

AN ACT

relating to certain qualifications and requirements for residential mortgage loan companies, the investment and use of excess residential mortgage loan originator recovery fund fees, and the creation of the mortgage grant fund; changing a fee.

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

SECTION 1. Section 13.016, Finance Code, is amended to read as follows:

Sec. 13.016. RECOVERY FUND. (a) Except as provided by Subchapter G, Chapter 156, the [The] savings and mortgage lending commissioner shall establish, administer, and maintain one recovery fund for the purposes of Chapters 156 and 157. The recovery fund shall be administered and maintained under Subchapter F, Chapter 156.

(b) The savings and mortgage lending commissioner's authority under this section includes the authority to[+]

~~[(1) set fee amounts under Chapters 156 and 157 for deposit in the recovery fund, and~~

~~[(2)]~~ enforce disciplinary action as provided by Chapters 156 and 157 for a person's failure to comply with the applicable provisions of those chapters relating to the recovery fund and with applicable rules adopted under those chapters.

SECTION 2. Section 156.2041, Finance Code, is amended to read as follows:

1 Sec. 156.2041. QUALIFICATIONS AND REQUIREMENTS FOR
2 LICENSE: MORTGAGE COMPANY. [~~a~~] To be issued a mortgage company
3 license, an applicant must:

4 (1) submit a completed application together with the
5 payment of applicable fees through the Nationwide Mortgage
6 Licensing System and Registry;

7 (2) designate control persons for the mortgage company
8 through the Nationwide Mortgage Licensing System and Registry;

9 (3) designate an individual licensed as a residential
10 mortgage loan originator under Chapter 157 as the company's
11 qualifying individual;

12 (4) if applicable, submit a completed branch
13 application through the Nationwide Mortgage Licensing System and
14 Registry for each branch office that engages in residential
15 mortgage loan activity on residential real estate located in this
16 state;

17 (5) not be in violation of this chapter, a rule adopted
18 under this chapter, or any order previously issued by the
19 commissioner to the applicant;

20 (6) have the company name or assumed name properly
21 filed with either the secretary of state or with the appropriate
22 county clerk's office; and

23 (7) [~~maintain a physical office in this state, and~~

24 [~~8~~] provide financial statements and any other
25 information required by the commissioner.

26 SECTION 3. Section 156.2042, Finance Code, is amended to
27 read as follows:

1 Sec. 156.2042. QUALIFICATIONS AND REQUIREMENTS FOR
2 LICENSE: CREDIT UNION SUBSIDIARY ORGANIZATION. [~~(a)~~] To be issued
3 a credit union subsidiary organization license, an applicant must:

4 (1) submit a completed application together with the
5 payment of applicable fees through the Nationwide Mortgage
6 Licensing System and Registry;

7 (2) designate control persons for the organization
8 through the Nationwide Mortgage Licensing System and Registry;

9 (3) designate an individual licensed as a residential
10 mortgage loan originator under Chapter 157 as the company's
11 qualifying individual;

12 (4) submit a completed branch application through the
13 Nationwide Mortgage Licensing System and Registry for each branch
14 office that engages in residential mortgage loan activity on
15 residential real estate located in this state; and

16 (5) not be in violation of this chapter, a rule adopted
17 under this chapter, or any order previously issued by the
18 commissioner to the applicant[~~, and~~

19 [~~(6) maintain a physical office in this state~~].

20 SECTION 4. Section 156.212, Finance Code, is amended to
21 read as follows:

22 Sec. 156.212. MAINTENANCE AND LOCATION OF OFFICES. [~~(a)~~
23 ~~Each residential mortgage loan company licensed under this chapter~~
24 ~~shall maintain a physical office in this state.~~

25 [~~(a-1) If a residential mortgage loan company's main office~~
26 ~~is outside this state, the requirement of Subsection (a) is~~
27 ~~satisfied if the company has a branch office located in this state.~~

1 ~~[(b)]~~ If a residential mortgage loan company maintains an
2 office separate and distinct from the company's main office,
3 whether located in this state or not, that conducts mortgage
4 business with consumers of this state or regarding residential real
5 estate in this state, the company shall apply for, pay a fee of \$50
6 for, and obtain an additional license to be known as a branch office
7 license for each additional office to be maintained by the company.

8 SECTION 5. Sections 156.501(b) and (c), Finance Code, are
9 amended to read as follows:

10 (b) Subject to this subsection and Section 156.502(b), the
11 recovery fund shall be used to reimburse residential mortgage loan
12 applicants for actual damages incurred because of acts committed by
13 a residential mortgage loan originator who was licensed under
14 Chapter 157 when the act was committed. The use of the fund is
15 limited to reimbursement for out-of-pocket losses caused by an act
16 by a residential mortgage loan originator licensed under Chapter
17 157 that constitutes a violation of Section 157.024(a)(2), (3),
18 (5), (7), (8), (9), (10), (13), (16), (17), or (18) or 156.304(b).

19 (c) Amounts in the recovery fund may be invested and
20 reinvested in accordance with Chapter 2256, Government Code, and
21 under the prudent person standard described in Section 11b, Article
22 VII, Texas Constitution [~~in the same manner as funds of the~~
23 ~~Employees Retirement System of Texas~~], and the interest from these
24 investments shall be deposited to the credit of the fund. An
25 investment may not be made under this subsection if the investment
26 will impair the necessary liquidity required to satisfy claims
27 [~~judgment payments~~] awarded under this subchapter.

1 SECTION 6. Section 156.502, Finance Code, is amended to
2 read as follows:

3 Sec. 156.502. FUNDING. (a) On an application for an
4 original license [~~or for renewal of a license~~] issued under Chapter
5 157, the applicant, in addition to paying the original application
6 fee [~~or renewal fee~~], shall pay a fee in the [~~an~~] amount of
7 [~~determined by the commissioner, not to exceed~~] \$20. The fee shall
8 be deposited in the recovery fund.

9 (a-1) All or any portion of the amount of a penalty that is
10 collected by the commissioner under Sections 156.302, 156.303,
11 157.023, 157.024, 157.031, 158.105, and 180.202, as determined by
12 the commissioner, may be deposited to the credit of the recovery
13 fund at the end of each fiscal year.

14 (b) If the balance remaining in the recovery fund at the end
15 of a calendar year is more than \$3.5 million, the amount of money in
16 excess of that amount shall be remitted by the commissioner to the
17 comptroller for deposit in the mortgage grant fund established
18 under Subchapter G [~~available to the commissioner to offset the~~
19 ~~expenses of participating in and sharing information with the~~
20 ~~Nationwide Mortgage Licensing System and Registry in accordance~~
21 ~~with Chapter 180~~].

22 SECTION 7. Chapter 156, Finance Code, is amended by adding
23 Subchapter G to read as follows:

24 SUBCHAPTER G. MORTGAGE GRANT FUND

25 Sec. 156.551. MORTGAGE GRANT FUND. (a) The commissioner
26 shall establish, administer, and maintain a mortgage grant fund as
27 provided by this subchapter. The amounts received by the

1 commissioner for deposit in the fund shall be held by the
2 commissioner in trust for carrying out the purposes of the fund.

3 (b) Subject to Subsection (c), all or any portion of the
4 amount of a penalty that is collected by the commissioner under
5 Sections 156.302, 156.303, 157.023, 157.024, 157.031, 158.105, and
6 180.202, as determined by the commissioner, may be deposited to the
7 credit of the mortgage grant fund at the end of each fiscal year.

8 (c) The balance of the mortgage grant fund may not at any
9 time exceed \$300,000.

10 Sec. 156.552. FUNDING. The mortgage grant fund consists
11 of:

12 (1) penalties collected by the commissioner and
13 deposited to the credit of the fund in accordance with Section
14 156.551(b); and

15 (2) excess amounts transferred from the recovery fund
16 under Section 156.502(b).

17 Sec. 156.553. MANAGEMENT OF FUND. (a) The commissioner, as
18 manager of the mortgage grant fund, shall:

19 (1) subject to Subsection (b), invest and reinvest the
20 assets of the fund;

21 (2) make disbursements from the fund in accordance
22 with Section 156.554;

23 (3) advise the finance commission regarding the fund;

24 (4) maintain books and records for the fund as
25 required by the finance commission; and

26 (5) appear at hearings or judicial proceedings related
27 to the fund.

1 (b) Amounts in the mortgage grant fund may be invested and
2 reinvested in accordance with Chapter 2256, Government Code, and
3 under the prudent person standard described in Section 11b, Article
4 VII, Texas Constitution.

5 Sec. 156.554. DISBURSEMENT FROM FUND. (a) The
6 commissioner shall approve each disbursement from the mortgage
7 grant fund, which must be for a purpose authorized by Subsection
8 (b).

9 (b) The commissioner:

10 (1) may provide grants in an aggregate amount of not
11 more than \$100,000 each year to an auxiliary mortgage loan activity
12 company or another nonprofit organization for the purposes of:

13 (A) providing to consumers financial education
14 relating to mortgage loans; and

15 (B) providing to other nonprofit organizations
16 training in order for those organizations to provide to consumers
17 financial education relating to mortgage loans;

18 (2) shall make disbursements from the fund to pay
19 claims made under Section 156.555 that meet the requirements for
20 payment under that section; and

21 (3) may make disbursements from the fund to provide
22 support for statewide financial education, activities, and
23 programs specifically related to mortgage loans for consumers,
24 including activities and programs described by Section 393.628(c).

25 Sec. 156.555. PAYMENT OF CLAIMS FOR FRAUDULENT UNLICENSED
26 ACTIVITY. (a) A residential mortgage loan applicant may make a
27 claim on and receive payment from the mortgage grant fund for the

1 recovery of the applicant's actual, out-of-pocket damages incurred
2 because of fraud committed by an individual who acted as a
3 residential mortgage loan originator but who did not hold the
4 required license issued under Chapter 157 at the time the
5 individual committed the fraudulent act.

6 (b) The eligibility and procedural requirements for a claim
7 made under Section 156.504 and the statute of limitations under
8 Section 156.503 apply to a residential mortgage loan applicant who
9 makes a claim under this section.

10 (c) Payments made from the mortgage grant fund to a
11 residential mortgage loan applicant under this section are subject
12 to the limits provided by Section 156.505.

13 Sec. 156.556. RULES. The finance commission shall adopt
14 rules to administer this subchapter, including rules governing
15 implementation of Section 156.554 that:

16 (1) ensure a grant awarded under that section is used
17 for a public purpose described by that section; and

18 (2) provide a means of recovering money awarded that
19 is not used in compliance with that section.

20 SECTION 8. Section 157.013(b), Finance Code, is amended to
21 read as follows:

22 (b) An application for a residential mortgage loan
23 originator license must be accompanied by:

24 (1) an application fee in an amount determined by the
25 commissioner, not to exceed \$500; and

26 (2) for an original license, a recovery fund fee in the
27 [an] amount of [determined by the commissioner, not to exceed] \$20.

1 SECTION 9. Sections 156.501(d) and (f), Finance Code, are
2 repealed.

3 SECTION 10. Section 156.501(c), Finance Code, as amended by
4 this Act, applies only to an investment made on or after the
5 effective date of this Act. An investment made before the effective
6 date of this Act is governed by the law as it existed immediately
7 before that date, and that law is continued in effect for that
8 purpose.

9 SECTION 11. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 3617 was passed by the House on April 30, 2021, by the following vote: Yeas 133, Nays 8, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3617 on May 28, 2021, by the following vote: Yeas 99, Nays 49, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3617 was passed by the Senate, with amendments, on May 24, 2021, by the following vote: Yeas 25, Nays 5.

Secretary of the Senate

APPROVED: _____

Date

Governor