

1 AN ACT

2 relating to the regulation of residential mortgage loan
3 originators; providing a penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle E, Title 3, Finance Code, is amended by
6 adding Chapter 180 to read as follows:

7 CHAPTER 180. RESIDENTIAL MORTGAGE LOAN ORIGINATORS

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 180.001. SHORT TITLE. This chapter may be cited as the
10 Texas Secure and Fair Enforcement for Mortgage Licensing Act of
11 2009.

12 Sec. 180.002. DEFINITIONS. In this chapter:

13 (1) "Clerical or support duties," following the
14 receipt of an application from a consumer, includes:

15 (A) the receipt, collection, distribution, and
16 analysis of information related to the processing or underwriting
17 of a residential mortgage loan; and

18 (B) communication with a consumer to obtain
19 information necessary to process or underwrite a loan, to the
20 extent that the communication does not include offering or
21 negotiating loan rates or terms or counseling the consumer about
22 residential mortgage loan rates or terms.

23 (2) "Credit union" means a state or federal credit
24 union operating in this state.

1 (3) "Credit union subsidiary organization" means an
2 agency, association, or company wholly or partly owned by a credit
3 union that is designed primarily to serve or otherwise assist
4 credit union operations. The term includes a credit union service
5 organization authorized by:

6 (A) Section 124.351(a)(1);

7 (B) Credit Union Commission rule; or

8 (C) Part 712 of the National Credit Union
9 Administration's Rules and Regulations.

10 (4) "Depository institution" has the meaning assigned
11 by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section
12 1813). The term includes a credit union but does not include a
13 credit union subsidiary organization.

14 (5) "Dwelling" has the meaning assigned by Section
15 103(v) of the Truth in Lending Act (15 U.S.C. Section 1602(v)).

16 (6) "Federal banking agency" means:

17 (A) the Board of Governors of the Federal Reserve
18 System;

19 (B) the Office of the Comptroller of the
20 Currency;

21 (C) the Office of Thrift Supervision;

22 (D) the National Credit Union Administration;

23 (E) the Federal Deposit Insurance Corporation;

24 or

25 (F) the successor of any of those agencies.

26 (7) "Finance commission" means the Finance Commission
27 of Texas.

1 (8) "Immediate family member" means the spouse, child,
2 sibling, parent, grandparent, or grandchild of an individual. The
3 term includes a stepparent, stepchild, and stepsibling and a
4 relationship established by adoption.

5 (9) "Individual" means a natural person.

6 (10) "License" means a license issued under the laws
7 of this state to an individual acting as or engaged in the business
8 of a residential mortgage loan originator.

9 (11) "Loan processor or underwriter" means an
10 individual who performs clerical or support duties as an employee
11 at the direction of and subject to the supervision and instruction
12 of an individual licensed as a residential mortgage loan originator
13 or exempt from licensure under Section 180.003.

14 (12) "Nationwide Mortgage Licensing System and
15 Registry" means a mortgage licensing system developed and
16 maintained by the Conference of State Bank Supervisors and the
17 American Association of Residential Mortgage Regulators for the
18 licensing and registration of state residential mortgage loan
19 originators.

20 (13) "Nontraditional mortgage product" means a
21 mortgage product other than a 30-year fixed rate mortgage.

22 (14) "Person" means an individual, corporation,
23 company, limited liability company, partnership, or association.

24 (15) "Real estate brokerage activity" means an
25 activity that involves offering or providing real estate brokerage
26 services to the public, including:

27 (A) acting as a real estate broker or salesperson

1 for a buyer, seller, lessor, or lessee of real property;

2 (B) bringing together parties interested in the
3 sale, purchase, lease, rental, or exchange of real property;

4 (C) negotiating, on a party's behalf, any
5 provision of a contract relating to the sale, purchase, lease,
6 rental, or exchange of real property, other than a negotiation
7 conducted in connection with providing financing with respect to
8 such a transaction;

9 (D) engaging in an activity for which a person is
10 required to be registered or licensed by the state as a real estate
11 broker or salesperson; and

12 (E) offering to engage in an activity described
13 by Paragraphs (A) through (D) or to act in the same capacity as a
14 person described by Paragraphs (A) through (D).

15 (16) "Registered mortgage loan originator" means an
16 individual who:

17 (A) is a residential mortgage loan originator and
18 is an employee of:

19 (i) a depository institution;

20 (ii) a subsidiary that is:

21 (a) owned and controlled by a
22 depository institution; and

23 (b) regulated by a federal banking
24 agency; or

25 (iii) an institution regulated by the Farm
26 Credit Administration; and

27 (B) is registered with, and maintains a unique

1 identifier through, the Nationwide Mortgage Licensing System and
2 Registry.

3 (17) "Regulatory official" means:

4 (A) with respect to Subtitles A, F, and G of this
5 title, the banking commissioner of Texas;

6 (B) with respect to Chapters 156 and 157 except
7 as provided by Paragraph (D), the savings and mortgage lending
8 commissioner;

9 (C) with respect to Chapters 342, 347, 348, and
10 351, the consumer credit commissioner; and

11 (D) with respect to credit unions, to the
12 examination, investigation, or inspection of employees of credit
13 union subsidiary organizations licensed under Chapter 156, and to
14 the enforcement of compliance with this chapter and Chapter 156 by
15 those employees, the credit union commissioner.

16 (18) "Residential mortgage loan" means a loan
17 primarily for personal, family, or household use that is secured by
18 a mortgage, deed of trust, or other equivalent consensual security
19 interest on a dwelling or on residential real estate.

20 (19) "Residential mortgage loan originator":

21 (A) means an individual who for compensation or
22 gain or in the expectation of compensation or gain:

23 (i) takes a residential mortgage loan
24 application; or

25 (ii) offers or negotiates the terms of a
26 residential mortgage loan; and

27 (B) does not include:

1 (i) an individual who performs solely
2 administrative or clerical tasks on behalf of an individual
3 licensed as a residential mortgage loan originator or exempt from
4 licensure under Section 180.003, except as otherwise provided by
5 Section 180.051;

6 (ii) an individual who performs only real
7 estate brokerage activities and is licensed or registered by the
8 state as a real estate broker or salesperson, unless the individual
9 is compensated by:

10 (a) a lender, mortgage broker, or
11 other residential mortgage loan originator; or

12 (b) an agent of a lender, mortgage
13 broker, or other residential mortgage loan originator;

14 (iii) an individual licensed under Chapter
15 1201, Occupations Code, unless the individual is directly
16 compensated for arranging financing for activities regulated under
17 that chapter by:

18 (a) a lender, mortgage broker, or
19 other residential mortgage loan originator; or

20 (b) an agent of a lender, mortgage
21 broker, or other residential mortgage loan originator;

22 (iv) an individual who receives the same
23 benefits from a financed transaction as the individual would
24 receive if the transaction were a cash transaction; or

25 (v) an individual who is involved solely in
26 providing extensions of credit relating to timeshare plans, as
27 defined by 11 U.S.C. Section 101(53D).

1 (20) "Residential real estate" means real property
2 located in this state on which a dwelling is constructed or intended
3 to be constructed.

4 (21) "Rulemaking authority" means:

5 (A) the finance commission, except as provided by
6 Paragraph (B); or

7 (B) with respect to credit unions and the
8 rulemaking authority granted by Section 15.4024, the Credit Union
9 Commission.

10 (22) "S.A.F.E. Mortgage Licensing Act" means the
11 federal Secure and Fair Enforcement for Mortgage Licensing Act of
12 2008 (Pub. L. No. 110-289).

13 (23) "Unique identifier" means a number or other
14 identifier assigned by protocols established by the Nationwide
15 Mortgage Licensing System and Registry.

16 Sec. 180.003. EXEMPTION. The following persons are exempt
17 from this chapter:

18 (1) a registered mortgage loan originator when acting
19 for an entity described by Section 180.002(16)(A)(i), (ii), or
20 (iii);

21 (2) an individual who offers or negotiates terms of a
22 residential mortgage loan with or on behalf of an immediate family
23 member of the individual;

24 (3) a licensed attorney who negotiates the terms of a
25 residential mortgage loan on behalf of a client as an ancillary
26 matter to the attorney's representation of the client, unless the
27 attorney:

1 (A) takes a residential mortgage loan
2 application; and

3 (B) offers or negotiates the terms of a
4 residential mortgage loan;

5 (4) an individual who:

6 (A) is an exclusive agent of a registered
7 financial services company;

8 (B) is exempt from regulation under Chapter 156
9 as provided by Section 156.202(5); and

10 (C) is individually enrolled as a registered
11 mortgage loan originator with the Nationwide Mortgage Licensing
12 System and Registry;

13 (5) an individual who offers or negotiates terms of a
14 residential mortgage loan secured by a dwelling that serves as the
15 individual's residence; and

16 (6) a nonprofit organization providing self-help
17 housing that originates zero interest residential mortgage loans
18 for borrowers who have provided part of the labor to construct the
19 dwelling securing the loan.

20 Sec. 180.004. ADMINISTRATIVE AUTHORITY; RULEMAKING. (a) A
21 regulatory official has broad authority to administer, interpret,
22 and enforce this chapter.

23 (b) The finance commission may implement rules necessary to
24 comply with this chapter and as required to carry out the intentions
25 of the federal Secure and Fair Enforcement for Mortgage Licensing
26 Act of 2008 (Pub. L. No. 110-289).

27 (c) This chapter does not limit the authority of a

1 regulatory official to take disciplinary action against a license
2 holder for a violation of this chapter or the rules adopted by the
3 regulatory official under this chapter. A regulatory official has
4 broad authority to investigate, revoke a license, and inform the
5 proper authority when fraudulent conduct or a violation of this
6 chapter occurs.

7 Sec. 180.005. SEVERABILITY. The provisions of this chapter
8 or applications of those provisions are severable as provided by
9 Section 311.032(c), Government Code.

10 [Sections 180.006-180.050 reserved for expansion]

11 SUBCHAPTER B. LICENSING AND REGISTRATION REQUIREMENTS

12 Sec. 180.051. STATE LICENSE REQUIRED; RENEWAL. (a) Unless
13 exempted by Section 180.003, an individual may not engage in
14 business as a residential mortgage loan originator with respect to
15 a dwelling located in this state unless the individual:

16 (1) is licensed to engage in that business under
17 Chapter 156, 157, 342, 347, 348, or 351; and

18 (2) complies with the requirements of this chapter.

19 (b) Unless exempted by Section 180.003, a loan processor or
20 underwriter who is an independent contractor may not engage in the
21 activities of a loan processor or underwriter unless the
22 independent contractor loan processor or underwriter obtains and
23 maintains the appropriate residential mortgage loan originator
24 license and complies with the requirements of this chapter.

25 (c) The individual must renew the license annually to be
26 considered licensed for purposes of this section.

27 (d) Notwithstanding any provision of law listed in

1 Subsection (a)(1), the regulatory official shall provide for annual
2 renewal of licenses for individuals seeking to engage in
3 residential mortgage loan origination activities.

4 Sec. 180.052. ENROLLMENT OR REGISTRATION WITH NATIONWIDE
5 MORTGAGE LICENSING SYSTEM AND REGISTRY. (a) A licensed
6 residential mortgage loan originator must enroll with and maintain
7 a valid unique identifier issued by the Nationwide Mortgage
8 Licensing System and Registry.

9 (b) A non-federally insured credit union that employs loan
10 originators, as defined by the S.A.F.E. Mortgage Licensing Act,
11 shall register those employees with the Nationwide Mortgage
12 Licensing System and Registry by furnishing the information
13 relating to the employees' identity set forth in Section 1507(a)(2)
14 of the S.A.F.E. Mortgage Licensing Act.

15 (c) Each independent contractor loan processor or
16 underwriter licensed as a residential mortgage loan originator must
17 have and maintain a valid unique identifier issued by the
18 Nationwide Mortgage Licensing System and Registry.

19 (d) The regulatory official who administers the law under
20 which a residential mortgage loan originator is licensed shall
21 require the residential mortgage loan originator to be enrolled
22 with the Nationwide Mortgage Licensing System and Registry.

23 (e) For purposes of implementing Subsection (d), the
24 regulatory official may participate in the Nationwide Mortgage
25 Licensing System and Registry.

26 Sec. 180.053. APPLICATION FORM. (a) A regulatory official
27 shall prescribe application forms for a license as a residential

1 mortgage loan originator.

2 (b) A regulatory official may change or update an
3 application form as necessary to carry out the purposes of this
4 chapter.

5 Sec. 180.054. CRIMINAL AND OTHER BACKGROUND CHECKS. (a) In
6 connection with an application for a license as a residential
7 mortgage loan originator, the applicant shall, at a minimum,
8 furnish in the form and manner prescribed by the regulatory
9 official and acceptable to the Nationwide Mortgage Licensing System
10 and Registry information concerning the applicant's identity,
11 including:

12 (1) fingerprints for submission to the Federal Bureau
13 of Investigation and any governmental agency or entity authorized
14 to receive the information to conduct a state, national, and
15 international criminal background check; and

16 (2) personal history and experience information in a
17 form prescribed by the Nationwide Mortgage Licensing System and
18 Registry, including the submission of authorization for the
19 Nationwide Mortgage Licensing System and Registry and the
20 appropriate regulatory official to obtain:

21 (A) an independent credit report obtained from a
22 consumer reporting agency described by Section 603(p), Fair Credit
23 Reporting Act (15 U.S.C. Section 1681a(p)); and

24 (B) information related to any administrative,
25 civil, or criminal findings by a governmental jurisdiction.

26 (b) For purposes of this section and to reduce the points of
27 contact that the Federal Bureau of Investigation may have to

1 maintain for purposes of Subsection (a)(1), a regulatory official
2 may use the Nationwide Mortgage Licensing System and Registry as a
3 channeling agent for requesting information from and distributing
4 information to the United States Department of Justice, any
5 governmental agency, or any source at the regulatory official's
6 direction.

7 (c) For purposes of this section and to reduce the points of
8 contact that a regulatory official may have to maintain for
9 purposes of Subsection (a) or (b), the regulatory official may use
10 the Nationwide Mortgage Licensing System and Registry as a
11 channeling agent for requesting information from and distributing
12 information to and from any source as directed by the regulatory
13 official.

14 Sec. 180.055. ISSUANCE OF LICENSE. (a) The regulatory
15 official may not issue a residential mortgage loan originator
16 license to an individual unless the regulatory official determines,
17 at a minimum, that the applicant:

18 (1) has not had a residential mortgage loan originator
19 license revoked in any governmental jurisdiction;

20 (2) has not been convicted of, or pled guilty or nolo
21 contendere to, a felony in a domestic, foreign, or military court:

22 (A) during the seven-year period preceding the
23 date of application; or

24 (B) at any time preceding the date of
25 application, if the felony involved an act of fraud, dishonesty,
26 breach of trust, or money laundering;

27 (3) demonstrates financial responsibility, character,

1 and general fitness so as to command the confidence of the community
2 and to warrant a determination that the individual will operate
3 honestly, fairly, and efficiently as a residential mortgage loan
4 originator within the purposes of this chapter and any other
5 appropriate regulatory law of this state;

6 (4) provides satisfactory evidence that the applicant
7 has completed prelicensing education courses described by Section
8 180.056;

9 (5) provides satisfactory evidence of having passed a
10 written test that meets the requirements of Section 180.057; and

11 (6) has paid a recovery fund fee or obtained a surety
12 bond as required under the appropriate state regulatory law.

13 (b) A revocation that has been formally vacated may not be
14 considered a license revocation for purposes of Subsection (a)(1).

15 (c) A conviction for which a full pardon has been granted
16 may not be considered a conviction for purposes of Subsection
17 (a)(2).

18 (d) For purposes of Subsection (a)(3), an individual is
19 considered not to be financially responsible if the individual has
20 shown a lack of regard in managing the individual's own financial
21 affairs or condition. A determination that an individual has not
22 shown financial responsibility may include:

23 (1) an outstanding judgment against the individual,
24 other than a judgment imposed solely as a result of medical
25 expenses;

26 (2) an outstanding tax lien or other governmental
27 liens and filings;

1 (3) a foreclosure during the three-year period
2 preceding the date of the license application; and

3 (4) a pattern of seriously delinquent accounts during
4 the three-year period preceding the date of the application.

5 Sec. 180.056. PRELICENSING EDUCATIONAL COURSES. (a) An
6 applicant for a residential mortgage loan originator license must
7 complete education courses that include, at a minimum, at least the
8 minimum number of hours and type of courses required by the S.A.F.E.
9 Mortgage Licensing Act and the minimum number of hours of training
10 related to lending standards for the nontraditional mortgage
11 product marketplace required by that Act.

12 (b) Education courses required under this section must be
13 reviewed and approved by the Nationwide Mortgage Licensing System
14 and Registry in accordance with the S.A.F.E. Mortgage Licensing
15 Act.

16 (c) Nothing in this section precludes any education course
17 approved in accordance with the S.A.F.E. Mortgage Licensing Act
18 from being provided by:

19 (1) an applicant's employer;

20 (2) an entity affiliated with the applicant by an
21 agency contract; or

22 (3) a subsidiary or affiliate of the employer or
23 entity.

24 (d) Education courses required under this section may be
25 offered in a classroom, online, or by any other means approved by
26 the Nationwide Mortgage Licensing System and Registry.

27 (e) An individual who has successfully completed

1 prelicensing education requirements approved by the Nationwide
2 Mortgage Licensing System and Registry for another state shall be
3 given credit toward completion of the prelicensing education
4 requirements of this section.

5 (f) An applicant who has previously held a residential
6 mortgage loan originator license that meets the requirements of
7 this chapter and other appropriate regulatory law, before being
8 issued a new original license, must demonstrate to the appropriate
9 regulatory official that the applicant has completed all continuing
10 education requirements for the calendar year in which the license
11 was last held by the applicant.

12 (g) If the appropriate federal regulators and the
13 Nationwide Mortgage Licensing System and Registry establish
14 additional educational requirements for licensed residential
15 mortgage loan originators, the rulemaking authority shall adopt
16 necessary rules to implement the changes to the educational
17 requirements of this section.

18 Sec. 180.057. TESTING REQUIREMENTS. (a) An applicant for a
19 residential mortgage loan originator license must pass a qualified,
20 written test that:

21 (1) meets the standards and requirements established
22 by the S.A.F.E. Mortgage Licensing Act;

23 (2) is developed by the Nationwide Mortgage Licensing
24 System and Registry; and

25 (3) is administered by a test provider in accordance
26 with the S.A.F.E. Mortgage Licensing Act.

27 (b) An individual may retake the test the number of times

1 and within the period prescribed by the S.A.F.E. Mortgage Licensing
2 Act.

3 (c) An individual who fails to maintain a residential
4 mortgage loan originator license for at least five consecutive
5 years must retake the test.

6 (d) This section does not prohibit a test provider approved
7 in accordance with the S.A.F.E. Mortgage Licensing Act from
8 providing a test at the location of:

9 (1) the license applicant's employer;

10 (2) a subsidiary or affiliate of the applicant's
11 employer; or

12 (3) an entity with which the applicant holds an
13 exclusive arrangement to conduct the business of a residential
14 mortgage loan originator.

15 Sec. 180.058. RECOVERY FUND FEE OR SURETY BOND REQUIREMENT.

16 (a) A regulatory official may not issue a residential mortgage loan
17 originator license unless the official determines that the
18 applicant meets the surety bond requirement or has paid a recovery
19 fund fee, as applicable, in accordance with the requirements of the
20 S.A.F.E. Mortgage Licensing Act.

21 (b) Each regulatory official shall adopt rules requiring an
22 individual licensed as a residential mortgage loan originator to
23 obtain a surety bond or pay a recovery fund fee as the official
24 determines appropriate to comply with the S.A.F.E. Mortgage
25 Licensing Act.

26 Sec. 180.059. STANDARDS FOR LICENSE RENEWAL. A license to
27 act as a residential mortgage loan originator may be renewed on or

1 before its expiration date if the license holder:

2 (1) continues to meet the minimum requirements for
3 license issuance;

4 (2) pays all required fees for the renewal of the
5 license; and

6 (3) provides satisfactory evidence that the license
7 holder has completed the continuing education requirements of
8 Section 180.060.

9 Sec. 180.060. CONTINUING EDUCATION COURSES. (a) To renew a
10 residential mortgage loan originator license, a license holder must
11 annually complete the minimum number of hours and type of
12 continuing education courses required by the S.A.F.E. Mortgage
13 Licensing Act, the minimum requirements established by the
14 Nationwide Mortgage Licensing System and Registry, and any
15 additional requirements established by the regulatory official.

16 (b) Continuing education courses, including the course
17 provider, must be reviewed and approved by the Nationwide Mortgage
18 Licensing System and Registry as required by the S.A.F.E. Mortgage
19 Licensing Act. Course credit must be granted in accordance with
20 that Act.

21 (c) Nothing in this section precludes any continuing
22 education course approved in accordance with the S.A.F.E. Mortgage
23 Licensing Act from being provided by:

24 (1) the employer of the license holder;

25 (2) an entity affiliated with the license holder by an
26 agency contract; or

27 (3) a subsidiary or affiliate of the employer or

1 entity.

2 (d) A person who successfully completes continuing
3 education requirements approved by the Nationwide Mortgage
4 Licensing System and Registry for another state shall be given
5 credit toward completion of the continuing education requirements
6 of this section.

7 Sec. 180.061. RULEMAKING AUTHORITY. A rulemaking authority
8 may adopt rules establishing requirements as necessary for:

9 (1) conducting background checks by obtaining:

10 (A) criminal history information through
11 fingerprint or other databases;

12 (B) civil administrative records;

13 (C) credit history information; or

14 (D) any other information considered necessary
15 by the Nationwide Mortgage Licensing System and Registry;

16 (2) payment of fees to apply for or renew licenses
17 through the Nationwide Mortgage Licensing System and Registry;

18 (3) setting or resetting, as necessary, license
19 renewal dates or reporting periods;

20 (4) amending or surrendering a license or any other
21 activity a regulatory official considers necessary for
22 participation in the Nationwide Mortgage Licensing System and
23 Registry; and

24 (5) investigation and examination authority for
25 purposes of investigating a violation or complaint arising under
26 this chapter or for purposes of examining, reviewing, or
27 investigating any license holder or individual subject to this

1 chapter.

2 Sec. 180.062. CONFIDENTIALITY OF INFORMATION. (a) Except
3 as otherwise provided by this section, a requirement under federal
4 or state law regarding the privacy or confidentiality of
5 information or material provided to the Nationwide Mortgage
6 Licensing System and Registry, and a privilege arising under
7 federal or state law, or under the rules of a federal or state
8 court, continue to apply to the information or material after the
9 disclosure of the information or material to the Nationwide
10 Mortgage Licensing System and Registry. The information and
11 material may be shared with federal and state regulatory officials
12 with mortgage industry oversight authority without the loss of any
13 privilege or confidentiality protections afforded by federal or
14 state laws.

15 (b) Information or material subject to a privilege or
16 confidential under Subsection (a) may not be subject to:

17 (1) disclosure under any federal or state law
18 governing the disclosure to the public of information held by an
19 officer or an agency of the federal government or this state; or

20 (2) subpoena, discovery, or admission into evidence in
21 a private civil action or administrative proceeding.

22 (c) A person who is the subject of information or material
23 in the Nationwide Mortgage Licensing System and Registry may waive,
24 wholly or partly, any privilege held by the Nationwide Mortgage
25 Licensing System and Registry with respect to the information or
26 material.

27 (d) A regulatory official may enter into an agreement or

1 sharing arrangement with another governmental agency, the
2 Conference of State Bank Supervisors, the American Association of
3 Residential Mortgage Regulators, or other associations
4 representing appropriate governmental agencies as established by
5 rule of the rulemaking authority or order issued by the regulatory
6 official. A protection provided by Subsection (a) also applies to
7 information and material shared under an agreement or sharing
8 arrangement entered into under this subsection.

9 (e) To the extent of a conflict between Subsection (a) and
10 Chapter 552, Government Code, or another state law relating to the
11 disclosure of confidential information or information or material
12 described by Subsection (a), Subsection (a) controls to the extent
13 Chapter 552, Government Code, or the other law provides less
14 confidentiality or a weaker privilege than is provided by
15 Subsection (a).

16 (f) This section does not apply to information or material
17 relating to the employment history of, and publicly adjudicated
18 disciplinary and enforcement actions against, a residential
19 mortgage loan originator that is included in the Nationwide
20 Mortgage Licensing System and Registry for access by the public.

21 [Sections 180.063-180.100 reserved for expansion]

22 SUBCHAPTER C. REPORTING AND OTHER REQUIREMENTS REGARDING

23 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY

24 Sec. 180.101. MORTGAGE CALL REPORTS. Each licensed
25 residential mortgage loan originator shall submit to the Nationwide
26 Mortgage Licensing System and Registry a report of condition that
27 is in the form and contains the information required by the

1 Nationwide Mortgage Licensing System and Registry.

2 Sec. 180.102. REPORT OF VIOLATIONS AND ENFORCEMENT ACTIONS.

3 Subject to the confidentiality provisions of this chapter, a
4 regulatory official shall report to the Nationwide Mortgage
5 Licensing System and Registry on a regular basis regarding
6 violations of, enforcement actions under, or information relevant
7 to this chapter or the S.A.F.E. Mortgage Licensing Act under the
8 regulatory official's licensure, regulation, or examination of a
9 licensed residential mortgage loan originator or person registered
10 under the S.A.F.E. Mortgage Licensing Act.

11 Sec. 180.103. INFORMATION CHALLENGE PROCESS. The

12 applicable rulemaking authority by rule shall establish a process
13 by which licensed residential mortgage loan originators may dispute
14 information submitted by the regulatory official to the Nationwide
15 Mortgage Licensing System and Registry.

16 [Sections 180.104-180.150 reserved for expansion]

17 SUBCHAPTER D. BUSINESS PRACTICES; PROHIBITED ACTS

18 Sec. 180.151. DISPLAY OF UNIQUE IDENTIFIER. The unique

19 identifier of a person originating a residential mortgage loan must
20 be clearly shown on each residential mortgage loan application
21 form, solicitation, or advertisement, including business cards and
22 websites, and any other document required by rule of the rulemaking
23 authority.

24 Sec. 180.152. REPRESENTATIONS. An individual who is

25 engaged exclusively in loan processor or underwriter activities may
26 not represent to the public, through the use of advertising,
27 business cards, stationery, brochures, signs, rate lists, or other

1 means, that the individual can or will perform any of the activities
2 of a residential mortgage loan originator unless the individual is
3 licensed as a residential mortgage loan originator.

4 Sec. 180.153. PROHIBITED ACTS AND PRACTICES. An individual
5 or other person subject to regulation under this chapter may not:

6 (1) employ, directly or indirectly, a scheme, device,
7 or artifice to defraud or mislead borrowers or lenders or to defraud
8 a person;

9 (2) engage in an unfair or deceptive practice toward a
10 person;

11 (3) obtain property by fraud or misrepresentation;

12 (4) solicit or enter into a contract with a borrower
13 that provides in substance that the individual or other person
14 subject to this chapter may earn a fee or commission through "best
15 efforts" to obtain a loan even though no loan was actually obtained
16 for the borrower;

17 (5) solicit, advertise, or enter into a contract for
18 specific interest rates, points, or other financing terms unless
19 the terms are actually available at the time of soliciting,
20 advertising, or contracting;

21 (6) conduct any business regulated by this chapter
22 without holding a license as required by this chapter;

23 (7) assist, aid, or abet an individual in the conduct
24 of business without a license required by this chapter;

25 (8) fail to make disclosures as required by this
26 chapter and any other applicable state or federal law, including
27 rules or regulations under applicable state or federal law;

1 (9) fail to comply with this chapter or rules adopted
2 under this chapter;

3 (10) fail to comply with any other state or federal
4 law, including rules or regulations adopted under that law,
5 applicable to a business or activity regulated by this chapter;

6 (11) make, in any manner, a false or deceptive
7 statement or representation;

8 (12) negligently make a false statement or knowingly
9 or wilfully make an omission of material fact in connection with:

10 (A) information or a report filed with a
11 governmental agency or the Nationwide Mortgage Licensing System and
12 Registry; or

13 (B) an investigation conducted by the regulatory
14 official or another governmental agency;

15 (13) make a payment, threat, or promise, directly or
16 indirectly, to a person for purposes of influencing the person's
17 independent judgment in connection with a residential mortgage
18 loan, or make a payment, threat, or promise, directly or
19 indirectly, to an appraiser of property, for purposes of
20 influencing the appraiser's independent judgment with respect to
21 the property's value;

22 (14) collect, charge, attempt to collect or charge, or
23 use or propose an agreement purporting to collect or charge a fee
24 prohibited by this chapter;

25 (15) cause or require a borrower to obtain property
26 insurance coverage in an amount that exceeds the replacement cost
27 of the improvements as established by the property insurer; or

1 (16) fail to truthfully account for money belonging to
2 a party to a residential mortgage loan transaction.

3 [Sections 180.154-180.200 reserved for expansion]

4 SUBCHAPTER E. ENFORCEMENT PROVISIONS

5 Sec. 180.201. ENFORCEMENT AUTHORITY. To ensure the
6 effective supervision and enforcement of this chapter, a regulatory
7 official may:

8 (1) deny, suspend, revoke, condition, or decline to
9 renew a license for a violation of this chapter, a rule adopted
10 under this chapter, or an order or directive issued under this
11 chapter;

12 (2) deny, suspend, revoke, condition, or decline to
13 renew a license if an applicant or license holder:

14 (A) fails to meet the requirements of Subchapter
15 B; or

16 (B) withholds information or makes a material
17 misstatement in an application for a license or renewal of a
18 license;

19 (3) order restitution against a person subject to
20 regulation under this chapter for a violation of this chapter;

21 (4) impose an administrative penalty on a person
22 subject to regulation under this chapter, subject to Section
23 180.202; or

24 (5) issue orders or directives as provided by Section
25 180.203.

26 Sec. 180.202. ADMINISTRATIVE PENALTY. (a) A regulatory
27 official may impose an administrative penalty on a residential

1 mortgage loan originator or other person subject to regulation
2 under this chapter, if the official, after notice and opportunity
3 for hearing, determines that the residential mortgage loan
4 originator or other person subject to regulation under this chapter
5 has violated or failed to comply with:

6 (1) this chapter;

7 (2) a rule adopted under this chapter; or

8 (3) an order issued under this chapter.

9 (b) The penalty may not exceed \$25,000 for each violation.

10 (c) The amount of the penalty shall be based on:

11 (1) the seriousness of the violation, including the
12 nature, circumstances, extent, and gravity of the violation;

13 (2) the economic harm to property caused by the
14 violation;

15 (3) the history of previous violations;

16 (4) the amount necessary to deter a future violation;

17 (5) efforts to correct the violation; and

18 (6) any other matter that justice may require.

19 Sec. 180.203. CEASE AND DESIST ORDERS. A regulatory
20 official may:

21 (1) order or direct a person subject to regulation
22 under this chapter to cease and desist from conducting business,
23 including issuing an immediate temporary order to cease and desist
24 from conducting business;

25 (2) order or direct a person subject to regulation
26 under this chapter to cease a violation of this chapter or a harmful
27 activity in violation of this chapter, including issuing an

1 immediate temporary order to cease and desist;

2 (3) enter immediate temporary orders against a person
3 subject to regulation under this chapter to cease engaging in
4 business under a license if the regulatory official determines that
5 the license was erroneously granted or the license holder is in
6 violation of this chapter; and

7 (4) order or direct other affirmative action as the
8 regulatory official considers necessary.

9 [Sections 180.204-180.250 reserved for expansion]

10 SUBCHAPTER F. DUTIES OF REGULATORY OFFICIALS

11 Sec. 180.251. GENERAL DUTIES OF REGULATORY OFFICIALS. (a)

12 Except as provided by Subsection (b), the savings and mortgage
13 lending commissioner shall administer and enforce this chapter with
14 respect to individuals licensed under Chapter 156 or 157.

15 (b) The credit union commissioner shall:

16 (1) examine, inspect, or investigate employees of
17 credit union subsidiary organizations who are licensed to act as
18 residential mortgage loan originators under Chapter 156; and

19 (2) enforce compliance by employees of credit union
20 subsidiary organizations described by Subdivision (1) with the
21 applicable requirements of Chapter 156 and this chapter and any
22 applicable rules adopted under Section 15.4024.

23 (c) The consumer credit commissioner shall administer and
24 enforce this chapter with respect to individuals licensed under
25 Chapter 342, 347, 348, or 351.

26 (d) To the extent permitted or required by this chapter and
27 as reasonably necessary for the implementation and enforcement of

1 the S.A.F.E. Mortgage Licensing Act, the banking commissioner of
2 Texas may administer and enforce this chapter with respect to a
3 person otherwise under the commissioner's jurisdiction under
4 Subtitle A, F, or G of this title.

5 Sec. 180.252. AUTHORITY OF REGULATORY OFFICIALS TO
6 ESTABLISH RELATIONSHIP WITH NATIONWIDE MORTGAGE LICENSING SYSTEM
7 AND REGISTRY; CONTRACTING AUTHORITY. To fulfill the purposes of
8 this chapter, a regulatory official may establish a relationship
9 with or contract with the Nationwide Mortgage Licensing System and
10 Registry or an entity designated by the Nationwide Mortgage
11 Licensing System and Registry to collect and maintain records and
12 process transaction fees or other fees related to licensed
13 residential mortgage loan originators or other persons subject to
14 regulation under this chapter.

15 SECTION 2. Section 14.107(b), Finance Code, is amended to
16 read as follows:

17 (b) The finance commission by rule shall set the fees for
18 licensing and examination under Chapter 342, 347, 348, 351, or 371
19 at amounts or rates necessary to recover the costs of administering
20 those chapters. The rules may provide that the amount of a fee
21 charged to a license holder is based on the volume of the license
22 holder's regulated business and other key factors. The
23 commissioner may provide for collection of a single annual fee from
24 a person licensed under Chapter 342, 347, 348, 351, or 371 to
25 include amounts due for both licensing and examination.

26 SECTION 3. Subchapter E, Chapter 15, Finance Code, is
27 amended by adding Section 15.4024 to read as follows:

1 Sec. 15.4024. RULES RELATING TO CERTAIN EMPLOYEES OF CREDIT
2 UNION SUBSIDIARY ORGANIZATIONS. (a) In this section, "credit union
3 subsidiary organization" has the meaning assigned by Section
4 180.002.

5 (b) The commission may adopt and enforce rules necessary for
6 the commissioner to:

7 (1) examine, inspect, or investigate employees of
8 credit union subsidiary organizations who are licensed to act as
9 residential mortgage loan originators under Chapter 156; and

10 (2) enforce compliance by employees of credit union
11 subsidiary organizations described by Subdivision (1) with the
12 applicable requirements of Chapters 156 and 180.

13 SECTION 4. Section 156.101, Finance Code, is amended by
14 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
15 read as follows:

16 (a) Except as provided by Subsection (a-2), the [The]
17 commissioner shall administer this chapter.

18 (a-1) The commissioner shall perform all duties relating to
19 the issuance and renewal of licenses under Section 156.2015 for
20 employees of credit union subsidiary organizations who act as
21 residential mortgage loan originators.

22 (a-2) The credit union commissioner is responsible for:

23 (1) the examination, inspection, or investigation of
24 employees of credit union subsidiary organizations who are licensed
25 to act as residential mortgage loan originators under this chapter;
26 and

27 (2) the enforcement of compliance by employees of

1 credit union subsidiary organizations described by Subdivision (1)
2 with the applicable requirements of this chapter and Chapter 180.

3 SECTION 5. Section 156.102(a), Finance Code, is amended to
4 read as follows:

5 (a) The finance commission may adopt and enforce rules
6 necessary for the intent of or to ensure compliance with this
7 chapter, except as provided by Section 15.4024 with respect to
8 employees of credit union subsidiary organizations subject to
9 regulation under Section 156.2015.

10 SECTION 6. Subchapter C, Chapter 156, Finance Code, is
11 amended by adding Section 156.2015 to read as follows:

12 Sec. 156.2015. RESIDENTIAL MORTGAGE LOAN ORIGINATION
13 ACTIVITIES. (a) In this section, "credit union subsidiary
14 organization," "Nationwide Mortgage Licensing System and
15 Registry," and "residential mortgage loan originator" have the
16 meanings assigned by Section 180.002.

17 (b) An individual required to be licensed under this chapter
18 may not act as a residential mortgage loan originator unless:

19 (1) the individual's license under this chapter
20 otherwise authorizes the individual to act as a residential
21 mortgage loan originator;

22 (2) the individual is enrolled with the Nationwide
23 Mortgage Licensing System and Registry as required by Section
24 180.052; and

25 (3) the individual complies with other applicable
26 requirements of Chapter 180 and rules adopted under that chapter.

27 (c) An employee of a credit union subsidiary organization

1 may not act as a residential mortgage loan originator unless the
2 employee:

3 (1) is licensed under this chapter;

4 (2) is enrolled with the Nationwide Mortgage Licensing
5 System and Registry as required by Section 180.052; and

6 (3) complies with other applicable requirements of
7 Chapter 180 and rules adopted under that chapter.

8 (d) The finance commission may adopt rules under this
9 chapter as required to carry out the intentions of the federal
10 Secure and Fair Enforcement for Mortgage Licensing Act of 2008
11 (Pub. L. No. 110-289).

12 SECTION 7. Sections 156.214(b) and (f), Finance Code, as
13 added by Chapter 228 (H.B. 1716), Acts of the 80th Legislature,
14 Regular Session, 2007, are amended to read as follows:

15 (b) To be eligible to register as a registered financial
16 services company, a person must:

17 (1) be a depository institution exempt from this
18 chapter under Section 156.202(1)(A) or (B) and chartered and
19 regulated by the Office of Thrift Supervision or the Office of the
20 Comptroller of the Currency, or be a subsidiary [~~or affiliate~~] of
21 the institution;

22 (2) provide the commissioner with satisfactory
23 evidence of an undertaking of accountability in a form acceptable
24 to the commissioner, supported by a surety bond equal to \$1 million
25 to cover the person's responsibility for mortgage broker activities
26 of each exclusive agent;

27 (3) provide a business plan satisfactory to the

1 commissioner that sets forth the person's plan to provide education
2 to its exclusive agents, handle consumer complaints relating to its
3 exclusive agents, and supervise the mortgage origination [~~broker~~]
4 activities of its exclusive agents;

5 (4) pay an annual registration fee of the lesser of:

6 (A) one-half of the license fee for a loan
7 officer under Section 156.203(c)(1), multiplied by the number of
8 exclusive agents under contract to act for the person in this state;
9 or

10 (B) \$200,000; and

11 (5) designate an officer of the person to be
12 responsible for the activities of the exclusive agents.

13 (f) Prior to permitting an exclusive agent to solicit,
14 process, negotiate, or place a mortgage loan, the registered
15 financial services company shall submit to the commissioner such
16 information as the commissioner may require relating to the
17 exclusive agent, and the exclusive agent must have enrolled with
18 the Nationwide Mortgage Licensing System and Registry as a
19 registered residential mortgage loan originator and provided to the
20 commissioner the exclusive agent's unique identifier. In this
21 subsection, "Nationwide Mortgage Licensing System and Registry,"
22 "residential mortgage loan originator," and "unique identifier"
23 have the meanings assigned by Section 180.002 [~~person together with~~
24 ~~a fingerprint imprint of the person. The commissioner shall obtain~~
25 ~~criminal history record information as provided in Section~~
26 ~~156.206(b). The commissioner may assess a fee in an amount~~
27 ~~determined by the finance commission to cover the cost of the~~

1 ~~criminal background check. This section does not apply to a person~~
2 ~~who is licensed as a mortgage broker or loan officer under Chapter~~
3 ~~156 at the time he becomes an exclusive agent of a registered~~
4 ~~financial services company].~~

5 SECTION 8. Chapter 157, Finance Code, is amended by adding
6 Section 157.012 to read as follows:

7 Sec. 157.012. LICENSE REQUIRED FOR CERTAIN EMPLOYEES OF
8 MORTGAGE BANKERS. (a) In this section, "Nationwide Mortgage
9 Licensing System and Registry" and "residential mortgage loan
10 originator" have the meanings assigned by Section 180.002.

11 (b) An employee of a mortgage banker may not act in the
12 capacity of a residential mortgage loan originator unless the
13 employee:

14 (1) is licensed under this chapter and enrolled with
15 the Nationwide Mortgage Licensing System and Registry as required
16 by Section 180.052; and

17 (2) complies with other applicable requirements of
18 Chapter 180 and rules adopted by the finance commission under that
19 chapter.

20 (c) The finance commission may adopt rules under this
21 chapter as required to carry out the intentions of the federal
22 Secure and Fair Enforcement for Mortgage Licensing Act of 2008
23 (Pub. L. No. 110-289).

24 (d) To be eligible to be licensed as a residential mortgage
25 loan originator, an employee of a mortgage banker, in addition to
26 the requirements of Subsection (b), must:

27 (1) satisfy the commissioner as to the employee's good

1 moral character, including the employee's honesty,
2 trustworthiness, and integrity;

3 (2) not be in violation of this chapter or a rule
4 adopted under this chapter; and

5 (3) provide the commissioner with satisfactory
6 evidence that the employee meets the qualifications provided by
7 Chapter 180.

8 SECTION 9. Chapter 341, Finance Code, is amended by adding
9 Subchapter G to read as follows:

10 SUBCHAPTER G. STATE-LICENSED RESIDENTIAL MORTGAGE LOAN

11 ORIGINATOR RECOVERY FUND

12 Sec. 341.601. DEFINITION. In this subchapter, "fund" means
13 the state-licensed residential mortgage loan originator recovery
14 fund.

15 Sec. 341.602. STATE-LICENSED RESIDENTIAL MORTGAGE LOAN
16 ORIGINATOR RECOVERY FUND. (a) The commissioner under Chapter 180
17 shall establish, administer, and maintain a state-licensed
18 residential mortgage loan originator recovery fund as provided by
19 this subchapter. The amounts received by the commissioner for
20 deposit in the fund shall be held by the commissioner in trust for
21 carrying out the purposes of the fund.

22 (b) Subject to this subsection, the fund shall be used to
23 reimburse residential mortgage loan applicants for actual damages
24 incurred because of acts committed by a state-licensed residential
25 mortgage loan originator who was licensed under Chapter 342, 347,
26 348, or 351 when the act was committed. The use of the fund is
27 limited to reimbursement for out-of-pocket losses caused by an act

1 that constitutes a violation of Chapter 180 or this subtitle.
2 Payments from the fund may not be made to a lender who makes a
3 residential mortgage loan originated by the state-licensed
4 residential mortgage loan originator or who acquires a residential
5 mortgage loan originated by the state-licensed residential
6 mortgage loan originator.

7 (c) The fund may be used at the discretion of the
8 commissioner to reimburse expenses incurred to secure and destroy
9 residential mortgage loan documents that have been abandoned by a
10 current or former state-licensed residential mortgage loan
11 originator under the regulatory authority of the agency.

12 (d) Payments from the fund shall be reduced by the amount of
13 any recovery from the state-licensed residential mortgage loan
14 originator or from any surety, insurer, or other person or entity
15 making restitution to the applicant on behalf of the originator.

16 (e) The commissioner, as manager of the fund, is entitled to
17 reimbursement for reasonable and necessary costs and expenses
18 incurred in the management of the fund, including costs and
19 expenses incurred with regard to applications filed under Section
20 341.605.

21 (f) Amounts in the fund may be invested and reinvested in
22 the same manner as funds of the Employees Retirement System of
23 Texas, and the interest from those investments shall be deposited
24 to the credit of the fund. An investment may not be made under this
25 subsection if the investment will impair the necessary liquidity
26 required to satisfy payment of judgments awarded under this
27 subchapter.

1 Sec. 341.603. FUNDING. (a) An applicant for an original
2 residential mortgage loan originator license issued under Chapter
3 342, 347, 348, or 351 or for renewal of a residential mortgage loan
4 originator license issued under Chapter 342, 347, 348, or 351
5 shall, in addition to paying the original application fee or
6 renewal fee, pay a fee in an amount determined by the commissioner.
7 The fee shall be deposited in the fund.

8 (b) If the balance remaining in the fund at the end of a
9 calendar year is more than \$2.5 million, the amount of money in
10 excess of that amount shall be available to the commissioner to
11 offset the expenses of participating in and sharing information
12 with the Nationwide Mortgage Licensing System and Registry in
13 accordance with Chapter 180.

14 Sec. 341.604. STATUTE OF LIMITATIONS. (a) An application
15 for the recovery of actual damages from the fund under Section
16 341.605 may not be filed after the second anniversary of the date of
17 the alleged act or omission causing the actual damages or the date
18 the act or omission should reasonably have been discovered.

19 (b) This section does not apply to a subrogation claim
20 brought by the commissioner for recovery of money paid out of the
21 fund.

22 Sec. 341.605. PROCEDURE FOR RECOVERY. (a) To recover from
23 the fund, a residential mortgage loan applicant must file a written
24 sworn application with the commissioner in the form prescribed by
25 the commissioner. A person who knowingly makes a false statement in
26 connection with applying for money out of the fund may be subject to
27 criminal prosecution under Section 37.10, Penal Code.

1 (b) The residential mortgage loan applicant is required to
2 show:

3 (1) that the applicant's claim is based on facts
4 allowing recovery under Section 341.602; and

5 (2) that the applicant:

6 (A) is not a spouse of the state-licensed
7 residential mortgage loan originator;

8 (B) is not a child, parent, grandchild,
9 grandparent, or sibling, including relationships by adoption, of
10 the state-licensed residential mortgage loan originator;

11 (C) is not a person sharing living quarters with
12 the state-licensed residential mortgage loan originator or a
13 current or former employer, employee, or associate of the
14 originator;

15 (D) is not a person who has aided, abetted, or
16 participated other than as a victim with the state-licensed
17 residential mortgage loan originator in any activity that is
18 illegal under this subtitle or Chapter 180 or is not the personal
19 representative of a state-licensed residential mortgage loan
20 originator; and

21 (E) is not licensed as a state-licensed
22 residential mortgage loan originator who is seeking to recover any
23 compensation in the transaction or transactions for which the
24 application for payment is made.

25 (c) On receipt of the verified application, the
26 commissioner's staff shall:

27 (1) notify each appropriate license holder and the

1 issuer of any surety bond issued in connection with their licenses;
2 and

3 (2) investigate the application and issue a
4 preliminary determination, giving the applicant, the license
5 holder, and any surety an opportunity to resolve the matter by
6 agreement or to dispute the preliminary determination.

7 (d) If the preliminary determination under Subsection
8 (c)(2) is not otherwise resolved by agreement and is not disputed by
9 written notice to the commissioner before the 31st day after the
10 notification date, the preliminary determination automatically
11 becomes final and the commissioner shall make payment from the
12 fund, subject to the limits of Section 341.606.

13 (e) If the preliminary determination under Subsection
14 (c)(2) is disputed by the applicant, license holder, or any surety
15 by written notice to the commissioner before the 31st day after the
16 notification date, the matter shall be set for a hearing governed by
17 Chapter 2001, Government Code, and the hearing rules of the finance
18 commission.

19 Sec. 341.606. RECOVERY LIMITS. (a) A person entitled to
20 receive payment out of the fund is entitled to receive
21 reimbursement of actual, out-of-pocket damages as provided by this
22 section.

23 (b) A payment from the fund may be made as provided by
24 Section 341.605 and this section. A payment for claims:

25 (1) arising out of the same transaction, including
26 interest, is limited in the aggregate to \$25,000, regardless of the
27 number of claimants; and

1 (2) against a single person licensed as a residential
2 mortgage loan originator under Chapter 342, 347, 348, or 351 is
3 limited in the aggregate to \$50,000 until the fund has been
4 reimbursed for all amounts paid.

5 (c) In the event there are concurrent claims under
6 Subsections (b)(1) and (2) that exceed the amounts available under
7 the fund, the commissioner shall prorate recovery based on the
8 amount of damage suffered by each claimant.

9 Sec. 341.607. REVOCATION OF LICENSE FOR PAYMENT FROM FUND.

10 (a) The commissioner may revoke a residential mortgage loan
11 originator license issued under this subtitle on proof that the
12 commissioner has made a payment from the fund of any amount toward
13 satisfaction of a claim against a state-licensed residential
14 mortgage loan originator under this subchapter.

15 (b) The commissioner may seek to collect from a
16 state-licensed residential mortgage loan originator the amount
17 paid from the fund on behalf of the originator and any costs
18 associated with investigating and processing the claim against the
19 fund or with collection of reimbursement for payments from the
20 fund, plus interest at the current legal rate until the amount has
21 been repaid in full. Any amount, including interest, recovered by
22 the commissioner shall be deposited to the credit of the fund.

23 (c) The commissioner may probate an order revoking a license
24 under this section.

25 (d) A state-licensed residential mortgage loan originator
26 on whose behalf payment was made from the fund is not eligible to
27 receive a new license until the originator has repaid in full, plus

1 interest at the current legal rate, the amount paid from the fund on
2 the originator's behalf and any costs associated with investigating
3 and processing the claim against the fund or with collection of
4 reimbursement from the fund.

5 (e) This section does not limit the authority of the
6 commissioner to take disciplinary action against a state-licensed
7 residential mortgage loan originator for a violation of the chapter
8 under which the license was issued or the rules adopted by the
9 finance commission under that chapter. The repayment in full to the
10 fund of all obligations of a state-licensed residential mortgage
11 loan originator does not nullify or modify the effect of any other
12 disciplinary proceeding.

13 Sec. 341.608. SUBROGATION. When the commissioner has paid
14 an applicant an amount from the fund under Section 341.605, the
15 commissioner is subrogated to all of the rights of the applicant to
16 the extent of the amount paid. The applicant shall assign the
17 applicant's right, title, and interest in any subsequent judgment
18 against the state-licensed residential mortgage loan originator up
19 to the amount paid by the commissioner. Any amount, including
20 interest, recovered by the commissioner on the assignment shall be
21 deposited to the credit of the fund.

22 Sec. 341.609. FAILURE TO COMPLY WITH SUBCHAPTER OR RULE
23 ADOPTED BY FINANCE COMMISSION. The failure of an applicant under
24 Section 341.605 to comply with a provision of this subchapter or a
25 rule adopted by the finance commission relating to the fund
26 constitutes a waiver of any rights under this subchapter.

27 Sec. 341.610. RULEMAKING. The finance commission may adopt

1 rules on the commissioner's recommendation to promote a fair and
2 orderly administration of the fund consistent with the purposes of
3 this subchapter.

4 SECTION 10. Subchapter B, Chapter 342, Finance Code, is
5 amended by adding Section 342.0515 to read as follows:

6 Sec. 342.0515. RESIDENTIAL MORTGAGE LOAN ORIGINATOR
7 ACTIVITIES. (a) In this section, "Nationwide Mortgage Licensing
8 System and Registry" and "residential mortgage loan originator"
9 have the meanings assigned by Section 180.002.

10 (b) Unless exempt under Section 180.003, an individual who
11 acts as a residential mortgage loan originator in the making,
12 transacting, or negotiating of a loan subject to this chapter must:

13 (1) be individually licensed to engage in that
14 activity under this chapter;

15 (2) be enrolled with the Nationwide Mortgage Licensing
16 System and Registry as required by Section 180.052; and

17 (3) comply with other applicable requirements of
18 Chapter 180 and rules adopted under that chapter.

19 (c) The finance commission shall adopt rules establishing
20 procedures for issuing, renewing, and enforcing an individual
21 license under this section. In adopting rules under this
22 subsection, the finance commission shall ensure that:

23 (1) the minimum eligibility requirements for issuance
24 of an individual license are the same as the requirements of Section
25 180.055;

26 (2) the minimum eligibility requirements for renewal
27 of an individual license are the same as the requirements of Section

1 180.059; and

2 (3) the applicant pays:

3 (A) an investigation fee in a reasonable amount
4 determined by the commissioner; and

5 (B) an annual license fee in an amount determined
6 as provided by Section 14.107.

7 (d) The finance commission may adopt rules under this
8 chapter as required to carry out the intentions of the federal
9 Secure and Fair Enforcement for Mortgage Licensing Act of 2008
10 (Pub. L. No. 110-289).

11 SECTION 11. Section 342.156, Finance Code, is amended to
12 read as follows:

13 Sec. 342.156. LICENSE SUSPENSION OR REVOCATION. After
14 notice and a hearing the commissioner may suspend or revoke a
15 license if the commissioner finds that:

16 (1) the license holder failed to pay the annual
17 license fee, an examination fee, an investigation fee, or another
18 charge imposed by the commissioner under this chapter;

19 (2) the license holder, knowingly or without the
20 exercise of due care, violated this chapter or a rule adopted or
21 order issued under this chapter; ~~or~~

22 (3) a fact or condition exists that, if it had existed
23 or had been known to exist at the time of the original application
24 for the license, clearly would have justified the commissioner's
25 denial of the application; or

26 (4) the license holder has failed to ensure that an
27 individual acting as a residential mortgage loan originator, as

1 defined by Section 180.002, in the making, transacting, or
2 negotiating of a loan subject to this chapter is licensed under this
3 chapter in accordance with Section 342.0515.

4 SECTION 12. The heading to Subchapter J, Chapter 347,
5 Finance Code, is amended to read as follows:

6 SUBCHAPTER J. RIGHTS AND DUTIES OF CREDITOR AND RESIDENTIAL
7 MORTGAGE LOAN ORIGINATOR

8 SECTION 13. Section 347.451, Finance Code, is amended by
9 adding Subsection (b-1) to read as follows:

10 (b-1) A registered creditor that engages in the activity of
11 originating a residential mortgage loan must meet the surety bond
12 or recovery fund fee requirement, as applicable, of the creditor's
13 residential mortgage loan originator under Section 180.058.

14 SECTION 14. Subchapter J, Chapter 347, Finance Code, is
15 amended by adding Section 347.4515 to read as follows:

16 Sec. 347.4515. RESIDENTIAL MORTGAGE LOAN ORIGINATOR
17 LICENSE REQUIRED. (a) In this section, "Nationwide Mortgage
18 Licensing System and Registry" and "residential mortgage loan
19 originator" have the meanings assigned by Section 180.002.

20 (b) Unless exempt under Section 180.003, an individual who
21 acts as a residential mortgage loan originator in the making,
22 transacting, or negotiating of an extension of credit subject to
23 this chapter must:

24 (1) be individually licensed to engage in that
25 activity under this chapter;

26 (2) be enrolled with the Nationwide Mortgage Licensing
27 System and Registry as required by Section 180.052; and

1 (3) comply with other applicable requirements of
2 Chapter 180 and rules adopted under that chapter.

3 (c) The finance commission shall adopt rules establishing
4 procedures for issuing, renewing, and enforcing an individual
5 license under this section. In adopting rules under this
6 subsection, the finance commission shall ensure that:

7 (1) the minimum eligibility requirements for issuance
8 of an individual license are the same as the requirements of Section
9 180.055;

10 (2) the minimum eligibility requirements for renewal
11 of an individual license are the same as the requirements of Section
12 180.059; and

13 (3) the applicant pays:

14 (A) an investigation fee in a reasonable amount
15 determined by the commissioner; and

16 (B) an annual license fee in an amount determined
17 as provided by Section 14.107.

18 (d) The finance commission may adopt rules under this
19 chapter as required to carry out the intentions of the federal
20 Secure and Fair Enforcement for Mortgage Licensing Act of 2008
21 (Pub. L. No. 110-289).

22 SECTION 15. Section 348.501, Finance Code, is amended by
23 adding Subsection (c) to read as follows:

24 (c) A license holder under this chapter who engages in the
25 sale of a motor vehicle to be used as a principal dwelling must meet
26 the surety bond or recovery fund fee requirements, as applicable,
27 of the holder's residential mortgage loan originator under Section

1 180.058.

2 SECTION 16. Subchapter F, Chapter 348, Finance Code, is
3 amended by adding Section 348.5015 to read as follows:

4 Sec. 348.5015. RESIDENTIAL MORTGAGE LOAN ORIGINATOR
5 LICENSE REQUIRED. (a) In this section, "Nationwide Mortgage
6 Licensing System and Registry" and "residential mortgage loan
7 originator" have the meanings assigned by Section 180.002.

8 (b) Unless exempt under Section 180.003, an individual who
9 acts as a residential mortgage loan originator in the sale of a
10 motor vehicle to be used as a principal dwelling must:

11 (1) be licensed to engage in that activity under this
12 chapter;

13 (2) be enrolled with the Nationwide Mortgage Licensing
14 System and Registry as required by Section 180.052; and

15 (3) comply with other applicable requirements of
16 Chapter 180 and rules adopted under that chapter.

17 (c) The finance commission shall adopt rules establishing
18 procedures for applying for issuing, renewing, and enforcing a
19 license under this section. In adopting rules under this
20 subsection, the finance commission shall ensure that:

21 (1) the minimum eligibility requirements for issuance
22 of a license are the same as the requirements of Section 180.055;

23 (2) the minimum eligibility requirements for renewal
24 of a license are the same as the requirements of Section 180.059;
25 and

26 (3) the applicant pays:

27 (A) an investigation fee in a reasonable amount

1 determined by the commissioner; and

2 (B) an annual license fee in an amount determined
3 as provided by Section 14.107.

4 (d) The finance commission may adopt rules under this
5 chapter as required to carry out the intentions of the federal
6 Secure and Fair Enforcement for Mortgage Licensing Act of 2008
7 (Pub. L. No. 110-289).

8 SECTION 17. Subchapter B, Chapter 351, Finance Code, as
9 added by Chapter 1220 (H.B. 2138), Acts of the 80th Legislature,
10 Regular Session, 2007, is amended by adding Section 351.0515 to
11 read as follows:

12 Sec. 351.0515. RESIDENTIAL MORTGAGE LOAN ORIGINATOR
13 LICENSE REQUIRED. (a) In this section, "Nationwide Mortgage
14 Licensing System and Registry" and "residential mortgage loan
15 originator" have the meanings assigned by Section 180.002.

16 (b) Unless exempt under Section 180.003, an individual who
17 acts as a residential mortgage loan originator in the making,
18 transacting, or negotiating of a property tax loan for a principal
19 dwelling must:

20 (1) be individually licensed to engage in that
21 activity under this chapter;

22 (2) be enrolled with the Nationwide Mortgage Licensing
23 System and Registry as required by Section 180.052; and

24 (3) comply with other applicable requirements of
25 Chapter 180 and rules adopted under that chapter.

26 (c) The finance commission shall adopt rules establishing
27 procedures for issuing, renewing, and enforcing an individual

1 license under this section. In adopting rules under this
2 subsection, the finance commission shall ensure that:

3 (1) the minimum eligibility requirements for issuance
4 of an individual license are the same as the requirements of Section
5 180.055;

6 (2) the minimum eligibility requirements for renewal
7 of an individual license are the same as the requirements of Section
8 180.059; and

9 (3) the applicant pays:

10 (A) an investigation fee in a reasonable amount
11 determined by the commissioner; and

12 (B) an annual license fee in an amount determined
13 as provided by Section 14.107.

14 (d) The finance commission may adopt rules under this
15 chapter as required to carry out the intentions of the federal
16 Secure and Fair Enforcement for Mortgage Licensing Act of 2008
17 (Pub. L. No. 110-289).

18 SECTION 18. Section 351.102, Finance Code, as added by
19 Chapter 1220 (H.B. 2138), Acts of the 80th Legislature, Regular
20 Session, 2007, is amended by adding Subsection (e) to read as
21 follows:

22 (e) A license holder engaged in the business of making,
23 transacting, or negotiating a property tax loan for a principal
24 dwelling must meet the surety bond or recovery fund fee
25 requirement, as applicable, of the holder's residential mortgage
26 loan originator under Section 180.058.

27 SECTION 19. Section 351.156, Finance Code, as added by

1 Chapter 1220 (H.B. 2138), Acts of the 80th Legislature, Regular
2 Session, 2007, is amended to read as follows:

3 Sec. 351.156. LICENSE SUSPENSION OR REVOCATION. After
4 notice and a hearing the commissioner may suspend or revoke a
5 license if the commissioner finds that:

6 (1) the license holder failed to pay the annual
7 license fee, an examination fee, an investigation fee, or another
8 charge imposed by the commissioner under this chapter;

9 (2) the license holder, knowingly or without the
10 exercise of due care, violated this chapter or Section 32.06 or
11 32.065, Tax Code, or a rule adopted or an order issued under this
12 chapter or Section 32.06 or 32.065, Tax Code; ~~[or]~~

13 (3) a fact or condition exists that, if it had existed
14 or had been known to exist at the time of the original application
15 for the license, clearly would have justified the commissioner's
16 denial of the application; or

17 (4) the license holder has failed to ensure that an
18 individual acting as a residential mortgage loan originator, as
19 defined by Section 180.002, in the making, transacting, or
20 negotiating of a property tax loan for a principal dwelling is
21 licensed under this chapter in accordance with Section 351.0515.

22 SECTION 20. Section 411.095, Government Code, is amended to
23 read as follows:

24 Sec. 411.095. ACCESS TO CRIMINAL HISTORY RECORD
25 INFORMATION: CONSUMER CREDIT COMMISSIONER. ~~[(a)]~~ The consumer
26 credit commissioner is entitled to obtain from the department
27 criminal history record information that relates to a person who is

1 an applicant for or holder of a license under Chapter 342, 347, 348,
2 351, or 371, Finance Code.

3 SECTION 21. Section 411.1385, Government Code, is amended
4 to read as follows:

5 Sec. 411.1385. ACCESS TO CRIMINAL HISTORY RECORD
6 INFORMATION: SAVINGS AND MORTGAGE LENDING COMMISSIONER. (a) The
7 savings and mortgage lending commissioner is entitled to obtain
8 from the department criminal history record information maintained
9 by the department that relates to a person who is an applicant for
10 or holder of a [~~mortgage broker or loan officer~~] license issued
11 under Chapter 156 or 157, Finance Code.

12 (b) Criminal history record information obtained by the
13 savings and mortgage lending commissioner under Subsection (a) with
14 respect to the issuance of a license under Chapter 156, Finance
15 Code, may be released or disclosed only as provided by Section
16 156.206, Finance Code.

17 SECTION 22. For purposes of implementing an orderly and
18 efficient process for licensing and registering residential
19 mortgage loan originators that meets the requirements of the
20 federal Secure and Fair Enforcement for Mortgage Licensing Act of
21 2008 (Pub. L. No. 110-289), Chapter 180, Finance Code, as added by
22 this Act, Section 15.4024, Finance Code, as added by this Act, and
23 Chapters 156, 157, 342, 347, 348, and 351, Finance Code, as amended
24 by this Act, the Finance Commission of Texas, as soon as practicable
25 after the effective date of this Act, may adopt rules and establish
26 interim procedures for licensing individuals engaging in or
27 conducting the business of a residential mortgage loan originator

1 in this state and for the approval or denial of applications for
2 licenses authorizing individuals to engage in business as a
3 residential mortgage loan originator. For individuals authorized
4 by state law to engage in residential mortgage loan origination
5 activities immediately before the effective date of this Act, the
6 Finance Commission of Texas may establish expedited review and
7 licensing procedures.

8 SECTION 23. (a) In this section, "Nationwide Mortgage
9 Licensing System and Registry," "regulatory official,"
10 "residential mortgage loan originator," and "unique identifier"
11 have the meanings assigned by Section 180.002, Finance Code, as
12 added by this Act.

13 (b) On application by a person for a license, registration,
14 and unique identifier as a residential mortgage loan originator
15 with the Nationwide Mortgage Licensing System and Registry, the
16 regulatory official may determine that the applicant meets the
17 prelicensing education courses and written test requirements of
18 Sections 180.056 and 180.057, Finance Code, as added by this Act, if
19 the applicant, on the effective date of this Act, is acting as a
20 state-licensed residential mortgage loan originator in this state
21 under Chapter 156, Finance Code. The applicant must be in good
22 standing with the regulatory official to obtain an exemption under
23 this subsection.

24 (c) The regulatory official may determine an exemption
25 under Subsection (b) of this section by rule of the Finance
26 Commission of Texas.

27 (d) This section does not grant a residential mortgage loan

1 originator a waiver from the continuing education requirements
2 prescribed by the regulatory official and the federal Secure and
3 Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No.
4 110-289).

5 SECTION 24. (a) Except as provided by Subsection (b) of
6 this section, an individual is not required to comply with Chapter
7 180, Finance Code, as added by this Act, and Chapters 156, 157, 342,
8 347, 348, and 351, Finance Code, as amended by this Act, until the
9 later of:

10 (1) July 31, 2010; or

11 (2) a subsequent date that is approved by the
12 secretary of the United States Department of Housing and Urban
13 Development under the authority granted under the federal Secure
14 and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No.
15 110-289).

16 (b) An individual authorized to engage in residential
17 mortgage loan origination activities in this state as of July 31,
18 2009, is not required to comply with Chapter 180, Finance Code, as
19 added by this Act, and Chapters 156, 157, 342, 347, 348, and 351,
20 Finance Code, as amended by this Act, until the later of:

21 (1) July 31, 2011; or

22 (2) a subsequent date approved by the secretary of the
23 United States Department of Housing and Urban Development under the
24 authority granted under the federal Secure and Fair Enforcement for
25 Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

26 SECTION 25. This Act takes effect immediately if it
27 receives a vote of two-thirds of all the members elected to each

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1 house, as provided by Section 39, Article III, Texas Constitution.
2 If this Act does not receive the vote necessary for immediate
3 effect, this Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 10 was passed by the House on April 28, 2009, by the following vote: Yeas 148, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 10 on May 29, 2009, by the following vote: Yeas 143, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 10 was passed by the Senate, with amendments, on May 25, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor