

# Senate Committee on Business and Commerce

## Legislative Implementation

Texas Department of Savings and  
Mortgage Lending

# Statutory Mandates

The Department of Savings and Mortgage Lending's mission is to protect consumer interests while ensuring a safe and sound, and compliant system of savings banks, mortgage brokers and mortgage bankers, facilitating the credit necessary to support the residential housing and real estate financial needs of Texas.

## ★ Savings Banks and Savings and Loans

- ❖ Chapters 66 and 96 of the Texas Finance Code require the Commissioner to examine each state savings bank and savings and loan to safeguard the interests of depositors, creditors, shareholders, and other parties.

## ★ Mortgage Companies and Mortgage Bankers

- ❖ Chapters 156, 157, and 180 of the Texas Finance Code require the Commissioner to license, examine and resolve consumer complaints relating to all residential mortgage loan originators and their sponsored loan officers. This program was initiated in fiscal 2000 and has been expanded in each subsequent legislative session.

## ★ Mortgage Servicers

- ❖ Chapter 158 of the Texas Finance Code requires the Commissioner to register all third party non-depository residential mortgage loan servicers operating in the State of Texas and to resolve consumer complaints that are filed with the Commissioner. This program was initiated September 1, 2011.

# Profile of Regulated Entities & Staffing

	11-30-2011	2010	2008	2006
<b><u>Thrift Exam and Supervision-</u></b>				
# of Institutions	31	29	28	22
Assets Regulated (billions)	\$8.6	\$7.8	\$4.0	\$9.3
# of Exams/Visits Completed	36	42	30	22
<b><u>Mortgage Origination Licensing-</u></b>				
# of Individuals Licensed	13,462	12,775	18,309	24,162
# of Companies Licensed	3,174	2,912	2,116	414
# of Licensees Examined	829	3,210	5,323	6,459
<b><u>Mortgage Servicer Registration-</u></b>				
# of Companies Registered	78	N/A	N/A	N/A
<b>Average FTEs by Program</b>				
Thrift Examination & Supervision	17	15	17	14
Mortgage Regulation	29	23	36	35
Complaint Resolution	8	9	7	8
Administration	8	7	7	6
Total Average FTEs	62	54	67	63

# Senate Bill 17

## ★ Purpose

- ❖ Relating to the regulation of third party residential mortgage loan servicers; providing an administrative penalty.

## ★ Rules 7 TAC 79

- ❖ Adopted creation of new rules found in 7 TAC 79 by the Finance Commission of Texas at its December 16, 2011 meeting.
- ❖ These new rules provide 1) definitions, 2) how to register, 3) required timely disclosure to consumers on filing a complaint as well as procedures for the Department to investigate consumer complaints, 4) due process for appeals and hearings held under this chapter.
- ❖ Authority is primarily reactive to the filing of a consumer complaint. The Department is authorized to participate in any multi-state examination of a registered residential mortgage loan servicer.

## ★ Consumer Complaints

- ❖ During the first quarter of FY 2012 we have received 33 consumer complaints on loan servicing or loan modification issues.

# Senate Bill 1124

## ★ Purpose

- ❖ Relating to statutory conflicts resulting from the passage of HB 10 (the Texas SAFE Act of 2009) and providing penalties.

## ★ Rules 7 TAC 80 and 7 TAC 81

- ❖ Adopted amendments to rules found in 7 TAC 80 and 7 TAC 81 by the Finance Commission of Texas at its October 21, 2011 meeting.
- ❖ Primarily non-substantive changes, which reconciled language in the rules to statutory language in 180, 156 and 157, and added clarification when needed.
- ❖ A substantive amendment was made to 80.301, reestablishing the exemption for an “owner of real property who in any 12-consecutive-month period makes no more than five Residential Mortgage Loans to purchasers of the real property for all or a part of the purchase price of that same real property.” This exemption had been removed in response to HUD guidance that was subsequently reversed by the federal government. An addition was also added to Chapter 180 in the statute leaving all statutory and rule citations consistent.

# House Bill 558

## ★ Purpose

- ❖ Relating to payoff statements requested by title companies to mortgage servicers in connection with certain home loans.

## ★ Rules 7 TAC 155

- ❖ Adopted creation of new rules found in 7 TAC 155 by the Finance Commission of Texas on December 16<sup>th</sup> following extensive stakeholder involvement.
- ❖ Stakeholder requests which are found in the rules include:
  - ❖ A statement clarifying the deadline for a mortgage servicer to respond to a payoff request made under the statute;
  - ❖ A statement clarifying that amounts held in escrow at closing will be settled in accordance with applicable federal law;
  - ❖ A Requirement that payoff requests include, at a minimum, the name of the mortgagor, physical address of the underlying collateral, or a legal description of the property, and the proposed closing date of the loan.
- ❖ Requirements on the payoff statement form include:
  - ❖ Proposed closing date;
  - ❖ Payoff amount valid through the proposed closing date; and
  - ❖ Sufficient information to identify the loan for which the payoff is provided.

# Other Senate Bills Impacting Agency

## SB 767

### ★ Purpose

- ❖ Relating to the regulation of certain residential mortgage foreclosure consulting services; providing a criminal penalty.
- ❖ The Department has historically held that if foreclosure consultants negotiate rates or terms with borrowers, they must be licensed as a residential mortgage loan originator. No adjustments were necessary to the Department's operation.

## SB 249 and SB 1008

### ★ Purpose

- ❖ Relating to the composition of the Finance Commission of Texas. SB 249 expanded the overall membership to 11 by adding one additional banking executive and one public member. SB 1008 expands the qualifications of the Finance Commission mortgage member to also include a mortgage loan originator licensed under Chapter 157 in addition to the already stated licensee under Chapter 156.

# Developments Since Adjournment

## ★ Dodd–Frank Wall Street Reform and Consumer Protection Act

- ❖ The Office of Thrift Supervision (OTS) eliminated in July 2011 –
  - ❖ Some of the 17 federal thrift charters in Texas may wish to convert to a state savings bank charter to still have a dedicated thrift regulator. Three charter conversions to the state savings bank system have been completed.
  
- ❖ HUD's authority to interpret and enforce the federal SAFE Act was transferred to the Bureau of Consumer Financial Protection (CFPB) In July 2011 -
  - ❖ The CFPB now holds the authority to determine if an individual state is meeting the standards to warrant continued independent oversight. They will also be charged with interpreting most of the other key mortgage lending compliance statutes our Department relies on including RESPA and TILA.
  - ❖ Three days prior to the transfer, HUD issued final rules implementing the federal SAFE Act, which had been in proposed status for over 18 months.
    - ❖ As a result of these interpretations reversing HUD's earlier guidance, the Department discontinued license requirements for governmental entities, their employees, and employees of bona fide non-profits.

★ The agency became the ninth state supervisory body accredited as a mortgage regulator by the Conference of State Bank Supervisors.



# Upcoming Issues

## ★ Outreach

- ❖ Currently mortgage servicers are required to notify borrowers of where to file a complaint only at origination of a new loan or upon transfer of servicing of an existing loan. This does not account for the significant volume of existing borrowers who have no other way of knowing they have a new place to file complaints. The Department has begun outreach efforts with various consumer advocacy groups and asked servicers to voluntarily notify borrowers through normal correspondence avenues.
- ❖ Face to face discussion with the directors of several federal thrift institutions could lead to additional charter conversions.

## ★ Operations

- ❖ Current FTE levels, fund balances, and fee structures are anticipated to be sufficient to meet demands on the agency. The added flexibility of SDSI has provided timely responsiveness essential to both consumer protection and a safe and sound mortgage industry.
- ❖ Training and retention of new staff is critical to agency performance and has been addressed continuously. As of December 31, 2011, 8% of all employees had less than two years of agency service (down from 40% in February 2007). Examiner annual turnover rate has decreased from 28% in FY 2005 to 4% in FY 10 down to 0% in FY11 and FY12 to date.