance with Tex. Fin. Code §§157.031 and 157.023, and in order to potentially effect reimbursement of amounts disbursed from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.555, if the Commissioner approves

a claim made under Tex. Fin. Code §156.555, the Commissioner may impose an administrative penalty on the unlicensed individual whose fraudulent acts caused the claim in an amount not less than the approved Mortgage Grant Fund claim amount. As provided by Tex. Fin. Code §156.551(b), upon payment of the administrative penalty, the Commissioner may cause the funds to be deposited into the Mortgage Grant Fund, to the extent such fund has not met or exceeded the maximum amount set for the fund as provided by Tex. Fin. Code §156.551(c).

(b) Grounds for Denial. As provided by Tex. Fin. Code §180.201(1), failure by the unlicensed individual to pay the administrative penalty imposed by this section is a violation of an order of the Commissioner and therefore constitutes grounds for denial of an application from such individual for a residential mortgage loan originator license under Finance Code Chapter 157.

#### §52.304. Liability for Unpaid Claims.

(a) No Liability. The Mortgage Grant Fund, the Commissioner, and the Department are not liable to a claimant for a claim approved by the Commissioner under Tex. Fin. Code §156.555 if the assets of the Mortgage Grant Fund are insufficient to pay such claim.

(b) Payment of Unpaid Claims. If the Mortgage Grant Fund contains insufficient assets to pay a claim approved by the Commissioner under Tex. Fin. Code §156.555, the Commissioner will:

(1) record the time and date the claim was approved; and

(2) pay approved but unpaid claims for which a recordation was made under paragraph (1) as funds in the Mortgage Grant Fund become available, in the order of the recorded time and date of such claims; and, provided, the Commissioner determines in his or her sole discretion that disbursement from the Mortgage Grant Fund will not injure, hamper, or impede the Commissioner's administration of and disbursements from the Mortgage Grant Fund for purposes of Tex. Fin. Code §156.554.

#### §52.305. Eligibility.

(a) Application of Finance Code Chapter 156, Subchapter F. Tex. Fin. Code §156.555(b), adopts by reference the eligibility and procedural requirements for making a claim on the Commissioner's recovery fund in accordance with Finance Code Chapter 156, Subchapter F. This section clarifies how certain of such requirements apply to a claim made on the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555.

(b) Actions by an Unlicensed Individual Acting as an Originator. To be eligible to recover from the Mortgage Grant Fund, the individual alleged to have caused harm to the claimant must have been acting or attempting to act in the capacity of an originator - actions for which a license under Finance Code Chapter 157 was required as provided by Tex. Fin. Code §157.012 and §81.100 of this title (relating to Licensing - General).

(c) Fraudulent Acts. Tex. Fin. §156.501, applicable to claims made on the recovery fund, provides that recovery from such fund is limited to acts by a licensed originator that constitute a violation of specific, enumerated provisions of Tex. Fin. Code §§157.024(a) and 156.304(b). As provided by Tex. Fin. Code §156.555, a claimant may make a claim against the Mortgage Grant Fund for fraudulent acts committed by an unlicensed individual who acted as an originator as provided by subsection (b) of this section. To the extent a claimant meets his or her burden of proof to establish that an unlicensed individual committed acts of fraud, such claim is deemed to be eligible for recovery for purposes of Tex. Fin. Code §156.501 under Tex. Fin. Code §157.024(a)(3), describing a violation for a licensed originator engaging in improper, fraudulent, or dishonest dealings.

§52.306. Statute of Limitations at Inception.

Tex. Fin. Code §156.555(b) adopts by reference the statute of limitations period for making claims on the recovery fund under Finance Code Subchapter F and applies it to claims made against the Mortgage Grant Fund in accordance with Tex. Fin. Code §156.555. Specifically, pursuant to Tex. Fin. Code §156.503, a claim made on the recovery fund may not be filed after the fourth anniversary of the date the acts causing the actual damages occurred or should reasonably have been discovered. Tex. Fin. Code §156.555 and the Mortgage Grant Fund came into existence effective September 1, 2021. As a result, the earliest possible date for a claim to have accrued for purposes of the limitations period applicable to claims made under Tex. Fin. Code §156.555 is September 1, 2017, and any claim accruing prior to that date is barred.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 80. [TEXAS] RESIDENTIAL MORTGAGE LOAN COMPANIES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rule in 7 Texas Administrative Code (TAC) Chapter 80, Subchapter C: §80.206. The commission further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 80, Subchapter C: §80.206. The commission further proposes amendments to existing rules in 7 TAC Chapter 80 as follows: Subchapter A, §80.2; Subchapter C, §80.203 and §80.204; and Subchapter D, §80.300. This proposal and the rules as repealed, amended, or added as a new rule by this proposal are referred to collectively as the "proposed rules."

### Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156).

### *Changes Concerning Office Requirements and Remote Work*

Prior to September 1, 2021, pursuant to now former Finance Code Sections 156.2041(7) and 156.2042(6), a residential mortgage loan company or credit union subsidiary organization licensed by the department under Finance Code Chapter 156 was required to "maintain a physical office in Texas" (physical office requirement). During the 87th Legislature (Regular Session), Senate Bill 1900 (SB1900) and House Bill 3617 (HB3617) were enacted into law (eff. September 1, 2021) which, among things, amended Finance Code Sections 156.2041 and 156.2042 to eliminate the physical office requirement. One stated purpose for HB3617, as reflected by the bill's House Committee Report was to address "a rise in demand for remote working." The proposed rules implement those portions of HB3617 addressing elimina-

tion of the physical office requirement and further seek to fulfill the stated purpose of HB3617 by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a "residential mortgage loan company" (as defined by Finance Code §156.002(13); mortgage company) to work remotely. The proposed rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage company such that the office must be licensed by the department. The rules, if adopted, would: (i) eliminate use of the term "physical office" throughout Chapter 80 and instead use the terms "main office" and "branch office," terms that are used in Chapter 156; (ii) eliminate existing requirements for a mortgage company to maintain records tied to the now defunct physical office requirement; (iii) create definitions for the terms "administrative office," "branch office," "licensed office," and "main office" for purposes of administering the proposed rules, including to clarify which offices of a mortgage company must be licensed by the department; (iv) clarify that the main office or a branch office must be established by the mortgage company and not a sponsored originator; (v) describe conditions under and parameters by which the employees and sponsored originators of a mortgage company are authorized to work from a remote location; (vi) create a new requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (vii) create a new requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (viii) create a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules; and (ix) create a new requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work remotely.

### Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department. However, the proposed rules are intended to formalize and clarify existing

requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department.

#### Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of adopting the proposed rules will be to have rules that formalize and clarify in rule the parameters by which the employees and sponsored originators of a mortgage company may work remotely, including requiring training concerning such remote work, and written procedures governing such remote work, thereby ensuring the privacy of those members of the public utilizing the services of a mortgage company, and confidentiality of their personal financial information.

#### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As related above, the proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department by regulated persons. However, the proposed rules are intended to formalize and clarify existing requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department by regulated persons for a branch office license. The proposed rules related to Changes Concerning Office Requirements and Remote Work require a mortgage company to provide its employees and sponsored originators with training on how to work remotely in an environment conducive and appropriate to consumer privacy, and to maintain written procedures governing such remote work. However, most, if not all, mortgage companies already operate under existing authority for their employees and sponsored originators to work remotely, including existing parameters, presently not formalized in rule, that the mortgage company employ sufficient security protocols to protect consumer information, and to exercise appropriate oversight and supervision over an employee or sponsored originator working remotely. The proposed rules require the mortgage company to adequately train its employees and sponsored originators on conducting such remote work, and to document its procedures governing such remote work. As a result, the proposed rules do not directly impose a cost on regulated persons in order to comply with the proposed rules. A mortgage company may conceivably choose to engage, at some indeterminate cost, a third party to conduct such training or to develop such written procedures concerning remote work by its employees and sponsored originators; however, this potential cost would be at the election of the mortgage company, and is not directly required by the proposed rules. Furthermore, existing applicable law at the federal level already imposes similar requirements to ensure mortgage companies licensed by the department employ appropriate safeguards to protect a consumer's financial information, including activities conducted remotely by its employees and sponsored residential mortgage loan originators. Specifically, applicable regulations of

the Federal Trade Commission (FTC) (16 C.F.R. §§314.1-314.5 require mortgage companies to employ appropriate safeguards to (i) "[p]rotect the security and confidentiality of customer information"; (ii) "[p]rotect against any anticipated threats or hazards to the security or integrity of such information"; and (iii) "[p]rotect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer" (16 C.F.R. §314.3, concerning Standards for Safeguarding Customer Information). Taking the foregoing into consideration, the proposed rules do not impose economic costs on persons required to comply with the proposed rules.

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency. the proposed rules related to Changes Concerning Office Requirements and Remote Work, among other things, include certain definitions to clarify which offices of mortgage company must be licensed by the department. Pursuant to Tex. Fin. Code §156.212(b), the department charges a fee of \$50 for a mortgage company to hold a branch office license, thereby potentially impacting the amount of fees paid to the department by regulated persons. However, the proposed rules are intended to formalize and clarify existing requirements concerning licensure of branch offices of a mortgage company, and are not anticipated to result in an increase or decrease in fees paid to the department by regulated persons for a branch office license; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Office Requirements and Remote Work create a new rule requirement for a mortgage company to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage company to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new requirement for a mortgage company to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage company to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage company to work from remotely. The proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, 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 this proposal.

## SUBCHAPTER A. GENERAL PROVISIONS

### 7 TAC §80.2

#### Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act). 7 TAC §80.100(g) is also proposed under the authority of, and to implement, Finance Code §156.210.

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

#### §80.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 156, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §156.002(14) and paragraph (18) [(20)] of this section means a request, in any form, for an offer (or a response to a solicitation 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, and/or the mortgage loan amount.

[(2) "Branch office," as used in Tex. Fin. Code §156.2041(a)(4), means any office that is separate and distinct from the mortgage company's principal place of business of record with NMLS, whether located in Texas or not, which conducts mortgage business on residential real estate located in Texas.]

(2) [(3)] "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(3) [(4)] "Commissioner's designee" means an employee of the Department performing his or her assigned 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.

(4) [(5)] "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(5) [(6)] "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:

(A) is a director, general partner or executive officer;

(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;

(C) in the case of an LLC, is a managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the partnership's capital assets.

(6) [(7)] "Department" means the Department of Savings and Mortgage Lending.

(7) [(8)] "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.

(8) [(9)] "Mortgage applicant" has the meaning assigned by 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.

(9) [(10)] "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §156.002.

(10) [(11)] "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §156.002.

(11) [(12)] "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §156.002(14), means, among other things, when an individual:

(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;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs); or

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.

(12) [(13)] "Originator" has the meaning assigned by Tex. Fin. Code §156.002 in defining "residential mortgage loan originator." Paragraphs (11) [(12)] and (18) [(20)] of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

(13) [(14)] "Person" means an individual, corporation, company, limited liability company, partnership or association.

[(15) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is conducted.]

(14) [(16)] "Qualifying Individual" or "Qualified Individual" has the meaning assigned by Tex. Fin. Code §156.002 in defining "qualifying individual." Additionally, the license held by the Qualifying Individual must be held in a status which authorizes him or her [them] to conduct regulated activities, and the individual sponsored of record in NMLS by the mortgage company for which he or she is acting as [they are] the Qualifying Individual.

(15) [(17)] "Residential Mortgage Loan" has the meaning assigned by Tex. Fin. Code §180.002 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.

(16) [(18)] "Residential real estate" has the meaning assigned by Tex. Fin. Code §156.002 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.

(17) [(19)] "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.

(18) [(20)] "Takes a residential mortgage loan application," as used in 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Iain A. Berry  
Associate General Counsel  
Department of Savings and Mortgage Lending  
Earliest possible date of adoption: October 3, 2021  
For further information, please call: (512) 475-1535

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.203, 80.204, 80.206

Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.203. Advertising.

(a) - (b) (No change.)

(c) For purposes of this section, an 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 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 (b)(2) of this section do not apply to:

(1) - (2) (No change.)

(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) [physical office].

(d) (No change.)

§80.204. Books and Records.

(a) (No change.)

(b) Mortgage Application Records. Each mortgage company or sponsored originator is required to maintain, at the location specified in their official record on file with the Department, the following books and records:

(1) - (2) (No change.)

(3) General Business Records. General business records include:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan [origination] business;

(B) (No change.)

(C) copies of 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 such mortgage company in connection with the residential mortgage loan [origination] business;

(D) - (G) (No change.)

(4) Records Concerning Administrative Offices. A mortgage company must create and maintain a list reflecting any office constituting an "administrative office" of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work). [Records Establishing Physical Office. A mortgage company must create and maintain records establishing its physical office including:]

[(A) records reflecting the names and contact information for persons serving as staff for the mortgage company assisting customers at the physical office; and]

[(B) records reflecting the mortgage company's right to access the physical office and conduct business of the mortgage company at such office (e.g., a lease agreement or deed).]

(5) Records Concerning Remote Work. A mortgage company must create and maintain records reflecting its compliance with the requirements for remote work as provided by §80.206 of this title (relating to Office Locations; Remote Work).

(c) - (g) (No change.)

§80.206. Office Locations; Remote Work.

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(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:

(A) an office or location at which the employees or sponsored originators of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(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 Tex. Fin. Code §180.002(19)(B)(i); or

(C) an office or location which performs any combination of activities described by subparagraphs (A) or (B) of this paragraph.

(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:

(A) an office or location at which the employees or sponsored originators of the mortgage company act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(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 Tex. Fin. Code §180.002(19)(B)(i);

(C) an office or location which performs any combination of the activities described by subparagraphs (A) and (B) of this paragraph; or

(D) a "remote location" as defined by this section.

(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.

(4) "Main office" means the address 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.

(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.

(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 loan 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.

(c) Authorization for Remote Work. The employees of a mortgage company and its sponsored originators may conduct business and work from a location other than a licensed office or an administrative office of the mortgage company (remote location) if the mortgage company:

(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;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(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;

(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 the Commissioner or the Commissioner's designee on request;

(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

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage company and its employees and sponsored originators comply with this section; and

(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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



## 7 TAC §80.206

### Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

#### §80.206. *Physical Office.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 475-1535



## SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

### 7 TAC §80.300

#### Statutory Authority

This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

#### §80.300. *Examinations.*

(a) (No change.)

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person [qualifying individ-

ual] 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 [qualifying individual's] mailing address or email address of record with NMLS and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made [the mortgage company or sponsored originator must make] available to facilitate the examination.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapter 156 and this chapter, and will specifically address whether:

(1) all persons conducting residential mortgage loan origination activities are properly licensed and sponsored [by the mortgage company in NMLS];

(2) all office locations [at which such activities are conducted] are properly licensed or [and] registered, as provided by §80.206 of this title (relating to Office Locations; Remote Work) [with NMLS];

(3) - (5) (No change.)

(d) - (g) (No change.)

(h) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of a mortgage company or a sponsored originator because the required records are maintained at a location outside of Texas, [the mortgage company or sponsored originator will be required to reimburse] 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 23, 2021.

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Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



## CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rule in 7 Texas Administrative Code (TAC) Chapter 81, Subchapter C: §81.206. The commission further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 81, Subchapter C: §81.206. The commission further proposes amendments to existing rules in 7 TAC Chapter 81 as follows: Subchapter A, §81.2; Subchapter C, §81.203 and §81.204; and Subchapter D, §81.300. This proposal and the rules as repealed, amended, or added as a new



rule by this proposal are referred to collectively as the "proposed rules."

#### Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157.

#### Changes Concerning Office Requirements and Remote Work

The proposed rules recognize the growing demand for the employees and sponsored originators of a mortgage banker to work remotely by formalizing and clarifying in rule existing authority for the employees and sponsored originators of a mortgage banker to do so. The proposed rules also formalize and clarify in rule existing requirements concerning what constitutes the main office or a branch office of a mortgage banker such that the office must be registered with the department. The proposed rules are further designed to fully implement the requirement, pursuant to Finance Code §157.003(b)(6), for a mortgage banker to provide the commissioner with "a list of any offices that are separate and distinct from the primary office identified on the mortgage banker registration and that conduct residential mortgage loan business." The rules, if adopted, would: (i) create definitions for the terms "administrative office," "branch office," "main office," and "registered office," for purposes of administering the proposed rules, including to clarify which offices of a mortgage banker must be registered with the department; (ii) clarify that the main office or a branch office must be established by the mortgage banker or mortgage company and not an originator; (iii) describe conditions under and parameters by which the employees and sponsored originators of a mortgage banker are authorized to work from a remote location; (iv) create a new requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy; (v) create a new requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely; (vi) create a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules; and (vii) create a new requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely.

#### Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state as a result of enforcing or administering the proposed rules.

#### Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of adopting the proposed rules will be to have rules that formalize and clarify in rule the parameters by which the employees and sponsored originators of a mortgage banker may work remotely, including requiring training concerning such remote work, and written procedures governing such remote work, thereby ensuring the privacy of those members of the public utilizing the services of a mortgage banker, and confidentiality of their personal financial information.

#### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work require a mortgage banker to provide its employees and sponsored originators with training on how to work remotely in an environment conducive and appropriate to consumer privacy, and to maintain written procedures governing such remote work. However, most, if not all, mortgage bankers already operate under existing authority for their employees and sponsored originators to work remotely, including existing parameters, presently not formalized in rule, that the mortgage banker employ sufficient security protocols to protect consumer information, and to exercise appropriate oversight and supervision over an employee or sponsored originator working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further require the mortgage banker to adequately train its employees and sponsored originators on conducting such remote work, and to document its procedures governing such remote work. As a result, the proposed rules do not directly impose a cost on regulated persons in order to comply with the proposed rules. A mortgage banker may conceivably choose to engage, at some indeterminate cost, a third party to conduct such training or to develop such written procedures concerning remote work by its employees and sponsored originators, however, this potential cost would be at the election of the mortgage banker, and is not directly required by the proposed rules. Furthermore, existing applicable law at the federal level already imposes similar requirements to ensure mortgage bankers registered with the department employ appropriate safeguards to protect a consumer's financial information, including activities conducted remotely by its employees and sponsored residential mortgage loan originators. Specifically, applicable regulations of the Federal Trade Commission (FTC) (16 C.F.R. §§314.1-314.5 require mortgage bankers to employ appropriate safeguards to (i) "[i]nsure the security and confidentiality of customer information"; (ii) "[p]rotect against any anticipated threats or hazards to the security or integrity of such information"; and (iii) "[p]rotect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer" (16 C.F.R. §314.3, concerning Standards for Safeguarding Customer Information). Taking the foregoing into consideration, the proposed rules do not impose economic costs on persons required to comply with the proposed rules.

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Office Requirements and Remote Work create a new rule requirement for a mortgage banker to provide appropriate training to its employees and sponsored originators to ensure that remote work is conducted in an environment conducive and appropriate to consumer privacy. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage banker to establish, adopt, maintain, and follow written procedures concerning its employees and sponsored originators working remotely. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new requirement for a mortgage banker to create and maintain a list of its offices constituting an "administrative office" as defined by the proposed rules. The proposed rules related to Changes Concerning Office Requirements and Remote Work further create a new rule requirement for a mortgage banker to maintain records reflecting compliance with the requirements for the employees and sponsored originators of the mortgage banker to work remotely. The proposed rules do not expand, limit, or repeal an existing regulation (rule requirement); (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, 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 this proposal.

## SUBCHAPTER A. GENERAL PROVISIONS

### 7 TAC §81.2

#### Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

#### §81.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code, Chapter 157 and Chapter 180, the following terms have the meanings indicated:

(1) "Application," as used in Tex. Fin. Code §§157.002(6) and 180.002(19), and paragraph (16) [(19)] of this section means a request, in any form, for an offer (or a response to a solicitation 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, and/or the mortgage loan amount.

(2) "Commissioner" means the Savings and Mortgage Lending Commissioner appointed under Finance Code, Chapter 13.

(3) "Commissioner's designee" means an employee of the Department performing his or her assigned 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 157.

[(4) "Criminal Offense" means any violation of any state or federal criminal statute which: ]

[(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount; ]

[(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty; ]

[(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation; ]

[(D) involves deceiving the public by means of swindling, false advertising or the like; ]

[(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 with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or ]

~~{(H)}~~ involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.}]

(4) ~~{(5)}~~ "Compensation" includes salaries, bonuses, commissions, and any financial or similar incentive.

(5) ~~{(6)}~~ "Department" means the Department of Savings and Mortgage Lending.

(6) ~~{(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.

(7) ~~{(8)}~~ "Mortgage applicant" means an applicant for a residential mortgage loan or a person who is solicited (or contacts a mortgage banker or originator in response to a solicitation) to obtain a residential mortgage loan, and includes 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.

(8) ~~{(9)}~~ "Mortgage banker" has the meaning assigned by Tex. Fin. Code §157.002.

(9) ~~{(10)}~~ "Mortgage company" means, for the purposes of this chapter, a "residential mortgage loan company" as that term is defined by Tex. Fin. Code §157.002.

(10) ~~{(11)}~~ "Nationwide Mortgage Licensing System and Registry" or "NMLS" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002.

(11) ~~{(12)}~~ "Offers or negotiates the terms of a residential mortgage loan," as used in Tex. Fin. Code §157.002(6) and §180.002(19) means, among other things, when an individual:

(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;

(B) presents for consideration by a mortgage applicant or prospective mortgage applicant particular residential mortgage loan terms (including rates, fees and other costs); or

(C) communicates directly or indirectly with a mortgage applicant or prospective mortgage applicant for the purpose of reaching a mutual understanding about particular residential mortgage loan terms.

(12) ~~{(13)}~~ "Originator" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 in defining "residential mortgage loan originator." Paragraphs (11) ~~{(12)}~~ and (16) ~~{(19)}~~ of this section do not affect the applicability of such statutory definition. Individuals who are specifically excluded under such statutory definition, as provided by Tex. Fin. Code §180.002(19)(B), are excluded under this definition and for purposes of this chapter. Persons who are exempt from licensure as provided by Tex. Fin. Code §180.003 are exempt for purposes of this chapter, except as otherwise provided by Tex. Fin. Code §180.051.

~~{(14)}~~ "Physical office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications is conducted.}]

~~{(15)}~~ "Recovery Fund" means the fund administered and maintained by the Commissioner for the recovery of actual damages by persons aggrieved by a licensed residential mortgage loan originator, established pursuant to Tex. Fin. Code §13.016.}]

(13) ~~{(16)}~~ "Residential mortgage loan" has the meaning assigned by Tex. Fin. Code §157.002 and §180.002 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.

(14) ~~{(17)}~~ "Residential real estate" has the meaning assigned by Tex. Fin. Code §180.002 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.

(15) ~~{(18)}~~ "Social media site" means any digital platform accessible by a mortgage applicant or prospective mortgage applicant where the mortgage banker 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 banker or sponsored originator posts commercial messages or other content designed to solicit business.

(16) ~~{(19)}~~ "Takes a residential mortgage loan application," as used in Tex. Fin. Code §157.002(6) and §180.002(19) 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Iain A. Berry

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Department of Savings and Mortgage Lending

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## SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

### 7 TAC §§81.203, 81.204, 81.206

#### Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residen-

tial Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

§81.203. *Advertising.*

(a) - (b) (No change.)

(c) For purposes of this section, an 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 banker or 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 (b)(2) of this section do not apply to:

(1) - (2) (No change.)

(3) signs located on or adjacent to the mortgage banker's registered office as provided by §81.206 of this title (relating to Office Locations; Remote Work) [or originator's physical office].

(d) (No change.)

§81.204. *Books and Records.*

(a) (No change.)

(b) Mortgage Application Records. Each originator is required to maintain, at the location specified in their official record on file with the Department, the following books and records:

(1) - (2) (No change.)

(3) General Business Records. General business records include:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage loan [origination] business;

(B) 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 applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all mortgage banker employees, independent contractors and others compensated by such originator in connection with the residential mortgage loan [origination] business;

(D) - (G) (No change.)

(4) Records Concerning Administrative Offices. A mortgage banker must create and maintain a list reflecting any office constituting an "administrative office" of the mortgage banker for purposes of §81.206 of this title (relating to Office Locations; Remote Work).

(5) Records Concerning Remote Work. A mortgage banker must maintain records reflecting compliance with the requirements for remote work as provided by §81.206 of this title.

(c) - (h) (No change.)

§81.206. *Office Locations; Remote Work.*

(a) Definitions. The following terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) "Administrative office" means any office of a mortgage banker that is separate and distinct from its main office or a branch office, whether located in Texas or not, at which the mortgage banker conducts residential mortgage loan business in Texas. The term does

not include a "remote location" as defined by this section. The term includes:

(A) an office or location at which the employees or sponsored originators of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees or sponsored originators act solely in the capacity of a "residential mortgage loan servicer," as that term is defined by Tex. Fin. Code §158.002; or

(D) an office or location which performs any combination of activities described by subparagraphs (A) - (C) of this paragraph.

(2) "Branch office" means any office a mortgage banker 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:

(A) an office or location at which the employees or sponsored originators of the mortgage banker act solely in the capacity of a "loan processor or underwriter," as that term is defined by Tex. Fin. Code §180.002;

(B) an office or location at which the employees of the mortgage banker perform solely administrative or clerical tasks on behalf of an individual licensed as an originator, as provided by Tex. Fin. Code §180.002(19)(B)(i);

(C) with respect to a mortgage banker whose registration under Finance Code Chapter 157 reflects it acts as a servicer of residential mortgage loans, an office or location at which a mortgage banker or its employees or sponsored originators act solely in the capacity of a "residential mortgage loan servicer," as that term is defined by Tex. Fin. Code §158.002;

(D) an office or location which performs any combination of activities described by subparagraphs (A) - (C) of this paragraph; or

(E) a "remote location" as defined by this section.

(3) "Main office" means the address the mortgage banker has listed in its NMLS registration (MU1 filing) as its "main address" (principal address) under "identifying information," and is therefore registered with the Department.

(4) "Registered office" means a physical office of the mortgage banker that is registered with the Department as its main office or a branch office.

(5) "Remote location" means a location other than a registered office or an administrative office of the mortgage banker from which the employees or sponsored originators of the mortgage banker conduct residential mortgage loan business as provided by subsection (c) of this section.

(b) Office Requirements. A mortgage banker must register any office constituting the main office or a branch office of the mortgage banker. A mortgage banker must also register any office or location it

advertises or promotes to the general public as an office or location at which the mortgage banker's sponsored originators meet in-person with mortgage applicants or prospective mortgage loan applicants. A registered office of the mortgage banker 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 banker or mortgage company. An 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.

(c) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a location other than a registered office or an administrative office of the mortgage banker (remote location) if the mortgage banker:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(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;

(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(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

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage banker and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## 7 TAC §81.206

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

§81.206. *Physical Office.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

### 7 TAC §81.300

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023 and §180.004, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Chapter 157 and the Texas SAFE Act, and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Fair Enforcement for Mortgage Licensing Act of 2009.

§81.300. *Examinations.*

(a) The Commissioner, or the Commissioner's designee(s), will conduct periodic examinations of an [a mortgage company or sponsored] originator as the Commissioner deems necessary.

(b) Notice of Examination. Except when the Department determines that giving advance notice would impair the examination, the Department will give the primary contact person of the mortgage banker or mortgage company sponsoring the originator listed in NMLS or a person designated by the primary contact person [qualifying individual of the mortgage company] advance notice of each examination. Such notice will be sent to the primary contact person's or designated person's [qualifying individual's] mailing address or email address of record with NMLS and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records that must be produced or made [the mortgage company or sponsored originator must make] available to facilitate the examination.

(c) Examinations will be conducted to determine compliance with Finance Code, Chapters 157 and 180, [~~Chapter 156~~] and this chapter, and will specifically address whether:

(1) all persons conducting residential mortgage loan origination activities are properly licensed and sponsored [~~by the mortgage company in NMLS~~];

(2) all office locations [~~at which such activities are conducted~~] are properly licensed or [~~and~~] registered, as provided by §80.206 (relating to Physical Office) and §81.206 of this title (relating to Office Locations; Remote Work) [~~with NMLS~~];

(3) (No change.)

(4) legal and regulatory requirements applicable to the originator and the mortgage banker or mortgage company sponsoring the originator [~~mortgage company and its originators~~] are being properly followed; and

(5) other matters as the Commissioner may deem necessary or advisable to carry out the purposes of Finance Code, Chapters 157 and 180 [~~Chapter 156~~].

(d) The examiners will review a sample of residential mortgage loan files identified by the examiners and randomly selected from the originator's [~~mortgage company's~~] mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiners may require an originator, at his or her [~~a mortgage company, at its~~] own cost, to make copies of loan files or such other books and records as the examiners deem appropriate for the preparation of or inclusion in the examination report.

(f) (No change.)

(g) Failure to Cooperate; Disciplinary Action. Failure by an [~~of 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.

(h) Reimbursement for Costs. When the Department must travel outside of Texas to conduct an examination of an [~~a mortgage company or a sponsored~~] originator because the required records are maintained at a location outside of Texas, [~~the mortgage company or sponsored originator will be required to reimburse~~] 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

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## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

#### SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

#### DIVISION 3. APPLICATION PROCEDURES

##### 7 TAC §83.3010

The Finance Commission of Texas (commission) proposes amendments to §83.3010 (relating to Fees) in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The rules in 7 TAC Chapter 83, Subchapter B govern credit access businesses (CABs). In general, the purpose of the proposed rule changes to 7 TAC Chapter 83, Subchapter B is to reduce the annual assessment paid by licensed CABs for the Texas Financial Education Endowment (TFEE).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received no informal precomments on the rule text draft.

Proposed amendments to §83.3010 relate to the amount of the annual assessment that CABs pay toward TFEE. Currently, §83.3010(g)(4) requires each licensed entity to pay a fee up to \$200 for each annual renewal, to contribute to TFEE. This provision also explains that the commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose. The proposed amendment to §83.3010(g)(4) would reduce the annual fee paid to TFEE from \$200 to \$100.

The commission and the OCCC believe that the endowment is close to a sustaining level, and that now is an appropriate time to reduce the \$200 assessment. As of February 28, 2021, the TFEE fund balance was approximately \$9.1 million. The fund balance has increased each year CABs have been licensed. For example, the fund balance was \$7.9 million in FY 2019 and \$8.3 million in FY 2020. In the 2020 - 2021 grant cycle, ten organizations were awarded a cumulative amount of \$300,000. In June 2021, the commission approved the TFEE Grant Advisory Committee's recommendation to disburse \$350,000 during the 2022-2023 TFEE grant cycle. The commission and the OCCC anticipate that a \$100 fee will enable TFEE to continue growing while also making substantial grants to support financial education in Texas.

Mirand Diamond, Director of Licensing and Finance, has determined that for the first five-year period the proposed rule changes are in effect, there will be fiscal implications for state government as a result of administering the rules. The proposed amendment to §83.3010 would decrease the annual CAB TFEE assessment from \$200 to \$100. Fees that CABs pay toward TFEE will decrease by approximately \$200,000 in each of the first five years the proposed rule change is in effect. In the last seven fiscal years, on average, the OCCC has collected approximately \$400,000 per year in fees from CABs for TFEE. Therefore, the OCCC anticipates that decreasing the fee by 50% will cause this amount to decrease by approximately \$200,000

per year. The rule change will not affect costs to the state. Ms. Diamond has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that the annual assessment for credit access business licensees will be reduced by \$100.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes require a decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would limit current §83.3010 by reducing a fee. The proposal would not expand or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G (governing CABs). In addition, Texas Finance Code, §393.628 authorizes the commission to set the annual assessment that CABs pay toward TFEE (up to \$200), and authorizes the commission to adopt rules regarding TFEE.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.3010. *Fees.*

(a) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) - (3) (No change.)

(4) In addition to the annual assessment fee, a fee not to exceed \$100 [200] is required for each annual renewal of a licensed entity, in order to contribute to the Texas Financial Education Endowment. The finance commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



## CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) proposes amendments to §89.310 (relating to Fees) and §89.405 (relating to Denial, Suspension, or Revocation Based on Criminal History), and proposes the repeal of §89.409 (relating to License Reissuance), in 7 TAC, Chapter 89, concerning Property Tax Lenders.

The rules in 7 TAC Chapter 89 govern property tax lenders. In general, the purpose of the proposed rule changes to 7 TAC Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 89 was published in the *Texas Register* on May 28, 2021 (46 TexReg 3425). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft, addressing the issue of below-market-rate loans under Texas Tax Code, §32.06(a-8). The precomment did not address the proposed rule changes in §§89.310, 89.405, and 89.409. The OCCC appreciates the thoughtful input provided by stakeholders.

A proposed amendment to §89.310 would adjust the volume-based portion of the annual fee paid by property tax lender licensees. Under Texas Finance Code, §351.154, property tax lender licensees are required to pay a license fee to the OCCC. Under Texas Finance Code, §14.107, the commission is authorized to set the amount of the license fee in an amount necessary to recover the costs of administering Texas Finance Code, Chapter 351. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency. This means that the OCCC is responsible for the costs of its operations, and it may set fees in amounts necessary for the purpose of carrying out its functions.

Under current §89.310(g)(1), the annual license fee paid by active property tax lender licensees consists of two components: (1) a fixed fee up to \$600, and (2) a volume fee up to \$0.03 for each \$1,000 advanced in property tax loans, in accordance with the property tax lender's most recent annual report. Under current §89.310(g)(3), the total annual license fee shall not average more than \$1,200 per active licensed location.

The proposed amendment to §89.310(g)(1)(B) would adjust the volume-based portion of the annual license fee from \$0.03 to \$0.05 per \$1,000 advanced. The commission and the OCCC believe that this change is necessary to ensure that licensing

fees are sufficient to recover the costs of administering Texas Finance Code, Chapter 351. Currently, property tax lenders contribute approximately 0.8% of the total revenue that the OCCC receives from license fees. However, property tax lender examinations make up approximately 1.5% of the OCCC's workload of examination hours. This suggests that the current revenue from property tax lender license fees is not sufficient in comparison to other industries.

In the OCCC's experience, the property tax lending industry has required significant staff resources due to the complexity of the property tax loan transaction. A property tax lender examination often requires a team of examiners with specialized training and experience. On average, a property tax lender examination requires approximately 20 examination hours (compared to 16 hours for motor vehicle sales finance licensees and 10 hours for regulated lenders). The OCCC has also received a number of complaints about property tax lenders. Compared to other industries, property tax lenders have consistently tended to have a higher ratio of complaints to the number of active licensees. Many of these complaints are complex and require significant staff time to process. In the OCCC's experience, costs for property tax lenders tend to scale with loan volumes, with the OCCC generally expending more resources on property tax lenders that have larger loan volumes.

Currently, the volume-based fee for property tax lenders is lower than the corresponding fee for regulated lenders. Whereas property tax lenders currently pay \$0.03 per \$1,000 advanced under §89.310(g)(1)(B), regulated lenders currently pay \$0.05 per \$1,000 of loans made under Texas Finance Code, Chapter 342, Subchapter E, as provided by the current rule at 7 TAC §83.310(g)(1)(B)(iii) (relating to Fees). Adjusting the volume-based fee for property tax lenders from \$0.03 to \$0.05 would bring property tax lenders more in line with other licensees. This would help ensure that property tax lenders pay their fair share of costs for regulating the industry, and that other industries are not subsidizing the cost of regulating property tax lenders.

Proposed amendments to §89.405 relate to the OCCC's review of the criminal history of a property tax lender applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The proposed amendments to §89.405 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Proposed amendments throughout subsections (c) and (f) of §89.405 would implement these statutory changes from HB 1342. Other proposed amendments to §89.405 include technical corrections, clarifying changes, and updates to citations.

The proposal would repeal §89.409. Currently, §89.409 requires a licensee to return its license certificate in the event of reissuance of a license. When this section was adopted, it was

based on the assumption that the OCCC would issue a paper license certificate. Because the OCCC now issues licenses through an online system (ALECS), this section is no longer necessary.

Mirand Diamond, Director of Licensing and Finance, has determined that for the first five-year period the proposed rule changes are in effect, there will be fiscal implications for state government as a result of administering the rules. The proposed amendment to §89.310 would increase the volume-based portion of the annual property tax lender license fee from \$0.03 to \$0.05 per \$1,000 advanced. In the last five years, the OCCC received an average of \$4,910.63 per year for the volume-based fee from property tax lenders. Increasing the volume-based fee from \$0.03 to \$0.05 per \$1,000 would increase the revenue from the fee by approximately 67%. This suggests that if the proposed rule changes are adopted, the OCCC would receive additional revenue of approximately \$3,273.75 per year for the first five fiscal years the rule changes are in effect. The rule changes will not affect costs to the state. Ms. Diamond has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefit anticipated as a result of the changes will be that the commissions' rules will be more easily understood by stakeholders, and will ensure that property tax lender licensees pay an appropriate share of license fees.

The OCCC anticipates some costs for property tax lenders required to comply with the rule changes as proposed, due to the adjustment to the annual license fee in §89.310. Of the 70 licensed property tax lenders that filed annual reports for calendar year 2020, 39 reported no property tax loans made, and would not be affected by the proposal. For the other 31 companies, the OCCC anticipates that the average fee increase would be approximately \$90. Of these companies, the median dollar amount of loans made in 2020 was approximately \$1.5 million, corresponding to a \$30 fee increase under the proposal. Any fee increase would be limited by current §89.310(g)(3), which effectively limits the volume-based fee to \$600 per active licensed location.

The OCCC anticipates that the proposed rule changes will have some economic impact on small businesses and micro-businesses. The OCCC estimates that all or nearly all of the currently licensed property tax lenders are small or micro-businesses. Therefore, the OCCC estimates that approximately 31 small businesses or micro-businesses will experience an economic impact from the proposed change. As discussed earlier, the OCCC anticipates that the 31 affected businesses would experience an average annual fee increase of approximately \$90. The OCCC considered potential alternatives, including a smaller increase to the volume-based fee, eliminating the \$1,200 maximum for the annual fee, and an adjustment to the \$600 fixed fee. However, the OCCC determined that these alternatives would not satisfy the statutory objective of ensuring that license fees cover the cost of administering Texas Finance Code, Chapter 351. The OCCC believes that adjusting the volume-based fee is an appropriate way to minimize the impact on small businesses and micro-businesses, because the impact will be smaller for businesses making lower dollar amounts of loans. The OCCC does not anticipate an adverse economic



effect on rural communities apart from other effects described in this paragraph.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed amendment to §89.310 requires an increase in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would not expand an existing regulation. The proposal would limit current §89.405 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history. The proposal would repeal current §89.409, relating to license reissuance. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

## SUBCHAPTER C. APPLICATION PROCEDURES

### 7 TAC §89.310

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351.

#### §89.310. Fees.

(a) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each active license consisting of:

(A) a fixed fee not to exceed \$600; and

(B) a volume fee based upon the lending activity conducted and the volume of business that consists of an amount not to exceed \$0.05 [~~\$0.03~~] per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 351 in accordance with the most recent annual report filing required by Texas Finance Code, §351.164.

(2) An annual assessment fee not to exceed \$250 is required for each inactive license.

(3) The maximum annual assessment fee for each licensed entity shall not average more than \$1,200 per active licensed location.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



## SUBCHAPTER D. LICENSE

### 7 TAC §89.405

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351.

#### §89.405. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 351, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 351 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, collecting due amounts in a legal manner, foreclosing on real property in compliance with state and federal law, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

- (A) theft;
- (B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions, property tax lending, or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; ~~and~~

(D) the relationship of the crime to the ability or [-] capacity [; or fitness] required to perform the duties and discharge the responsibilities of a licensee; and[-]

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; ~~and~~

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) ~~[(F)]~~ evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation. ~~[from one or more of the following:]~~

~~[(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(ii) the sheriff or chief of police in the community where the person resides; and]~~

~~[(iii) other persons in contact with the convicted person].~~

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) and (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

~~[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]~~

~~[(2)] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2)-(3) [~~§53.021(a)(3)-(4)~~];~~

~~[(3)] errors or incomplete information in the license application;~~

(3) [(4)] a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §351.156(3); and

(4) [(5)] any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1) and §351.156.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



## 7 TAC §89.409

The rule changes are proposed under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §14.107 authorizes the commission to set licensing fees under Chapter 351 at amounts necessary to recover the costs of administering that chapter. Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351.

§89.409. *License Reissuance.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 22. PROCEDURAL RULES SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

#### 16 TAC §22.246

The Public Utility Commission of Texas (commission) proposes amendments to existing 16 Texas Administrative Code (TAC) §22.246, relating to Administrative Penalties. The proposed rule will implement an amendment to the Public Utility Regulatory Act (PURA) §15.023(b-1) enacted by the 87th Texas Legislature that establishes an administrative penalty not to exceed \$1,000,000 for violations of PURA §35.0021 or §38.075, relating to Weather Emergency Preparedness.

#### Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule will not affect this state's economy.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

#### Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

#### Fiscal Impact on State and Local Government

David Smeltzer, Director of Rules and Projects, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

#### Public Benefits

Mr. Smeltzer has also determined that, for each year of the first five years the proposed rule and amendments are in effect, the anticipated public benefits expected as a result of the adoption of the proposed amendments will be alignment of commission rules with the requirements of PURA §35.0021 and §38.075. Mr. Smeltzer does not believe there will be any major economic

costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

#### Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

#### Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

#### Public Hearing

The commission staff will conduct a public hearing on this rulemaking on September 22, 2021, at 9:30 a.m. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 16, 2021. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

#### Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by September 16, 2021. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. Commission staff strongly encourages commenters to include a bulleted executive summary to assist Commission Staff in reviewing the filed comments in a timely fashion. All comments should refer to Project Number 52312.

#### Statutory Authority

The amended rule is proposed under the following provision of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §15.023, which establishes that the penalty for a violation of a provision of PURA §35.0021 or PURA §38.075 may be in an amount not to exceed \$1,000,000 for a violation and that each day a violation continues is a separate violation for purposes of imposing a penalty.

Cross reference to statutes: PURA §§14.001, 14.002, and 15.023, 35.0021, and 38.075.

#### §22.246. *Administrative Penalties.*

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise:

(1) - (4) (No change.)

(5) Violation -- Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA) [PURA], the Texas Water Code (TWC) [TWC], commission rule, or commission order.

(6) (No change.)

(c) Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.

(1) (No change.)

(2) The administrative penalty for each separate violation of PURA §35.0021, PURA §38.075, or a commission rule or commission order adopted under PURA §35.0021 or PURA §38.075 will be in an amount not to exceed \$1,000,000 per violation per day. For all other violations, the administrative penalty for each separate violation will be in an amount not to exceed \$25,000 per violation per day. An administrative penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system. [The administrative penalty for each separate violation may be in an amount not to exceed \$25,000 per day, provided that an administrative penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system].

(3) (No change.)

(d) - (k) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 2021.

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Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7244



## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 16 TAC §25.8

The Public Utility Commission of Texas (commission) proposes amendments to existing 16 Texas Administrative Code (TAC) §25.8, relating to a Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers. The proposed rule will implement an amendment to the Public Utility Regulatory Act (PURA) §15.023(b-1) enacted by the 87th Texas Legislature that establishes an administrative penalty not to exceed \$1,000,000 for violations of PURA §35.0021 or §38.075, each relating to Weather Emergency Preparedness.

#### Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule will not affect this state's economy.

#### Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

#### Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

#### Fiscal Impact on State and Local Government

David Smeltzer, Director of Rules and Projects, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

#### Public Benefits

Mr. Smeltzer has also determined that, for each year of the first five years the proposed rules and amendments are in effect, the anticipated public benefits expected as a result of the adoption of the proposed amendments will be alignment of commission rules with the requirements of PURA §35.0021 and §38.075. Mr. Smeltzer does not believe there will be any major economic costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

#### Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

#### Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

#### Public Hearing

The commission staff will conduct a public hearing on this rulemaking on September 22, 2021, at 9:30 a.m. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 16, 2021. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

#### Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by September 16, 2021. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. Commission staff strongly encourages commenters to include a bulleted executive summary to assist Commission Staff in reviewing the filed comments in a timely fashion. All comments should refer to Project Number 52312.

#### Statutory Authority

The amended rule is proposed under the following provision of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §15.023, which establishes that the penalty for a violation of a provision of PURA §35.0021 or PURA §38.075 may be in an amount not to exceed \$1,000,000 for a violation and that each day a violation continues is a separate violation for purposes of imposing a penalty.

Cross reference to statutes: PURA §§14.001, 14.002, and 15.023, 35.0021, and 38.075.

§25.8. *Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers.*

(a) (No change.)

(b) Classification system.

(1) (No change.)

(2) Class B violations.

(A) (No change.)

(B) All violations not specifically enumerated as a Class C or Class A violation are [shall be considered] Class B violations.

(3) Class A violations.

(A) Each separate violation of PURA §35.0021, PURA §38.075, or a commission rule or commission order adopted under PURA §35.0021, PURA §38.075 is a Class A violation and the administrative penalty will not exceed \$1,000,000 per violation per day. Penalties for all other Class A violations will [may] not exceed \$25,000 per violation per day.

(B) (No change.)

(c) (No change.)

(d) Assessment of administrative penalties. In addition to the requirements of §22.246 of this title (relating to Administrative Penalties), a notice of violation recommending administrative penalties will [shall] indicate the class of violation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7244



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

###### 19 TAC §61.1006

The Texas Education Agency (TEA) proposes an amendment to §61.1006, concerning foundation school program funding for reimbursement of disaster remediation costs. The proposed amendment would reflect changes made by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, by establishing provisions related to Winter Storm Uri.

**BACKGROUND INFORMATION AND JUSTIFICATION:** HB 1525, 87th Texas Legislature, Regular Session, 2021, added Texas Education Code (TEC), §48.2611, One-Time Reimbursement for Winter Storm Uri. The new statute establishes provisions to include reimbursement for costs incurred by school districts as a result of the 2021 North American winter storm (Winter Storm Uri), including any electricity price increases.

The proposed amendment would implement HB 1525 by adding new subsection (n) to address the reimbursement.

The amendment would allow the commissioner to provide funding from amounts appropriated for Winter Storm Uri to the disaster contingency fund and/or Foundation School Program funds available for disaster remediation costs if it is determined that costs exceed the amount to which school districts are entitled. To be eligible for reimbursement, a school district or an open-enrollment charter school will be required to submit an application and a costs sheet detailing un-reimbursed storm-related costs not covered by the Federal Emergency Management Agency (FEMA), insurance proceeds, or other sources such as philanthropic funds.

The new subsection would expire on September 1, 2023, to align with expiration of statutory authority under TEC, §48.2611.

**FISCAL IMPACT:** Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal beyond

what the authorizing statute requires. The 87th Texas Legislature, 2021, allocated \$35 million for distribution across the state.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by addressing reimbursement related to Winter Storm Uri as required by TEC, §48.2611. The proposed new provision would apply to all school districts and open-enrollment charter schools that submit applications and costs sheets detailing un-reimbursed storm-related costs not covered by FEMA, insurance proceeds, or other sources such as philanthropic funds.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be implementing HB 1525, 87th Texas Legislature, Regular Session, 2021, and establishing in rule the availability of reimbursement for costs related to Winter Storm Uri. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have a data and reporting impact. To apply for reimbursement for costs related to Winter Storm Uri, a school district or an open-enrollment charter school will be required to submit an application and a costs sheet detailing un-reimbursed storm-related costs not covered by FEMA, insurance proceeds, or other sources such as philanthropic funds. The application shall contain, at a minimum, the total dollar amount of paid disaster remediation costs.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins September 3, 2021, and ends October 4,

2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 3, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §48.2611, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which requires Texas Education Agency to provide reimbursement to school districts in accordance with TEC, §48.261, for costs incurred as a result of the 2021 North American winter storm (Winter Storm Uri), including any resulting electricity price increases.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §48.2611, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021.

*§61.1006. Foundation School Program Funding for Reimbursement of Disaster Remediation Costs.*

(a) General provisions. Subsections (a)-(m) of this section implement ~~[This section implements]~~ Texas Education Code (TEC), §48.261 (Reimbursement for Disaster Remediation Costs). The commissioner of education may provide disaster remediation cost reimbursement under subsections (a)-(m) of this section only if funds are available for that purpose from:

(1) amounts appropriated for that purpose, including amounts appropriated for school districts or open-enrollment charter schools for that purpose to the disaster contingency fund established under Texas Government Code, §418.073; or

(2) Foundation School Program (FSP) funds available for that purpose based on a determination by the commissioner that the amount appropriated for the FSP, including the facilities component as provided by TEC, Chapter 46, exceeds the amount to which school districts and open-enrollment charter schools are entitled under this subchapter and TEC, Chapter 46.

(b) Eligibility. A school district or an open-enrollment charter school that meets the following criteria is eligible to apply:

(1) all or part of the school district or open-enrollment charter school must be located in an area declared a disaster area by the governor under Texas Government Code, Chapter 418;

(2) the school district or open-enrollment charter school must have incurred and paid disaster remediation costs during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster that the school district or open-enrollment charter school does not anticipate recovering through insurance proceeds, federal disaster relief payments, or another similar source for reimbursement; and

(3) in accordance with TEC, §48.261, the school district or open-enrollment charter school must apply for reimbursement during the two-year period following the date of the governor's initial proclamation or executive order declaring a state of disaster. The school district or open-enrollment charter school must submit a completed application by the application deadline. A school district or an open-enrollment charter school that submits an incomplete application or submits an application after the application deadline may be deemed ineligible for funds.

(c) Definitions. The following terms have the following meanings when used in this section.

(1) Disaster remediation costs--Costs incurred by a school district or an open-enrollment charter school for replacing school facilities; equipment, including, but not limited to, the cost to repair or replace vehicles or computers damaged in the disaster; and supplies needed to provide instruction at a location where students eligible for FSP funding regularly attend classes.

(2) Paid disaster remediation costs--Disaster remediation costs that are paid or remitted resulting in an outflow of cash in exchange for goods or services evidenced by an invoice, receipt, voucher, or other such document, and in accordance with standards found in the Financial Accountability System Resource Guide adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide) and TEC, §48.261, that the school district or open-enrollment charter school does not anticipate recovering through insurance proceeds, federal disaster relief payment, or another similar source of reimbursement in accordance with TEC, §48.261, and that were paid during the two-year period following the governor's initial proclamation or executive order declaring a state of disaster.

(d) Application process. A school district or an open-enrollment charter school seeking disaster reimbursement must submit a new application each time Texas Education Agency (TEA) opens a disaster reimbursement application process on a form prescribed by TEA. The application shall contain, at a minimum, the following:

(1) identification of the governor's initial proclamation or executive order declaring a state of disaster and evidence that all or part of the school district or open-enrollment charter school is in the area subject to the disaster declaration;

(2) the total dollar amount of paid disaster remediation costs during the two-year period following the governor's proclamation or executive order declaring a state of disaster;

(3) the total dollar amount of paid disaster remediation costs paid during the two-year period following the governor's proclamation or executive order declaring a state of disaster that the school district or open-enrollment charter school anticipates to be reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement;

(4) the total difference between the amounts of paid disaster remediation costs specified in paragraphs (2) and (3) of this subsection and, of the total difference, the specific paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under TEC, §48.261;

(5) an explanation as to why the school district or open-enrollment charter school does not anticipate being reimbursed from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement for each paid disaster remediation cost identified in paragraph (4) of this subsection;

(6) a certification from the school district or open-enrollment charter school board and superintendent or chief executive officer that all paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under paragraph (4) of this subsection qualify as paid disaster remediation costs and that the school district or open-enrollment charter school board and superintendent or chief executive officer do not anticipate recovering these payments through insurance proceeds, federal disaster relief payments, or another similar source of reimbursement; and

(7) a certification from the school district or open-enrollment charter school board and superintendent or chief executive officer

that the school district or open-enrollment charter school, for any paid disaster remediation costs for which the school district or open-enrollment charter school is seeking reimbursement under paragraph (4) of this subsection, has made and will continue to make efforts to seek reimbursement from insurance proceeds, federal disaster relief payments, or another similar source of reimbursement as allowable or appropriate.

(e) Updates for new payments. If a school district or open-enrollment charter school makes more paid disaster remediation cost payments after submission of its initial application to the TEA and prior to the deadline announced for disaster reimbursement application submission, the TEA will prescribe a form allowing the school district or open-enrollment charter school to submit additional paid disaster remediation cost payments and information consistent with the application process in subsection (d) of this section and will increase the amount of reimbursement as available and appropriate.

(f) Reporting requirement. Annually after the date of the award under this disaster reimbursement program, the awarded school district or open-enrollment charter school board and superintendent or chief executive officer shall provide a certified report on a form prescribed by TEA until all insurance proceeds, federal disaster relief, or other similar sources of reimbursements related to the disaster are finalized. On the report, the school district or open-enrollment charter school shall identify any insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district or open-enrollment charter school received for which the school district or open-enrollment charter school previously received reimbursement payment from TEA. TEA will adjust funding for any overpayments made to the school district or open-enrollment charter school based on the final report made under this subsection of the school district or open-enrollment charter school out of the school district's or open-enrollment charter school's future FSP payments or will require a refund from the school district or open-enrollment charter school.

(g) Finality of award. Awards of assistance under this section will be made based only on paid disaster remediation costs. Prior to making an award, TEA may request additional documentation, including, but not limited to, evidence described in subsection (c)(2) of this section and evidence supporting the certifications required by subsection (d)(6) and (7) of this section. A school district or an open-enrollment charter school is not entitled to any requested reimbursement, and a decision by the commissioner is final and may not be appealed.

(h) Deadlines. The commissioner will announce a deadline for disaster reimbursement applications in conjunction with making a determination of the amount of funds available for the disaster reimbursement program cycle. All applications received by the announced deadline will be reviewed. Applications will be funded if sufficient funds are available to fully fund each application. If sufficient funds are not available to fully fund each application, funding will be prorated proportionately so that every funded application receives the same percentage of requested funding.

(i) Distribution of funds. Funds will be allocated through the FSP and will appear on the school district or open-enrollment charter school payment ledger and be delivered as soon as is practicable after award amounts have been determined.

(j) Finalization of award. When the school district or open-enrollment charter school determines that all insurance proceeds, federal disaster relief payments, or other similar sources of reimbursement that the school district or open-enrollment charter school anticipates receiving are finalized and there are no pending claims, the school district or open-enrollment charter school board and superintendent or chief ex-

ecutive officer shall certify to TEA in writing that the annual report required by subsection (f) of this section is no longer necessary and disaster reporting is finalized.

(k) Record retention and audit. The school district or open-enrollment charter school shall maintain all documents necessary to substantiate payment and certifications made in subsections (c)(2), (d), (g), and (h) of this section, and the school district or open-enrollment charter school is subject to audit by TEA until two years after the school district or open-enrollment charter school certifies to TEA in writing that the disaster is finalized and closed in accordance with subsection (j) of this section.

(l) Replacement of school facilities damaged in the disaster. In accordance with TEC, §48.261, a school district or an open-enrollment charter school is permitted to elect to replace a facility damaged in a disaster instead of repairing that facility, provided that the state funds provided under this section do not exceed the lesser of the amount that would be provided to the district or charter school if the facility were repaired or the amount necessary to replace the facility.

(1) Construction plans and budgeted costs to rebuild the facility must be reasonable and appropriate, as follows.

(A) Construction plans should follow current TEA facility guidelines and physical plant requirements as prescribed in applicable provisions of Chapter 61, Subchapter CC, of this title (relating to Commissioner's Rules Concerning School Facilities) without significant add-ons or upgrades, noting that:

(i) pre-disaster square footage in temporary buildings may be replaced with square footage in permanent buildings;

(ii) pre-disaster square footage amounts may be adjusted to account for additional square footage specifically required by TEA guidelines, if applicable; and

(iii) except where specifically identified, the provisions of Chapter 61, Subchapter CC, of this title do not apply to open-enrollment charter schools.

(B) Budgeted cost per square foot may not be significantly higher than recent comparable construction costs within the region where the facility will be constructed.

(C) Enrollment capacity of the facility may not vary significantly from current common practice for new facilities of a like purpose.

(D) The facility's square footage per unit of enrollment capacity may not significantly exceed current best practice guidelines for new facilities of like purpose.

(E) The requesting school district or open-enrollment charter school is responsible for demonstrating that construction plans and budgeted costs conform to the requirements in this paragraph.

(2) The cost to replace a facility shall be based on the average of the following two methodologies:

(A) replacement cost based on square footage, which is an amount equal to the product of the reasonable and appropriate budgeted costs and the quotient of the square footage of the pre-disaster facility and the square footage of the planned facility, where the replacement cost may not exceed the budgeted cost; and

(B) replacement cost based on enrollment capacity, which is an amount equal to the product of the reasonable and appropriate budgeted costs and the quotient of the pre-disaster facility enrollment capacity and the planned facility enrollment capacity, where the replacement cost may not exceed the budgeted cost.



(3) The commissioner may grant a waiver of one or more of the requirements in paragraph (1) of this subsection if the school district or open-enrollment charter school provides sufficient justification why the requirement should not apply in a particular instance.

(4) The school district or open-enrollment charter school may request an initial reimbursement based on anticipated insurance proceeds, federal disaster relief payments, or other similar sources of reimbursements. When this occurs, TEA will determine at a later date the appropriate reimbursement when actual insurance proceeds, federal disaster relief payments, or other similar sources of reimbursements are known.

(m) Applicability. Notwithstanding subsection (n) of this section, this [This] section applies to disasters that occur on or after September 1, 2019. Reimbursement requests for disaster remediation costs for disasters that occurred prior to September 1, 2019, are governed by §61.1013 of this title (relating to Foundation School Program Funding for Reimbursement of Disaster Remediation Costs) and §61.1014 of this title (relating to Credit Against Recapture for Reimbursement of Disaster Remediation Costs).

(n) Provisions related to Winter Storm Uri. This subsection implements TEC, §48.2611 (One-Time Reimbursement for Winter Storm Uri). TEA shall provide reimbursement to school districts for costs incurred as a result of the 2021 North American winter storm (Winter Storm Uri), including any resulting electricity price increases, using the process outlined in subsections (a)-(l) of this section. This subsection expires September 1, 2023.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



CHAPTER 100. CHARTERS  
SUBCHAPTER AA. COMMISSIONER'S  
RULES CONCERNING OPEN-ENROLLMENT  
CHARTER SCHOOLS  
DIVISION 1. GENERAL PROVISIONS

**19 TAC §100.1010**

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §100.1010(c) is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 3, 2021, issue of the Texas Register.)*

The Texas Education Agency (TEA) proposes an amendment to §100.1010, concerning open-enrollment charter schools. The proposed amendment would adopt in rule the *2020 Charter School Performance Framework (CSPF) Manual*, which would be updated to comply with statutory provisions and clarify the

operation of the CSPF to rate the performance of open-enrollment charter schools in Texas.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 100.1010 was adopted to be effective on September 18, 2014, and was last amended to be effective June 11, 2020. The rule is issued under Texas Education Code, §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools is measured. The performance frameworks (charter schools measured under standard accountability and charter schools measured under alternative education accountability) consist of several indices within academic, financial, and operational categories with data drawn from various sources, as reflected in the CSPF Manual adopted as a figure in the rule and updated every year.

The proposed amendment would replace the *2019 CSPF Manual* with the *2020 CSPF Manual*. The 2020 version of the manual would present no significant changes from 2019 except the following.

TEA received approval from the U.S. Department of Education on March 30, 2020, to waive statewide assessment and accountability requirements under the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, for the 2019-2020 school year. Consequently, for 2020 state academic accountability all Texas districts and campuses will receive a label of Not Rated: Declared State of Disaster.

Throughout the manual, language would be revised with technical edits, including clarification of the way to which CSPF standards are referred.

**FISCAL IMPACT:** Kelvey Oeser, deputy commissioner for educator support, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would

not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Oeser has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that statutorily required charter school performance frameworks data is gathered and used as accurately as possible. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins September 3, 2021, and ends October 4, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on September 3, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §12.1181, which directs the commissioner of education to develop and adopt open-enrollment charter school performance frameworks; and TEC, §29.259, which directs the commissioner of education to establish an adult high school diploma and industry certification charter school program, including adoption of frameworks to measure the performance of such a school.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §12.1181 and §29.259.

*§100.1010. Performance Frameworks.*

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework [Frameworks] (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard accountability system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.

(c) The assignment of performance levels for charter schools on the 2020 [2019] CSPF report is based on specific criteria, which are described in the 2020 [excerpted sections of the 2019] Charter School Performance Framework [Frameworks] Manual provided in this subsection.

Figure: 19 TAC §100.1010(c)  
[Figure: 19 TAC §100.1010(e)]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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**CHAPTER 109. BUDGETING, ACCOUNTING,  
AND AUDITING**  
**SUBCHAPTER AA. COMMISSIONER'S  
RULES CONCERNING FINANCIAL  
ACCOUNTABILITY**

**19 TAC §109.1001**

The Texas Education Agency (TEA) proposes an amendment to §109.1001, concerning financial accountability ratings. The proposed amendment would update financial accountability rating information and rating worksheets for school districts and open-enrollment charter schools, including adjustments required under Texas Education Code (TEC), §39.087, as added by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district or an open-enrollment charter school is to report to parents and taxpayers in the district.

The proposed amendment would clarify the financial accountability rating indicators terminology used to determine each school district's and charter school's rating for the 2020-2021 rating year and subsequent years by revising the ratings worksheet calculations in §109.1001(e)(5) and (f)(5). The proposed amendment would also include terminology clarifications to the rating worksheets in §109.1001(e)(5) and (f)(5). The proposed worksheets, dated October 2021, would differ from the current worksheets, dated April 2020, as follows.

*Figure: 19 TAC §109.1001(e)(5)*

A statement would be added that indicator 5 will not be utilized for the 2020-2021 rating year.

Indicator 15 would be revised to clarify terminology that aligns with the calculation used to score the indicator when the average daily attendance of the school district is greater than the allotted range. The "Determination of Points" chart in the worksheet would be revised to add the arithmetic symbol for "less than or equal to" to each of the ratios disclosed in the allotted range table of indicator 15.

The "Determination of rating based on meeting ceiling criteria" description section would be revised to remove the word "on" from the description of ceiling indicator 5 to provide greater clarity of the indicator's description.

*Figure: 19 TAC §109.1001(f)(5)*

Indicator 13 would be revised to remove the use of unrestricted net assets in the calculation and insert the use of total net assets in the calculation.

A statement would be added that indicator 21 will not be utilized for the 2020-2021 rating year.

**FISCAL IMPACT:** Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by clarifying terminology used to define FIRST indicators.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that the provisions of the financial accountability rating system align to make the indicators uniform for all school districts and charter schools and providing a fair and equitable rating for all school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins September 3, 2021, and ends October 4, 2021. A request for a public hearing on the proposal submit-

ted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on September 3, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §12.104, as amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, subjects open-enrollment charter schools to the prohibitions, restrictions, or requirements relating to public school accountability and special investigations under TEC, Chapter 39, Subchapters A, B, C, D, F, G, and J, and TEC, Chapter 39A; TEC, §39.082, which requires the commissioner to develop and implement a financial accountability rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; TEC, §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; TEC, §39.085, which requires the commissioner to adopt rules to implement TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; TEC, §39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adjust the financial accountability rating system under TEC, §39.082, to account for the impact of financial practices necessary as a response to the coronavirus disease (COVID-19) pandemic, including adjustments required to account for federal funding and funding adjustments under TEC, Chapter 48, Subchapter F; and TEC, §39.151, as amended by SB 1365, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to provide a process by which a district or charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39, including a determination of consecutive school years of unacceptable performance ratings. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to districts and open-enrollment charter schools.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§12.104, as amended by Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021; 39.082; 39.083; 39.085; 39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021; and 39.151, as amended by SB 1365, 87th Texas Legislature, Regular Session, 2021.

§109.1001. *Financial Accountability Ratings.*

(a) - (d) (No change.)

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) - (4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are

provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated October 2021 [~~April 2020~~] for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(5)

[Figure: 19 TAC §109.1001(e)(5)]

(6) (No change.)

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) - (4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated October 2021 [~~April 2020~~] for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(5)

[Figure: 19 TAC §109.1001(f)(5)]

(6) (No change.)

(g) - (q) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## TITLE 22. EXAMINING BOARDS

### PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

#### CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

##### 22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.24, Complaint Processing.

The proposed amendments outline a process that allows complaint cases resulting in a contingent dismissal to be closed at the time an agreement is reached between the parties as opposed to the current process in which the case is closed after completion

of the required remedial training. Such a change would result in more accurate reporting of complaint resolution timeframes.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

##### Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

##### §153.24. *Complaint Processing.*

(a) - (n) (No change.)

(o) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Texas Occupations Code §1103.552, staff, the administrative law judge in a contested case hearing, and the Board shall consider the following sanctions guide-

lines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) A person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline was issued by the Board more than seven years before the current alleged violation occurred;

(B) Prior discipline is defined as any sanction (including administrative penalty) received under a Board final or agreed order;

(C) A violation refers to a violation of any provision of the Act, Board rules or USPAP;

(D) "Minor deficiencies" is defined as violations of the Act, Board rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the license holder's honesty, integrity, or trustworthiness to the Board, the license holder's clients, or intended users of the appraisal service provided;

(E) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP that:

(i) impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the license holder's honesty, trustworthiness or integrity to the Board, the license holder's clients, or intended users of the appraisal service provided; or

(ii) are deficiencies done with knowledge, deliberate or willful disregard, or gross negligence that would otherwise be classified as "minor deficiencies";

(F) "Remedial measures" include, but are not limited to, training, mentorship, education, reexamination, or any combination thereof; and

(G) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement. [If the Respondent completes all remedial measures required in the agreement within the prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.]

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal and, if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the prior discipline, including:

(i) Whether prior discipline concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions previously imposed; and

(iii) The length of time since the prior discipline;

(D) The difficulty or complexity of the appraisal assignment(s) at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal/instance of conduct or multiple appraisals/instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac; or

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the extent or amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The level of experience Respondent had in the appraisal profession at the time of the violations, including:

(i) The level of appraisal credential Respondent held;

(ii) The length of time Respondent had been an appraiser;

(iii) The nature and extent of any education Respondent had received related to the areas in which violations were found; and

(iv) Any other real estate or appraisal related background or experience Respondent had;

(K) Whether Respondent can improve appraisal skills and reports through the use of remedial measures;

(3) The following sanctions guidelines shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

or

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

- (i) Contingent dismissal with remedial measures; or
- (ii) A final order which imposes one or more of the following:

following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, not to exceed \$3,000 in the aggregate.

(C) 1st Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(D) 2nd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

or

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(E) 2nd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(F) 2nd Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules,

or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(G) 3rd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) \$1,000 to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(H) 3rd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(I) 3rd Time Discipline Level 3--violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; or

(ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(J) 4th Time Discipline--violations of the Act, Board rules, or USPAP will result in a final order which imposes the following:

(i) A revocation; and

(ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board rules, or the Act, up to the maximum \$5,000 statutory limit per complaint matter.

(K) Unlicensed appraisal activity will result in a final order which imposes a \$1,500 in administrative penalties per unlicensed appraisal activity, up to the maximum \$5,000 statutory limit per complaint matter.

(4) In addition, staff may recommend any or all of the following:

(A) reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) probating all or a portion of any sanction or administrative penalty for a period not to exceed five years;

(C) requiring additional reporting requirements; and

(D) such other recommendations, with documented support, as will achieve the purposes of the Act, Board rules, or USPAP.

(p) - (q) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 23, 2021.

TRD-202103295

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 936-3652



## CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

### 22 TAC §159.204

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.204, Complaint Processing.

The proposed amendments outline a process that allows complaint cases resulting in a contingent dismissal to be closed at the time an agreement is reached as opposed to the current process in which the case is closed after completion of the required remedial training. Such a change would result in more accurate reporting of complaint resolution timeframes.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect,

there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov). Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.204. *Complaint Processing.*

(a) - (l) (No change.)

(m) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;

(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;

(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;

(D) A violation refers to a violation of any provision of the AMC Act, Board rules, or USPAP;

(E) "Minor deficiencies" is defined as violations of the AMC Act, Board rules, or USPAP which do not call into question the qualification of the AMC for licensure in Texas;

(F) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP which do call into question the qualification of the AMC for licensure in Texas;

(G) "Remedial measures" include training, auditing, or any combination thereof; and

(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement. [If Respondent completes all remedial measures required in the agreement within a certain prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.]

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

(i) Whether it concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions imposed;

(iii) The length of time since the previous discipline;

(D) The difficulty or complexity of the incident at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:



(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The business operating history of the AMC, including:

(i) The size of the AMC's appraiser panel;

(ii) The length of time Respondent has been licensed as an AMC in Texas;

(iii) The length of time the AMC has been conducting business operations, in any jurisdiction;

(iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and

(v) Respondent's affiliation with other business entities;

(K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and

(L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.

(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures;

(ii) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(C) 1st Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(D) 2nd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(E) 2nd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(F) 2nd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(G) 3rd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(H) 3rd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(I) 3rd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A revocation; and
- (ii) Minimum of \$7,000 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules, or the Act; each day of a continuing violation is a separate violation.

(J) 4th Time Discipline--violations of the AMC Act, Board rules or USPAP will result in a final order which imposes the following:

- (i) A revocation; and
- (ii) \$10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(K) Unlicensed AMC activity will result in a final order which imposes a \$10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.

(4) In addition, staff may recommend any or all of the following:

(A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors

that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;

(C) Requiring additional reporting requirements;

(D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and

(E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act, Board rules, or USPAP.

(n) - (o) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 23, 2021.

TRD-202103296

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 936-3652



## PART 14. TEXAS OPTOMETRY BOARD

### CHAPTER 273. GENERAL RULES

#### 22 TAC §273.4

The Texas Optometry Board proposes amendments of 22 TAC §273.4, Fees (Non-Refundable). The initial fees are increased by five dollars and the biennial fees are increased by five dollars for each year for a total of ten dollars each biennium. The fees are being increased because the agency will incur additional costs and expenses due to SB993 of the 87th Regular Legislative Session.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for the state and local governments as a result of repealing the rule.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated is agency efficiency in its ability to carry out its programs. There will be a slight increase to cost to persons required to comply with the amendment. Specifically, a five-dollar increase to initial fees and ten-dollar increase to biennial fees.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendment. Since the agency has determined that the proposed amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory

Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed amendment will be in effect, it is anticipated that the proposed amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed amendment will not require the creation of new employee position or the elimination of an existing employee position. There will be a slight increase to cost to persons required to comply with the amendment. Specifically, a five-dollar increase to initial fees and ten-dollar increase to biennial fees paid to the agency. Should the agency receive additional funding in the future, costs may be reduced. The fees are being increased because the agency will incur additional costs and expenses due to SB993 of the 87th Regular Legislative Session. The agency plans to collect the fees and seek additional appropriations based on the collected fees.

#### PUBLIC COMMENTS

Comments on the proposed amendment may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The proposed amendment of §273.4 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.165.

No other sections are affected by this repeal.

§273.4. Fees (Non-Refundable).

(a) Examination Application Fee \$150.00.

(b) License Without Examination Application Fee \$305.00 [~~\$300.00~~].

(c) Therapeutic Certification Application Fee \$85.00 [~~\$80.00~~].

(d) Optometric Glaucoma Specialist License Application Fee \$55.00 [~~\$50.00~~].

(e) Initial Therapeutic License Fee: \$55.00 [~~\$50.00~~] plus \$5.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$60.00 [~~\$55.00~~]. Beginning January 1, 2021, a fee of \$265.36 [~~\$260.36~~] plus \$6.00 fee required by House Bill 2985, 78th Legislature. Total fee for biennial renewal: \$271.36 [~~\$266.36~~].

(f) License Renewal.

(1) Fee for licenses renewed on or before the January 1 expiration date:

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$220.36 [~~\$210.36~~] plus \$1.00 fee

required by House Bill 2985, 78th Legislature. Total fee: \$221.36 [~~\$211.36~~].

(B) Active Optometric Glaucoma Specialist: \$230.00 [~~\$220.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$231.00 [~~\$221.00~~].

(C) Beginning January 1, 2021, the renewal fee for biennial renewal is:

(i) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$430.72 [~~\$420.72~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$432.72 [~~\$422.72~~].

(ii) Active Optometric Glaucoma Specialist: \$450.00 [~~\$440.00~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$452.00 [~~\$442.00~~].

(iii) Licenses renewed for the one year for 2021: the fee will be prorated for the one-year period.

(2) License fee for late renewal, one to 90 days late.

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$325.54 [~~\$315.54~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fee: \$326.54 [~~\$316.54~~].

(B) Active Optometric Glaucoma Specialist: \$340.00 [~~\$330.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$341.00 [~~\$331.00~~].

(C) Beginning January 1, 2021, the renewal fee for biennial renewal, one to 90 days late is:

(i) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$641.08 [~~\$631.08~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$643.08 [~~\$633.08~~].

(ii) Active Optometric Glaucoma Specialist: \$670.00 [~~\$660.00~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$672.00 [~~\$662.00~~].

(iii) Licenses renewed for the one year for 2021: the one to 90 days late fee will be prorated for the one-year period.

(3) License fee for late renewal, 91 days to one year late.

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$430.72 [~~\$420.72~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fee: \$431.72 [~~\$421.72~~].

(B) Optometric Glaucoma Specialist: \$450.00 [~~\$440.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$451.00 [~~\$441.00~~].

(C) Beginning January 1, 2021, the renewal fee for biennial renewal 91 days to one year late is:

(i) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$851.44 [~~\$841.44~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$853.44 [~~\$843.44~~].

(ii) Active Optometric Glaucoma Specialist: \$890.00 [~~\$880.00~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$892.00 [~~\$882.00~~].

(iii) Licenses renewed for the one year for 2021: the 91 days to one-year late fee will be prorated for the one-year period.

(4) Late fees (for all renewals with delayed continuing education) \$420.72.

(g) Provisional License \$75.00.

(h) Initial Limited Faculty License \$50.00.

(i) Duplicate License, Renewal Certificate, Therapeutic Certificate or Optometric Glaucoma Specialist Certificate (lost, destroyed, or name change) \$25.00.

(j) Retired License.

(1) Optometrist and Therapeutic Optometrist: \$210.36 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$211.36.

(2) Optometric Glaucoma Specialist: \$220.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$221.00.

(3) Beginning January 1, 2021, the renewal fee for biennial renewal is:

(A) Optometrist, Therapeutic Optometrist and inactive Optometric Glaucoma Specialist: \$220.36 [~~\$210.36~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$222.36 [~~\$212.36~~].

(B) Active Optometric Glaucoma Specialist: \$230.00 [~~\$220.00~~] plus \$2.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$232.00 [~~\$222.00~~].

(k) Retired License to Active License Application Fee. For individuals holding Retired License making application for active license. \$30.00 [~~\$25.00~~].

(l) Request for Criminal History Evaluation Letters \$125.00.

(m) Fee for official license verification: \$40.00.

(n) Fee for list of optometrists: \$65.00.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2021.

TRD-202103238

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 305-8502



## CHAPTER 275. CONTINUING EDUCATION

### 22 TAC §275.1

The Texas Optometry Board (the "Board") proposes amendments of 22 TAC §275.1 General Requirements. This amendment simply modernizes the way the agency approves continuing education course providers and courses. The Board reserves the right to review and approve providers that are not automatically granted approval through this amendment as stated in Paragraph C. The Board also reserves the right to reject any course. Finally, this amendment will increase agency efficiencies and improve customer service.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed amendment is in effect, there will

be no fiscal implications for the state and local governments as a result of repealing the rule.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated is agency efficiency and increased customer service. There will be no economic cost to persons required to comply with the proposed amendment.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendment. Since the agency has determined that the proposed amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed amendment will be in effect, it is anticipated that the proposed amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed amendment will not require the creation of new employee position or the elimination of an existing employee position; and implementation of the proposed amendment will not require an increase or decrease in fees paid to the agency. The proposed amendment purely modernizes the way the Board approves continuing education providers and courses. There will be no effect on the state's economy.

#### PUBLIC COMMENTS

Comments on the proposed amendment may be submitted electronically to: [kelly.parker@tob.texas.gov](mailto:kelly.parker@tob.texas.gov), Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The proposed amendment of §275.1 General Requirements is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.165.

No other sections are affected by this repeal.

#### §275.1 General Requirements

(a) Number of hours required to renew.

(1) The Texas Optometry Act requires each optometrist licensed in this state to take 16 hours of continuing education per calendar year with at least six hours in the diagnosis or treatment of ocular disease. Beginning with the 2021 license renewal, at least 12 hours of the required 16 hours shall be in the diagnosis or treatment of ocular

disease. The subject of at least one hour of the required 16 hours shall be professional responsibility. The calendar year is considered to begin January 1 and run through December 31.

(2) Hours required beginning with the 2023 license renewal.

(A) 32 hours of continuing education taken during the two-year period preceding license renewal.

(B) 24 hours of the required 32 hours shall be in the diagnosis or treatment of ocular disease.

(C) Two hours of the required 32 hours shall be in professional responsibility as defined in subsection (b)(1)(H) [(b)(9)] of this section.

#### (b) Providers.

(1) The Board has determined that the following providers who provide courses in subjects directly related to optometry may satisfy the criteria for acceptable continuing education hours and may be given automatic approval:

(A) Courses sponsored by an optometry college or school accredited by the American Optometric Council on Education (ACOE);

(B) Courses sponsored by the American Optometric Association (AOA) or an affiliate of the AOA;

(C) Courses sponsored by the American Academy of Optometry (AAO) or an affiliate of AAO;

(D) Courses accredited by the Council on Optometric Provider Education (COPE);

(E) Courses sponsored and or approved by the Texas Health and Human Services Commission;

(F) Courses sponsored by the American Board of Optometry;

(G) Courses approved by the Accreditation Council for Continuing Medical Education (AACME); and

(H) Courses in professional responsibility given by a board accredited in-state college or school of optometry may be given approval if the course:

(i) is made available as a live course in this state and on the internet; and

(ii) includes the study of professional ethics, the Texas Optometry Act and Board Rules, judicious prescribing of dangerous drugs, pain management, or drug abuse by professionals.

(2) Notwithstanding the automatic approvals contemplated in paragraph (1) of this subsection, the Board shall be entitled to reject individual courses.

[(b) The board accepts for continuing education credit all courses sponsored by any board-accredited college or schools of optometry and such other programs or courses of other organizations as are approved by the board upon recommendation from the Continuing Education Committee, appointed by the Board Chair. The Continuing Education Committee will consider, among other things in its discretion, the following criteria in approving courses and classifying the hours as general, diagnosis or treatment of ocular disease, and professional responsibility:]

[(1) all subjects of education must be directly related to optometry;]

[(2) courses sponsored by or given by accredited optometry schools will be granted automatic approval as limited by paragraph (9) of this subsection;]

[(3) courses meeting evaluation standards and receiving approval of the Association of Regulatory Boards of Optometry will be granted automatic approval as limited by paragraph (9) of this subsection;]

[(4) courses sponsored by optometric organizations may be given approval;]

[(5) courses sponsored by universities or accredited nonoptometric schools may be given approval if the subject matter is directly related to optometry;]

[(6) correspondence courses sponsored and graded by accredited optometry schools may be given approval. The maximum number of hours allowed for these courses is set out in §275.2(f) of this title (relating to Required Education);]

[(7) courses sponsored by individual providers may be approved but providers must supply the committee with a synopsis of the lecture material to be presented, itinerary including time in the class, and resumes of the lecturers;]

[(8) on-line computer courses with post-course testing sponsored by the Association of Regulatory Boards of Optometry or by accredited optometry schools. The maximum number of hours allowed for these courses is set out in §275.2(f) of this title;]

[(9) courses in professional responsibility given by a board accredited in-state college or school of optometry may be given approval if the course;]

[(A) is made available as a live course in this state and on the internet; and]

[(B) includes the study of professional ethics, the Texas Optometry Act and Board Rules, judicious prescribing of dangerous drugs, pain management, or drug abuse by professionals;]

(c) Provider Approval. Continuing education providers who are not preapproved under subsection (b) of this section shall make application to the Board on the prescribed form, submit the appropriate fee, and submit all required materials for consideration of approval. Failure to utilize the Board's application form or submit any of the requirements shall be grounds to reject the application request. Provider applications will be approved by the Board upon recommendation from the Continuing Education Committee.

(d) [(e)] Renewal requirements. Licensees who have not complied with the education requirements may not be issued a renewal license unless such person is entitled to an exemption under Section 351.309 of the Act. The following persons are exempt:

(1) a licensee who holds a Texas license, but does not practice optometry in Texas; provided, however, that if at any time during the calendar year for which such exemption has been obtained such person desires to practice optometry, such person shall not be entitled to practice optometry in Texas until the hours of continuing education credits set out in subsection (a) of this section are obtained and the board has been notified of the completion of such continuing education requirements;

(2) a licensee who served in the regular armed forces of the United States during part of the period immediately preceding the license renewal date;

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a serious or disabling illness or physical dis-

ability which prevented the licensee from complying with the requirements of this section during the period immediately preceding the annual license renewal date; provided, however, that in lieu of claiming the exemption, a licensee who has submitted the requisite proof of illness or disability may elect to obtain the education requirement by correspondence or multi-media courses sponsored, monitored, or graded by colleges of optometry; or

(4) a licensee who was first licensed within the period immediately preceding the first renewal date is exempt from Board mandated continuing education for this first calendar year. A new licensee is not exempt from continuing education required by Texas laws.

(e) [(d)] Availability. Approved courses must be available to all Texas licensed optometrists at a fee considered reasonable and nondiscriminatory.

[(e)] Summaries of the courses and resumes of those teaching must be submitted to the board's Continuing Education Committee for approval or disapproval. This information should be received 60 days prior to the date the course is to take place;]

(f) Proof of Attendance. Written proof of attendance and completion of approved courses must be supplied by the licensed optometrist to the board in conjunction with the renewal application for an optometry license. If the licensed optometrist is practicing in Texas, the licensee should submit the original proof of attendance or the approved sponsors of continuing education may submit to the board written proof of attendance and completion of approved courses on behalf of the licensed optometrist. Information such as the following will be required: sponsoring organizations; location and dates; course names; instructors; names of attendee; number of education hours completed; and any other information deemed necessary by the board. Proof of attendance supplied by the sponsor should contain at least one signature of the sponsor's designee.

(g) Retired License Continuing Education.

(1) An applicant with a current license applying for the Retired License shall obtain eight hours of Board approved continuing education during the calendar year preceding the date of application. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

(2) An applicant whose license has expired for one year or more shall obtain 16 hours of Board approved continuing education during the calendar year preceding the date of application. All of the hours may be obtained on the Internet or by correspondence. At least eight of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

(3) The holder of a retired license shall obtain eight hours of Board approved continuing education during the calendar year prior to renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

(4) Beginning with the 2023 license renewal, the holder of a retired license shall obtain 16 hours of Board approved continuing education prior to renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2021.

TRD-202103239

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 305-8502



## TITLE 28. INSURANCE

### PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

#### CHAPTER 276. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

##### 28 TAC §§276.3 - 276.5

**INTRODUCTION.** The Office of Injured Employee Counsel (OIEC) proposes amendments to existing rules at 28 Texas Administrative Code (TAC), Chapter 276, Subchapter A, §§276.3 - 276.5. The proposed amendments update rules to ensure efficient agency operations; maintain consistency with statute; and simplify publication requirements.

**REASONED JUSTIFICATION.** OIEC identified a number of rules that required updates during the agency's rule review under Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years. The agency identified rules that are outdated, inconsistent with statutory language, or fail to clarify the language and purpose of statutes.

The proposed amendment to §273.3, Rulemaking Petition, clarifies rules may be petitioned by an "interested person." This language is consistent with the language in Government Code §2001.021, Subchapter B.

The proposed amendment to §276.4, Sick Leave Pool, removes references to the "Deputy Public Counsel" and adds language reflecting the Public Counsel's discretion to designate a sick leave pool administrator under Government Code §661.002. This change is part of a general effort to remove functional job titles from agency rules.

The proposed amendment to §276.5, Employer's Notice of Ombudsman Program and First Responder Liaison to Employees, updates publication requirements under Labor Code §404.153 to eliminate language designating publication locations and font sizes. This change is part of a general effort to remove complexity from agency rules.

**FISCAL NOTE.** Mrs. Andria Franco, Deputy Public Counsel, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal impact to state or local governments that provide workers' compensation coverage as a result of enforcing or administering the amendments. There will be no measurable effect on local employment or the local economy because of the proposed amendments.

**PUBLIC BENEFIT.** Mrs. Franco has also determined that, for each of the first five years amended §§276.3 - 276.5 are in effect, there are several public benefits anticipated, as well as potential, minimal costs for persons to comply with the proposal.

The amendment to §276.3 will remove potential confusion by conforming the rule to the language in Government Code §2001.021, Subchapter B.

The amendment to §276.4 will move away from listing functional job titles in agency rules. Currently if the Deputy Public Counsel position is vacant or the agency changes functional job titles, the agency will have to undergo rulemaking to make a change in sick leave pool administration. The amendment will allow the agency head to designate a sick leave pool administrator based on current business needs.

The amendments to §276.5 will benefit the public by removing inadvertent violations due to disputes about font size and publication location. The amendments recognize that the goal of Labor Code §404.153 is to ensure that injured employees receive notice of the existence of OIEC services and the first responder liaison.

**ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL.** Mrs. Franco anticipates there will be no costs to comply with these rules. The proposed changes impact internal agency operations, accuracy or provide additional flexibility with notice publication guidelines which should decrease the regulatory burden on system participants. No additional notices need to be printed to comply with the amendments to §276.5. Because OIEC has determined that the proposed amendments will have no costs to system participants, Government Code §2001.0045 does not apply.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES, AND RURAL COMMUNITIES.** In accordance with Government Code §2006.002(c), OIEC has determined that adoption of the proposed amendments will not have a direct, adverse economic impact on small or micro-businesses or rural communities who may be self-insured insurance carriers.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Government Code §2001.0221 requires that a state agency prepare a government growth impact statement describing the effects that a proposed rule may have during the first five years that the rule would be in effect. The proposed rules will not create or eliminate a government program and will not require an increase or decrease in fees. Implementation of the proposal will not create or eliminate employee positions and will not require an increase or decrease in future legislative appropriations to the agency.

The proposal deletes §276.4(1), regarding the reference to the Deputy Public Counsel as sick leave pool administrator and amends §276.5, regarding font size and posting locations for the employer's notice of OIEC services. The proposed rule does not change the number of individuals subject to the rule's applicability. The proposed rule will not significantly affect the state's economy.

**ONE-FOR-ONE RULE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.**

Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost

imposed on the persons by the proposed rule. The proposal will not impose any additional costs on regulated persons.

**TAKINGS IMPACT ASSESSMENT.** OIEC has determined that no private real property interests are affected by this proposal, and this amendment does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be received no later than 5:00 p.m. on October 3, 2021, to Kathleen Contreras, Mail Code 50, and 7551 Metro Center Drive, Austin, Texas 78744, or via email to [kathleen.contreras@oiec.texas.gov](mailto:kathleen.contreras@oiec.texas.gov). Any requests for a public hearing should be submitted separately to the Public Counsel.

**STATUTORY AUTHORITY.** Labor Code §404.006 authorizes the Public Counsel to adopt rules as necessary to implement Chapter 404 of the Labor Code.

**CROSS REFERENCE TO STATUTE.** The following sections are affected by this proposal: 28 TAC §§276.3 - 276.5; TEX. Government Code §2001.021, Subchapter B; TEX. Government Code §661.002; Tex. Lab. Code §§404.1525, 404.153(a-1) and 404.006.

No other statutes, articles, or codes are affected by the proposed new rules.

*§276.3. Agency's Ethics Statement and Employee Requirements.*

(a) Changes or amendments to the Office of Injured Employee Counsel's (OIEC) rules may be petitioned by an interested [any] person. Rulemaking petitions shall be in the form of a letter to the Public Counsel that contains the following:

(1) - (7) (No change.)

(b) - (d) (No change.)

*§276.4. Sick Leave Pool.*

A sick leave pool is established to alleviate hardship caused to an employee and employee's immediate family if a catastrophic illness or injury forces the employee to exhaust all sick leave earned by the employee and to lose compensation from the state.

~~[(1) The Deputy Public Counsel is designated as the pool administrator.]~~

(1) ~~[(2)]~~ The agency head ~~[pool administrator]~~ shall develop and administer a procedure for the administration of this section.

(2) ~~[(3)]~~ Operation of the pool shall be consistent with Chapter 661 of the Texas Government Code.

*§276.5. Employer's Notice of Ombudsman Program and First Responder Liaison to Employees.*

(a) All employers participating in the workers' compensation system shall post notice of the Office of Injured Employee Counsel's (OIEC) Ombudsman Program. This notice shall be posted ~~[in the personnel office, if the employer has a personnel office, and]~~ in the workplace where each employee is likely to see the notice on a regular basis.

(b) (No change.)

(c) ~~[The notice shall be printed with a title in at least 15 point bold type and text in at least 14 point normal type.]~~ The text of the notice shall be as follows without any additional words or changes:

Figure: 28 TAC §276.5(c) (No change.)

(d) An employer that employs first responders or that supervises volunteer first responders shall:

(1) - (2) (No change.)

(3) The following notice shall be printed ~~[with a title in at least 15 point bold type and text in at least 14 point normal type,]~~ in English and Spanish or in English and any other language common to the employer's affected employee population. The text of the notice shall be as follows without any additional words or changes:

Figure: 28 TAC §276.5(d) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2021.

TRD-202103226

Gina McCauley

General Counsel

Office of Injured Employee Counsel

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 804-4194



## SUBCHAPTER B. OMBUDSMAN PROGRAM

### 28 TAC §276.10

**INTRODUCTION.** The Office of Injured Employee Counsel (OIEC) proposes amendments to existing rules at 28 Texas Administrative Code (TAC), Chapter 276, Subchapter B, §276.10. The proposed amendments update rules to ensure efficient agency operations; maintain consistency with statute; and eliminate a license requirement.

**REASONED JUSTIFICATION.** OIEC identified a number of rules that required updates during the agency's rule review under Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years. The agency identified rules that are outdated, inconsistent with statutory language, or fail to clarify the language and purpose of statutes.

The proposed amendments to §276.10, Ombudsmen Training and Continuing Education Program, remove §276.10(c)(2)(A) and §276.10(a)(1) regarding obtaining and maintaining a valid workers' compensation adjuster license and the associated continuing education requirement. The change follows statewide efforts to reduce burdensome licensing requirements. These deletions will also require amending §276.10(a)(2), to remove references to continuing education for obtaining and retaining the adjusters' license. The proposed amendment to §276.10(c)(1)(B) will remove functional job titles.

**FISCAL NOTE.** Mrs. Andria Franco, Deputy Public Counsel, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal impact to state or local governments that provide workers' compensation coverage as a result of enforcing or administering the amendments. There will be no measurable effect on local employment or the local economy because of the proposed amendments.

**PUBLIC BENEFIT.** Mrs. Franco has also determined that, for each of the first five years amended §276.10 is in effect, there are



several public benefits anticipated, as well as potential, minimal costs for persons to comply with the proposal.

The amendments to §276.10 will benefit the public by removing a licensing requirement that prevents otherwise eligible individuals from applying to become ombudsmen with OIEC. In addition, the Labor Code provides extensive training requirements to ensure OIEC ombudsmen are competent in workers' compensation law. The change will also reduce taxpayer expenses related to test preparation and examination fees. The rule's robust training requirements will remain, but all references to the license are being removed. The amendments to §276.10(a)(1) and §276.10(c)(2)(A) remove references to the workers' compensation adjuster license. The amendment to §276.10(a)(2) deletes references to the workers' compensation adjuster license. The amendment to §276.10(c)(1)(B) deletes functional job titles that no longer exist at the agency.

**ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL.** Mrs. Franco anticipates there will be no costs to comply with these rules. The proposed changes impact internal agency operations. Because OIEC has determined that the proposed amendments will have no costs to system participants, Government Code §2001.0045 does not apply.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES.** In accordance with Government Code §2006.002(c), OIEC has determined that adoption of the proposed amendments will not have a direct, adverse economic impact on small or micro-businesses or rural communities who may be self-insured insurance carriers.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Government Code §2001.0221 requires that a state agency prepare a government growth impact statement describing the effects that a proposed rule may have during the first five years that the rule would be in effect. The proposed rules will not create or eliminate a government program and will not require an increase or decrease in fees. Implementation of the proposal will not create or eliminate employee positions and will not require an increase or decrease in future legislative appropriations to the agency.

The proposal deletes §276.10(c)(2)(A) and §276.10(a)(2) removing references to continuing education for obtaining and retaining the adjuster license. The proposal also amends §276.10(c)(1)(B) to remove obsolete job titles and §276.10(a)(1) to amend a definition related to the license requirement. The proposed rule does not change the number of individuals subject to the rule's applicability. The proposed rule will not significantly affect the state's economy.

**ONE-FOR-ONE RULE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.** Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. The proposal will not impose any additional costs on regulated persons.

**TAKINGS IMPACT ASSESSMENT.** OIEC has determined that no private real property interests are affected by this proposal, and this amendment does not restrict or limit an owner's right

to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be received no later than 5:00 p.m. on October 3, 2021, to Kathleen Contreras, Mail Code 50, and 7551 Metro Center Drive, Austin, Texas 78744, or via email to [kathleen.contreras@oiec.texas.gov](mailto:kathleen.contreras@oiec.texas.gov). Any requests for a public hearing should be submitted separately to the Public Counsel.

**STATUTORY AUTHORITY.** Labor Code §404.006 authorizes the Public Counsel to adopt rules as necessary to implement Chapter 404 of the Labor Code.

**CROSS REFERENCE TO STATUTE.** The following sections are affected by this proposal: 28 Texas Administrative Code §276.10, Texas Labor Code §404.152. No other statutes, articles, or codes are affected by the proposed new rules.

*§276.10. Ombudsman Training and Continuing Education Program.*

(a) Definitions. The following words and phrases shall have the following meaning in this section unless the context clearly indicates otherwise:

~~(1)~~ Adjuster's license: A workers' compensation license issued by the Texas Department of Insurance.

(1) ~~(2)~~ Continuing education: A formal training program required for all ombudsmen in this state ~~[that includes continuing education for obtaining and retaining an adjuster's license].~~

(2) ~~(3)~~ Ombudsmen education and training program: The training required by the Office of Injured Employee Counsel (OIEC) to serve as an ombudsman, which results in certification upon completion.

(b) (No change.)

(c) OIEC staff's responsibilities regarding education and training. OIEC staff shall maintain the knowledge and skills needed to properly assist unrepresented injured employees in the workers' compensation system.

(1) The Ombudsman Program is the division within OIEC that is responsible for the overall management of the ombudsmen education and training program. The Ombudsman Program's responsibilities include, but are not limited to:

(A) educating ombudsmen about the workers' compensation laws, rules, advisories, appeals panel decisions, dispute resolution, OIEC policies and procedures, and application of such information to specific cases or factual situations;

(B) selecting supervisory staff ~~[an Ombudsman Supervisor and an Associate Director of the Ombudsman Program]~~ to observe, supervise, train, and provide feedback to ombudsmen on a daily basis;

(C) - (I) (No change.)

(2) An ombudsman's responsibilities shall include, but is not limited to:

~~(A) obtaining and maintaining a valid workers' compensation adjusters' license issued by the Texas Department of Insurance and submitting a copy of the license to OIEC's central office;~~

(A) ~~(B)~~ completing the ombudsmen education and training program;

(B) ~~(C)~~ participating in OIEC conferences;

(C) [(D)] completing all continuing education requirements;

(D) [(E)] maintaining the technical and professional skills to perform all the duties of an Ombudsman; and

(E) [(F)] assisting injured employees throughout the workers' compensation system.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2021.

TRD-202103225

Gina McCauley

General Counsel

Office of Injured Employee Counsel

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 804-4194



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER I. VALUATION PROCEDURES

###### 34 TAC §9.4031

The Comptroller of Public Accounts proposes the repeal of existing §9.4031, concerning a manual for discounting oil and gas income, related to the concept of discounting, the discounted cash flow (DCF) equation, DCF appraisal, and three acceptable techniques for estimating a "discount rate" in the DCF method. The comptroller repeals existing §9.4031 in order to propose the adoption of a new §9.4031 with revisions to remove concepts and explanations included in the referenced manual. The repeal of §9.4031 will be effective as of the date the new §9.4031 takes effect.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed rule repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed rule repeal would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rule repeal would benefit the public by improving the administration of local property valuation and taxation. There would be no anticipated significant economic cost to the public. The proposed rule repeal would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Korry Castillo, Director, Property Tax Assistance Division, P.O. Box 13528

Austin, Texas 78711 or to the email address: [ptad.rulecomments@cpa.texas.gov](mailto:ptad.rulecomments@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.175 (Oil or Gas Interest), which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying methods to apply and the procedures to use in appraising oil or gas interests for ad valorem tax purposes.

This repeal implements Tax Code, §23.175 (Oil or Gas Interest).

§9.4031. *Manual for Discounting Oil and Gas Income.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 23, 2021.

TRD-202103299

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: October 3, 2021

For further information, please call: (512) 475-2220



###### 34 TAC §9.4031

The Comptroller of Public Accounts proposes new §9.4031, concerning a manual for discounting oil and gas income.

The new §9.4031 updates and revises the Manual for Discounting Oil and Gas Income that was adopted in April 2015. The new manual explains the concept of discounting, the discounted cash flow (DCF) equation, DCF appraisal, and three acceptable techniques for estimating a discount rate in the DCF method. The updates and revisions to the manual generally reflect statutory changes, changes in the federal statutory income tax rate, updates to names and sources of information and updates to appendices to reflect current values. The proposed updated version is available for review at <https://comptroller.texas.gov/taxes/property-tax/docs/96-1703-proposed.pdf>.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals.

The proposed new rule would benefit the public by improving the administration of local property valuation and taxation. There would be no anticipated significant economic cost to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Korry Castillo, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: [ptad.rulecom-](mailto:ptad.rulecom-)

ments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under Tax Code, §5.05 (Appraisal Manuals and Other Materials) and §23.175 (Oil or Gas Interests), which provide the comptroller with the authority to develop and distribute to each appraisal office appraisal manuals that specify the methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

The new section implements Tax Code, §23.175 (Oil or Gas Interests).

§9.4031. Manual for Discounting Oil and Gas Income.

Adoption of the "Manual for Discounting Oil and Gas Income." This manual specifies the methods and procedures to calculate the present value of oil and gas properties using discounted future income under Tax Code, Chapter 23.175, and directs each appraisal district to use the specified methods and procedures. The Comptroller of Public Accounts adopts by reference the Manual for Discounting Oil and Gas

Income dated June 2021. The manual is accessible on the Property Tax Assistance Division website. Copies of the manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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